



The public lawsuit in the economic crime in front of the ordinary judiciary



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Abstract

The article sheds the light on the public lawsuits view in the economic crime in front of the ordinary judiciary due to what the economic crime is characterised of a special nature coming from causing harm to the national economy, and which demands deviating from the ordinary rules in pursuing it. However, the need arises for alternatives to the public lawsuit, in the midst of a judicial reality that has become exhausted by the large number of cases and the slowness of their ruling.

Within this scope and in accordance with the modern views in criminal policy, the Algerian legislator creates through the order 15-12, the immediate appearance system, the penal order and the mediation in the penal article...

Keywords

economic crime;
public lawsuit;
public lawsuit alternatives;
immediate appearance;
mediation.

الكلمات المفتاحية

الجريمة الاقتصادية؛
الدعوى العمومية؛
بدائل الدعوى العمومية ؛
المثول الفوري ؛
الوساطة.

الدعوى العمومية في الجريمة الاقتصادية أمام القضاء العادي

ملخص

يسلط المقال الضوء على نظر الدعوى العمومية في الجريمة الاقتصادية، أمام القضاء العادي ، ذلك أن ما تتميز به الجريمة الاقتصادية من طبيعة خاصة متأتية من مساسها بالاقتصاد الوطني يستدعي الخروج على القواعد العامة في المتابعة بشأنها ، ومع ذلك تنشأ الحاجة في ظل واقع قضائي أثقل كاهله كثرة القضايا وبطء الفصل فيها إلى بدائل عن الدعوى العمومية وعن إجراءات مختصرة .

هذا الإطار وتماشيا مع التوجهات الحديثة للسياسة الجنائية المشرع الجزائري من خلال الأمر 12-15 استحدث نظام المثول الفوري ، والأمر الجزائي والوساطة في المادة الجزائية ..

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Doi:

Introduction:

At present, economic crime makes a big challenge for countries concerning the negative effects that it creates. So, it doesn't confess geographical borders of countries, where it depends upon modern techniques to commit it. This particularity that specifies the economic crime requires to reassess the strategy to defy this type of crime for the purpose of protecting the economical policy of the country. That's because depending on general basics and procedural rules is no longer useful, for this reason deflection from the general rules is required.

In addition to the crisis that is witnessed by the penal justice which appears through the accumulation of a large number of pending cases, where it is centered on the slowness of procedures and the resulting impact is evident in the weakness of their treatment in spite of their simplicity. Also, modern criminal policy also turns to take reform measures for the justice sector for the sake of getting out of this crisis and search for alternatives to the public lawsuit that facilitate the acceleration of judgment in cases, and decrease the pressure it suffers from, without prejudice to the rules and principles of trials.

For the purpose of this trend and seeking the reformation of the justice system, through order 15-02, the legislator sought to approve new procedures which are represented in the penal order, mediation in the penal article, and instant appearance system.

Also in line with the international obligations which were imposed by Algeria's ratification of many international agreements concerning adopting the idea of a specialized judiciary to face new crimes through its setting the specialized penal poles in 2006, and then the economic and financial penal pole in 2020.

In line with modern policy in confronting new crimes, the Algerian legislator maintained the follow-up of public lawsuits in front of the ordinary judiciary. Therefore, each of them has common jurisdiction to hear cases concerning the economic crime, and by requesting the attorney general to the penal pole specialized in the case file, the lawsuit will be abandoned to him at any stage of the lawsuit. Also, if the file is being examined by the specialized penal pole and the public prosecutor at the economic and financial pole wants to claim the lawsuit file, so, the file will be given up to him, because it has priority. Accordingly, the theme of our research is related to: Examining the public lawsuit by the ordinary judiciary, not the specialized one.

Research problematic:

The question raised here is about how efficient and effective the procedural fight against economic crime is in its new forms under the ordinary judiciary ?

To pose the question in this way it is necessary to divide the research into two main axis:

First axis: Filing and presenting the public lawsuit in economic crime.

First section: Filing the public lawsuit in economic crime.

Second section: presenting the public lawsuit in the economic crime.

Second axis: options to the public lawsuits in economic crimes and abbreviating the procedures.

First section: Reasonable ground for choosing substitutions of the public lawsuits in economic crimes and abbreviating the procedures.

Second section: Procedures established by the order 15/02.

First axis

Filing and presenting the public lawsuit in economic crime

We mean by filing a lawsuit the appeal of public prosecution to the judiciary in the name of the people to punish the executed in this crime ⁽¹⁾. Whereas, presenting the public lawsuit is meant starting its proceedings to be used the first time before being used by the investigation authorities or the judgement authorities. It is also the proceeding that changes the lawsuit form its inactive state, in which it has been since it is established, to active state by giving it to competent authorities to start their procedures ⁽²⁾. The Public Prosecution was given the entrustment by the legislator to file a public lawsuit on behalf of the society, depending on the general rule. Whereas, what the legislator stipulated

restricting complaints from some administrative organization is an exception to this rule. The restriction may also be either by request or permission.

First section: Filing the public lawsuit (rule and exception) :

The Public Prosecution has a deep rooted jurisdiction to initiate public prosecution on behalf of society in all crimes, and this is the general rule stipulated in article 29 of the code of criminal procedure. It represents in front of every judicial body, and its representative attends the pleadings in front of the judicial bodies which are specialized in rulings as well as attending the pronouncement of the ruling. It practices this jurisdiction by itself without being given orders or permissions from any other part, even from the Minister of Justice himself, and in that sense it represents the public right. It takes the necessary measures when it receives a call of a crime being committed, and in this sense it enjoys the appropriate and compatible authority. Therefore, it can file and initiate a public lawsuit, as well as it has the right to give an order stating that there is no reason for prosecution, except for special situations which are saved by law and in which the public prosecution authority is restricted in this matter.

So, this requires submitting a complaint from the person harmed by crime or permission, like: stealing crimes among relatives. It is necessary to mention that in the case of restricting the hand of the public prosecution in filing the public lawsuit with a complaint or registration, once they are submitted, the restriction is released and the remaining of its stages will start.

Second sub- section: Restrictions contained on the public prosecution's right to file the public prosecution in economic crime.

In the context of shifting away from the penal procedure and the authorized powers of the administrative organisations which are specialized in executing the criminal policy for the objectives the state's economic policy, the administrative authority interferes to make deterrence if the matter requires, for the purpose of protecting specific interests. Also it can also indulge and turn a blind eye some transgressions that are not affective for the protected interest ⁽³⁾.

This is due to the fact that economic crime requires those with technical expertise and specializations in commercial activities in order to disclose and investigate it which requires knowledge of the laws that rule different sectors, such as industry, trade, and finance, and. So, it requires to know the details, hidden matters and secrets of transactions in these sectors. For this reason the need of specialized agents who are entrusted to fill up this mission is raised, besides to judicial police officers ⁽⁴⁾, because the small number of the public prosecution employees and their pursuing the common law crimes they are not able to pursue economic crimes of a special nature, where they require specialized officers in their fields to examine, inspect, and investigate them. As well as this sort of crimes in view of its specific nature requires speed and flexibility in its approach and simplification of procedures ⁽⁵⁾.

The role that is played by the competent administrative bodies is what differentiates economic crime, and its range varies from one crime to another. Sometimes the case depends on the filing of a complaint by the administrative organisation, and others the organization initiates the case itself without any interference from the public prosecution at all ⁽⁶⁾, and these restrictions are :

Branch One: Registering the complaint

The complaint is the report that the victims submit, or it is the requests in which the harmed people of crime present in order to claim compensation for the damage. It was said that they are those requests in which the civil claim is presented in front of the judicial officer ⁽⁷⁾, also, it is defined as **“A procedure that is undertaken by a given person who is the victim of specific crimes through which he expresses his explicit desire to file a public lawsuit in order to prove criminal responsibility and impose legal punishment on the accused against whom the complaint is made”** ⁽⁸⁾.

As is known, the Algerian legislator has not specified a specific form for the complaint in law, however there are some conditions that must be fulfilled in it to be acceptable in terms of the effect which is resulting from its submission, and among these conditions are:

- To be submitted by the competent authority, which means in other words legally entitled to have this right, or whoever has the right to deputize. This is logical because the law requires this. So, Failure to do so if the complaint is submitted by an incompetent body will result in the procedure being invalidated.
- Either the public prosecutor or the investigating judge is the party to which the complaint was submitted.
- The requisite acquaintances and information that are related to the complainant identity must be mentioned in the

complaint, which means, presented with the complainant identity relating to the crime complained of, where the complainant explains the facts of the crime in detail ⁽⁹⁾.

- It must be in writing so that the submitter can sign it, so it must have the administrative judiciary stamp on it. As well as the importance of registering the complaint submission date since it is useful in inferring the precedence of the complaint submission over public prosecution's interference in the lawsuit. And therefore, the complaint will be official and becomes authoritative in proof ⁽¹⁰⁾.

- If the condition of submitting a complaint in economic crimes in order to file a public prosecution is infringed by the public prosecution, this will invalidate the pursuing procedures concerning the cases brought to justice, and even if the case is at any stage of the lawsuit's stages, whether in front of the investigating judge or the ruling court it will issue an order by itself of rejecting the case and innocence for the already stated reason ⁽¹¹⁾.

Some examples of this:

- **In embezzlement crimes that are committed by managers of public economic institutions:**

In this case, filing a lawsuit has been restricted by the legislator, so the complaint must be submitted in advance by the competent authority, where article 6 bis of order 15/02 which was issued in 07/23/2015 stipulates that **"Public economic institutions whose capital is entirely owned by the state shall not be sued, or with mixed capital, for management activities that lead to theft, embezzlement, harm or loss of public or private funds except by relying on a preceeded complaint from the institution's social bodies which are stipulated in the valid legislation, where the social bodies members who do not report incidents of a penal nature are facing sentences which are stipulated in the valid legislation."**

This matter was a subject of controversy between supporters and adversaries of the managers' responsibility of public economic institutions for management works. The legislator reached this choice in the text of the law mentioned above, which was decreed by the interests of balancing between protecting managers from one side, as this restriction binds their hands and destroys their entrepreneurial spirit that contributes to the development of the sector, and preserving public money, and protecting the state's economy through it from the other side. This is done by creating the appropriate investment climate to engage in it freely. In this case, the legislator gave the authority to the social body to carry out the task of informing about crimes of theft, embezzlement, or destruction of public funds, and to initiate a public lawsuit concerning them, instead of the public prosecution.

The legislator justified his choice and clarified it in the explanatory agenda, where he included a text on his position in the above article that **"the bodies charged with managing and controlling the company are in a position that permits them to distinguish between management errors that do not require accountability and penal charges, and those that entail the criminal liability for the manager"**. In return, this category is exposed to criminal accountability if it does not carry out the task assigned to it, and is prevented from enjoying the complete immunity that could be abused to waste funds of these institutions. Therefore, its objective in this case is to realise the public funds protection from one side and the protection of managers from one side ⁽¹²⁾. But he retracted his position by annulling the article text 6 bis by Law No: 19-10 issued on December 11, 2019, and returned to his old position on the issue.

In tax crimes: Article 305 of the direct taxes and similar fees law refers to the text of article 104 of the tax procedures law, which stipulates that "pursuings are carried out with the objective of applying the penal sentences that are stated in the tax laws according to complaint presented by the city tax director, with the exception of those complaints that are related to security rights and the right of stamp, complaints are not submitted except after getting the approval opinion from the committee established for this objective at the competent regional directorate of taxes to which the city tax directorate is affiliated...". The legislator gave discretionary authority to the committee that is formed by the regional tax directorate concerning pursuings in this matter, as it has sufficient knowledge of the seriousness nature and extent of the tax transgressions, and then, taking a decision of whether to pursue or not ⁽¹³⁾. So, the public lawsuit will not be filed unless this complaint is submitted, and if it is not submitted, the procedures that are related to initiating the lawsuit are considered canceled and it is invalid, and whatever is built upon falsehood is false.

And it is also required to present a complaint from the article administration 534 of the indirect taxes law ⁽¹⁴⁾.

- **With reference to curbing the legislation and regulation transgressions that are concerning disbursement and the movement of capital to and from abroad,** article 9 of order 96-22 has stated chaining the public prosecution authority to file a public prosecution through relying on restricting it to initiating a complaint submitted by the Minister of Finance or one of his qualified representatives. And by the order 03-01 that was dated on February 19, 2003, it was amended by the authority competent to submit the complaint and put it in the hands of the minister of finance and the Bank of Algeria governor or one of their qualified representatives for this objective. Pursuant to Article 12 thereof ⁽¹⁵⁾,

it is thus a restriction that restricts the public prosecution in this type of crime from filing a public lawsuit. This is pursuant to article 12 thereof. Therefore, it is a shackle that ties the public prosecution's hand in this sort of crimes from initiating a public lawsuit. But the legislator retracted his decision through what was stipulated in the order (10-03) which was issued on 08-26-2010 of giving the public prosecution the authority to initiate a public lawsuit because of the danger it brings to the national economy. Therefore, he decided to give the authority to initiate a lawsuit to the public prosecution to protect the state's interest ⁽¹⁶⁾.

- The consequential effect on the complaint which is delayed and its withdrawn

Delaying to record the complaint will result in the invalidation of the procedure, and if a public lawsuit is initiated regarding it, it will be considered unacceptable, and it is considered invalid and all procedures resulting from it are invalidated because of their transgression of one rule of judicial organization which is a substantial rule that is related to public order ⁽¹⁷⁾.

But, if the complaint is withdrawn, the general rule which is stated in article 6 of the criminal procedure code states that "the public lawsuit will vanish with the withdrawal of the complaint at any phase of the public lawsuit until a final ruling is issued". As long as there is no limitation on this rule in the Corruption prevention law, so, the general rule will be applied. And therefore, the complainant can withdraw it. This will result in the end of the public lawsuit at any phase of the lawsuit ⁽¹⁸⁾.

Branch two : Recording the request

We mean by request **"Revelation in writing from a given administrative body to the public prosecution of its will to start a public lawsuit in some crimes that the legislator decided to leave discretion to these bodies to determine the appropriateness of bringing them because they are more capable than others of assessing the circumstances and state of affairs surrounding the lawsuit"** ⁽¹⁹⁾.

It is clear that the Algerian legislator agreed with the tendency which is taken by the French legislator in not taking the request as a limitation on filing a public lawsuit in economic crimes, opposite to the Egyptian legislation that allowed it in relation to customs crimes. Especially the crime of smuggling foreign goods if it is done for commerce, initiating to do so, or having them for the objective of commerce, without forgetting that they are smuggled. Besides to those which are related to organizing dealing in foreign exchange, so he states that a request to file a public lawsuit may be presented by the competent minister in each of them, ⁽²⁰⁾.

Branch three: Recording the permission

Permission is defined « **as a written authorization which is issued by the body or entity to which the employee who committed the crime follows. And the permission was put in place to protect certain employees, like: parliament members, view to their sensitive tasks and their enjoyment of immunity** ». So, in this case, the entity to which the employee belongs issues a permit or authorization that permits to follow him. Which means, it takes off the immunity he enjoys, and usually he represents the authorization of parliamentary immunity. And as their crimes are often connected with corruption, like public transactions crimes, money laundering... and other crimes ⁽²¹⁾, where members of the legislative body enjoy immunity in terms of actions that are related to the works of their tasks which are precised in the constitution 129 of the 2020 ⁽²²⁾. As for other works, the representative may be subject to judicial prosecution concerning them, and this requires getting a waiver of his immunity, and if he does not waive his immunity, the constitutional court will be informed to issue a decision to lift his immunity (Article 130 of the 2020 Constitution). But, if the committed crime is a felony or misdemeanor and the deputy is in the act of committing it, in this case he could be arrested and inform the national people's assembly office if he is a parliamentary deputy or inform the national assembly office if he is a National Assembly deputy. The latter can request to stop pursuing and release the deputy on the condition that the rulings of article 130 which is mentioned before are executed, which means, decreeing a decision to lift immunity from the constitutional court by decision of the article 131 of the 2020 constitution.

Second section

initiating a public lawsuit in economic crime

We mean by initiating a public lawsuit **"A series of pursued procedures through its different phases, starting with filing it, presenting demands in front of the investigating judge, chalanging his orders, assigning the accused to be present and plead, mentioning requests and defenses, submitting appeals against the rulings issued, and pursuing them in front of the judicial authorities until they are decided upon by a final and conclusive ruling"** ⁽²³⁾. The public prosecution's initiation of the public lawsuit is considered as an inherdeep rooted right and this is pursuant to what is stated in article 29 of the code, where it exercises it on behalf of society, and accordingly it enjoys the

appropriate authority to decide what procedures should be taken. And generally, this is done by demanding an investigation from the investigating judge, and in case failing the public prosecution in filing a public lawsuit by summons to appear, but when order 15-02 was issued, which embodied the criminal policy tendency towards the diminution of the burden on the courts, decrease the files number which are presented to them, acceleration and simplification the procedures, and depend on restorative justice, the legislator has added other ways, which are represented in immediate appearance, the penal order, and mediation.

First sub- section: Regarding the general rules: which are done in two ways; A judicial investigation request and summons to appear

Branch one: A judicial investigation request

It is stated in article 67 of the code of criminal procedure that the public prosecutor must present a demand to the investigating judge for the sake of opening an investigation into the commission of a felony against a known or unknown person and has the power to accuse him of committing the crime. Also, the investigating judge cannot open an investigation concerning the facts that he reached to know and he has not been requested to do so by the public prosecutor, and accordingly, he must refer complaints or reports that are proving those facts.

It must be mentioned in this regard that the investigation is obligatory in criminal matters and optional in transgressions if there are not specific texts which require that. Also, an investigation into transgressions can be carried out if the public prosecutor demands it, and this is in according to what is stipulated in the article text 66 of the code of criminal procedure.

Branch two: By summons to appear (direct summons)

We mean by it **“The public lawsuit filing by a harmed person of a felony or misdemeanor and this is done through submitting his complaint to the investigating judge in order to set himself as a civil party and demand compensation after paying the lawsuit fees”** ⁽²⁴⁾. And the Algerian legislator has ensured its regulations in the text of article 72 of the code of criminal procedure, where this article permits the harmed person from the crime whether it is a felony or misdemeanor to present a complaint that is accompanied by a civil claim to the competent investigating judge, and set himself as a civil party in the lawsuit and pays or deposits a sum of money. And it is worthy to mention that all of these articles 333, 334, 394 referred to some rulings that are regulating this procedure.

The general rule is changed in this case by stopping giving the public prosecution power to file a public lawsuit and placing it in the hands of the harmed person, which makes him find justifications concerning his own interests. So, he usually feels oppressed and looks to take revenge for himself and restore the injustice that he suffered because of the crime committed against him in case that the public prosecution did not achieve to perform its mission due to negligence or disregard. Therefore, through pursuing this procedure he will have the chance to make amends for the harm he suffered, and this is done via the penal prosecution of the crime. Also, among the result of that, that if the prosecution conducts follow-up for the crime, the right of the harmed party by it is perished and he cannot take this way, because he is permitted an exception when the public prosecution refuses and does not achieve to do so ⁽²⁵⁾.

Also, deviating from the general rules here, where it is originally the alone civil lawsuit is not filed to the penal court, so, the civil lawsuit role here is to file a public lawsuit, then pursuing it. In the event of its file is folded for any known reason, the civil lawsuit cannot ride its way, and the civil way remains for it to the civil court ⁽²⁶⁾.

In the midst of regulating this right, the Algerian legislator made its field stretches to all crimes, including felonies, misdemeanors, and transgressions, unlike the Egyptian legislator for instance which does not permit it in felonies, and does not make it (the harmed person from the crime) presented to the public prosecution. Rather, his complaint is presented to the investigating judge for misdemeanors, transgressions, and felonies, and he brings a complaint which is accompanied by a civil claim, because investigation is compulsory in felonies ⁽²⁷⁾. Or it is brought to the court of misdemeanors and transgressions.

Second axis: options to the public lawsuits in economic crimes and abbreviating the procedures.

The Algerian legislator approved several options under order 15-02 because the reality of the justice system and its weak performance forced the search for new procedures that would decrease the volume of cases submitted to it and to realize brevity in penal procedures.

First section: Reasonable ground for choosing substitutions of the public lawsuits in economic crimes and abbreviating the procedures.

Sub section one: Penal justice crisis and its failure to oppose crime. There are two phenomena that have increased the suffering of criminal justice: the first is legislative distension, and the second is that it depends a lot in opposing crime on public prosecution, which is specified by its long and complex processes and formal control to the greatest extent, as the large number of cases presented to the judicial bodies is one of the factors of the criminal justice crisis that cannot be resolved quickly, but rather remains with the judiciary for a long period, which negatively affects the desired justice and its guarantees in the justice system ⁽²⁸⁾.

The raise in the crime volume emerges through the large number of cases, besides to the traditional justice relies upon long and complex proceedings that it is not in line with the speed with which the crime develops. So, seeking and applying justice is impossible for judicial bodies, because there are many files that the judge must decide with speed without taking enough study and scan required in dealing with them. Where this will detract from the right to an overall study of case files, and the broadcast of some of them will be delayed and many of them will be preserved because of the lack of significance on the part of the public prosecution and evading many perpetrators from justice ⁽²⁹⁾.

The failure of traditional penal justice in fighting and facing crime emerges through this reality, so looking agreement and harmony among the victims and justice agencies became a significant request for many countries in their policies and which has found a great approval by the citizens ⁽³⁰⁾. Besides to the reality of the heaped up case files that have not been addressed, legislative shortcomings emerged to address new crimes that have emerged in region and were imposed by social, economic and political changes, like electronic crimes and lot of other sorts of economic crimes. So, these crimes are new, and need technical expertise to deal with them, which means in other words, it is supposed that specialists exist at the level of judicial bodies, and this is also considered another obstacle that represented a difficulty which the criminal justice faced. Where this contributed to its loss of effectiveness in realizing its desired purposes⁽³¹⁾.

The actual and realistic failure and inability to realize the criminal policy purposes has led to the requirement of looking for a solution to this dilemma and searching for objective and procedural solutions which would decrease the heavy burden on judges and courts. And this cannot realized unless by finding other options to the traditional way and which is represented in the public lawsuit. Where the wanted options are supposed to realize speedy resolution of the cases brought to the judiciary in order to decrease their piling up, and they are also supposed to limit and annulate the length and complexity that characterize the penal procedures ⁽³²⁾.

For the sake of realizing that, many countries went in their policies to adopt some applications like decreasing or limiting the duration of the penal procedure to confront the length of the procedures, and separating the civil lawsuit from the penal one, so that the lawsuit decision would not be late. Anglo-American laws adopted the summary trial system for the sake of speeding it, where the accused was asked directly about his commission of the crime. So if he acknowledges it, the court is satisfied with its acknowledgment and the ruling is issued within a maximum of three sessions ⁽³³⁾.

Sub section two: A new vision of justice depending upon the increased attention to victims

Paying attention to the victim was defined through the process of treating the crime repercussions at the conceptual level in the books of researchers and those who are interested in the field, in the values that are existed in societies. So, when we talk about the scientific writing level, we see that the appearance of victimology goes back to the research presented by the jurist "Mandelson" at the criminal law conference in the year 1947, through which he had dealt with the victim as a participant in the crime and even considered him one of its causes. Then, many studies came after that, which added, detailed and developed this science from multiple visions. Where the concern of victimology took an international turn through the setting the victimology international association in 1971, which is a non-governmental association that gathered lot of researchers in the field. So, they evolved research that serves the specialty and contributed to its evolution depending upon the international and civil structures ⁽³⁴⁾.

And the international efforts sound to serve this new vision that countains harmonizing the interests of all parties, victims, perpetrators, and local communities. Where perpetrators require rehabilitation and victims require aid also, through what was recommended by the united nations conferences of 1980 and 1989 concerning the requirement of taking another way to manage the penal lawsuit rather than the classical way, and to direct towards adopting restorative justice procedures and programs ⁽³⁵⁾.

Likewise, at the international level, we find that the Tenth United Nations Congress on preventing crime and Treating criminals which was held in Vienna in 2000, through its orientation to the restorative justice and its approval, recommended the new national and international action plans, by resorting to restorative justice and encouraging states to formulate and follow it. Which means obligating states to review their processes concerning filing the public lawsuits besides to depending upon the restorative justice, and a deadline has been set for this to end in 2002. Concern was focused at the United Nations conference in its edition of the year 2005 on showing models of international experiences concerning this matter ⁽³⁶⁾.

Sub- section three : Making social legal security

So, adopting a new vision of justice which does not focus only on the perpetrator and the imposition of punishment, but rather looks towards building strong relationships in society, as it benefits the victim through compensation and as well as the perpetrators. So, when a crime happens, the concerned parties, which are: the perpetrator, the victim, and society, come together for the sake of dialogue and reconciliation. Where the perpetrator stands in one of two sides acknowledges committing the crime and commits to repairing the damage that is caused and compensating the victim, and this brings satisfaction for him and an amicable settlement of the dispute between them. Therefore, all the parties benefit from this process through rapprochement, which absorbs the social reaction to the crime, and performs so better than filing a penal lawsuit ⁽³⁷⁾.

Besides to what alternatives to a lawsuit based on reconciliation realize in decreasing the expenses and financial burdens that are resulting from bringing penal lawsuits and save time and effort.

Second section: procedures introduced by Order 15/02

In previous years, the summons to appear was often the practice in the penal cases. However, criminal policy in Algeria has recently moved away from penal procedures in order to eliminate the criminal crisis by decreasing the burden on the judicial systems.

This trend as an option which was adopted by the contemporary criminal policy finds its justifications in looking for the solutions to the criminal justice crisis outside its traditional field, that is characterized by lengthy, slow and complex criminal procedures submitted to procedural principles, agreed upon in all systems, and protected by constitutions, besides to accessing to the field of consensual justice which was applied since ancient times in lot of societies and has realized success in the reality ⁽³⁸⁾. The Algerian legislator approved this approach through the order 15-02 which was dated 23-07-2015, where he relied on alternatives to the penal lawsuit and which are represented in the penal order, instant appearance, and mediation.

Branch One: Via the instant appearance procedures

It is defined as **“one of the follow-up procedures that are taken by the public prosecution according to its procedural suitability in informing the court about the issue by having the accused appear immediately in front of it for the sake of simplifying trial procedures, concerning misdemeanors that he committed ”**⁽³⁹⁾. And the Algerian legislator has regulated it in the articles 339 to 339 bis 7 of order 15-02. Instant appearance is an introduced procedure in Algerian legislation for the purpose of decreasing the public prosecution's powers by removing its hand in cases of flagrante delicto in misdemeanors that do not require conducting an investigation and authorizing it to the sentencing judge.

This procedure is characterized as a permissible procedure through which the Public Prosecution practises the convenience authority based on the file submitted by the judicial police, which has taken its procedures that are stated in the article 42 of the penal procedure code and below, and has arrested the accused (and it gathered evidence and noted it in records) to the specialist regional public prosecutor. Where the latter interrogates the accused about his identity and the actions attributed to him in the presence of his lawyer according to the article 339 bis 3, in order to take into account his rights, and decides regarding him. In this case, it is possible to be decided either to request the investigating judge to open an investigation into the committed actions, or take action to summon attendance and release the accused, or it is decided to conduct an instant appearance, and the public prosecutor uses his authority in the appropriate manner ⁽⁴⁰⁾.

If the public prosecutor chooses the instant appearance of the accused, in this case a public session will be held in the presence of the accused who is under the security guard, his defense, and the victim in front of the misdemeanor department, and the session shall be presided over by the court president or one of its judges. If the accused does not have a defense, the law grants him that in accordance with the text of the article 339 bis 5. He also has the right to obtain a period of time to appoint a lawyer and prepare his defense within a period of at least three days. As well as the lawyer can get a copy of the file, and can meet with the accused alone in a place designated for this purpose. If the case is ready for adjudication, he can pronounce a ruling on it. Otherwise, it will be postponed to another session, and the judge will take what he sees appropriate concerning the accused, either putting him in temporary detention, leaving him free, or taking the judicial oversight measures that are stated in the article 125 bis 1 of the penal procedure code.

Branch two: Via the penal order

The penal order is also considered one of the procedures to apply the idea of shortened procedures that the Algerian legislator introduced under the order 15-02 and regulated in the article 380 bis, through which he focuses on turning towards moving away from the penal procedures because of their length and complexity. And in reality, the Algerian

legislator had previously decreed the penal order just for transgressions according to what was stated in law 78-0, dated in the article 392 bis, and then expanded his circle to cover the misdemeanors as well. Where the judge's access to the file of a simple case permits it to be decided in the absence of opponents, without the requirement for pleadings and without an investigation being conducted. And the ruling issued in their regard, if it is not objected to, will have the validity of the matter decided ⁽⁴¹⁾.

The Algerian legislator has restricted the penal order by setting several regulations, such as: limiting it to misdemeanors that are punished by imposing a fine or imprisonment for a period equal to a maximum of two years. Also, the legislator made it so as a permissible not obligatory, because the public prosecution which is represented in the person of the public prosecutor, disposes of the matter file after examining it according to its appropriate authority, and assesses what should be done about it. So, it may either demand an investigation into the facts through an opening request, or it takes the path of being required to attend, and both of these methods are considered among the normal methods to bring a public lawsuit, and they may follow the introduced procedures by the order 15-02 which are represented in demanding the issue of a penal order or suggesting mediation.

At a later stage, based on the demand of the public prosecutor the file will be in the hands of the penal judge, where it contains the evidentiary records that are gathered by the judicial police, besides to the birth certificate of the accused and his criminal record certificate, the facts will be adapted to the public prosecution's demands, and the file will be examined. So, if he sees that the file is complete and ready to be decided, this will be done in a non public session in the consulting room, and if he sees otherwise based on what he is permitted to, he refuses to decide on the issue and return it to the public prosecution after notifying it ⁽⁴²⁾.

This does not mean that the judge decides on the file because of its simplicity and clarity without the presence of the opponents and defense, because the ruling issued has the authority of the matter being considered, rather it relies upon the accused not objecting to it, and this will be within a month of its issuance, and the same thing for the public prosecution's objection will be within 10 days from the date of its issuance. So, if he objects in legal manner, in this case it becomes as if it was not issued, and here the file returns to the normal judicial process ⁽⁴³⁾.

Branch three: Mediation

The trend towards consensual justice in economic crimes in particular is proportional to what the field required the necessity of keeping the wheel of the economy turning, realizing the economic growth in a different way, treating in different manner, and confronting the crimes that affect it, which is characterized by its constant evolution and mobility. Where alternative methods are resorted to the public lawsuit that eliminate the need for following traditional procedures in front of the judicial bodies, which take away some tasks from them and assign them to non judicial bodies, while remaining under their supervision. And also work on finding negotiations in amicable, compromise and reformative manner between the conflicting parties and realize their satisfaction instead of retaliatory justice and this is done through these alternatives.

Mediation is based on a substantial idea, the basis of which is negotiation between the conflicting parties and looking for an amicable solution to the dispute at hand that satisfies both of them. And among its results is compensating the harmed person for what he incurred as a result of the crime, and correcting the effects resulting from it, which means in other words that the harm will be repaired, in the presence of an intermediary who is the third party, and all of that is under the judicial supervision.

And the mediation is defined as: **“Any unorthodox mode for resolving disputes through a third person that occurred according to the usual conditions with the knowledge of the judge of the incident”**, and it is also defined as “a procedure that occurs before the public prosecution disposes of the case or judges it, and based on the agreement of the parties under it, a neutral third person tries to look for resolving the dispute that they are confronting concerning a particular crime” ⁽⁴⁴⁾. And the Algerian legislator has regulated the rulings for mediation in the article 37 bis to 37 bis 9.

Mediation is recognized as a permissible procedure according to the public prosecution, where it can bring a public lawsuit concerning the facts that are presented to it if it counts them that they are dangerous. And this is according to the general rules whereby the public prosecution submits a demand to open an investigation into it to the investigating judge, or orders the preservation of the file.

As well as it may commence mediation on its own or based on the request of the victim or complainant, by using the appropriate authority granted to it by the legislator. This is what was stipulated in the article 37 bis of the order 15-02, and it may also refuse the request for mediation, which is consensual for the disputing parties. It is also characterized that the field of its application is limited to specific crimes, for instance, in the text of the article 37 bis 2 of the penal procedure code ⁽⁴⁵⁾.

Conclusion

Economic crime is characterized by its specificity concerning its nature, great impact on economic life, and its harm to the security of state and economic stability, which made it interfere by imposing the economic policy through which it protects and preserves the economy, and keeps pace with the evolutions that occur in this field. Economic crime confronting occurs in front of the ordinary judiciary, and it occurs in front of the specialized judicial authorities which the Algerian legislator has introduced.

Regarding the penal prosecution or bringing a public lawsuit to the ordinary judiciary: Filing a public lawsuit is the responsibility of the public prosecution on behalf of the society, and which the Algerian legislator has restricted in some crimes, including economic ones, which is done by presenting a complaint from the administrative bodies, so that it ties the hands of the public prosecution which does not practise its jurisdiction only after these bodies submit it. It also has many applications, the most famous of which is: Refraining from the managers' responsibility of the public economic institutions for management crimes that are stated in the article 6 of the penal procedure code, which were recently withdrawn by abolishing them by the law text, No: 19-10 which was dated in 11-12-20. And he did well, as he gave precedence to the interest of protecting public funds and abolished the distinction between the public economic institutions and other public commercial, industrial institutions and...However, there are some that are broad in the field of economic crimes, and some that are limited to being brought by a complaint, which is a narrow field. So, the Algerian legislator did not restrict the request with bringing a public lawsuit as is the case in the Egyptian legislation, and permission may also be provided in parliamentary immunities.

The public prosecution shall be commenced in accordance with the general rules, as it is conducted by the public prosecution according to the known procedures, either by demanding opening an investigation or by a direct assignment. But, the Algerian legislator, under the order 15-02, introduced new procedures that were considered as alternatives to the lawsuit that the public prosecution may resort to pursuant to the compatibility authority instead of the traditional follow-up procedures. And some of them are considered a shortcut to the procedures, as they are represented in the immediate appearance system, the penal order and mediation, where it has become possible for the judge to decide simple and clear issues without following procedures, without the presence of the parties, and in a non public session. Also, it has the authority of the adjudicated matter, in case that no objection is made to it, in an effort to simplify and expedite the ruling instead of the length and complexity of the procedures. Likewise, the dispute can be solved in amicable way through the mediation of the public prosecution, without resorting to a public lawsuit and for the sake of avoiding it and concluding a binding mediation agreement in order to set a restorative justice and redress damages. As well as decreasing the burden of the public prosecution in making an immediate appearance by presenting the accused in the misdemeanors he is guilty of, and issuing the ruling in much less time than required by ordinary procedures.

Recommendations:

- Widening the complaint field that restricted the public prosecution's authority in bringing a public lawsuit just in economic crime, and this is done by implementing it in more crimes in which the justification for resorting to it is clear. With the necessity of regulating the legislative framework which guarantees the performance of the concerned administration for the sake of maintaining the economy of the country, and its cooperation with the public prosecution in a way that fills all gaps and prevents perpetrators of economic crimes from escaping prosecution and punishment.

- Encouraging the public prosecution to widen in using lawsuit alternatives in economic crimes and do not resort to traditional modes of pursuing them.

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