

## **Criminal Settlement Provisions in Emirati Legislation**

Obaid Muhayer Alshamsi<sup>1</sup>  
& Mohammad Amin Alkrisheh<sup>2</sup>

### **Abstract**

Criminal settlement, introduced by Decree-Law No. 38 of 2022 concerning the Criminal Procedures Law, offers a significant alternative to traditional criminal prosecution in Emirati legislation. This mechanism alleviates the judicial system's burden by avoiding lengthy criminal procedures. This research explores the nature, concept, and scope of criminal settlement, detailing its procedural stages and effects. Employing descriptive and analytical methods, it highlights that in misdemeanors, a successful settlement results in the termination of criminal action, unless new elements emerge. For felonies, it leads to reduced penalties. If a misdemeanor settlement fails, the public prosecution must initiate proceedings. The study recommends that the Emirati legislator ensure settlements are proposed only when the accused is not detained, to avoid coercion and ensure free consent. This is crucial for maintaining the integrity of the settlement process and upholding justice within the framework of Emirati law.

**Keywords:** Emirati Criminal Procedures Law, criminal action, criminal settlement, procedures of criminal settlement, termination of criminal action.

### **Introduction**

In response to the desire of the Emirati legislator to keep pace with modern legislation, it was deemed necessary to introduce amendments to certain articles of the Criminal Procedures Law by Decree-Law No. 38 of 2022. These amendments aim to alleviate some of the burden on the courts due to the growing number of criminal cases they handle, to resolve criminal disputes at their inception, and to ensure justice by applying uniform procedural rules in similar criminal cases without discrimination. Under the Criminal Procedures Law, the Emirati legislator has implemented several amendments to manage criminal proceedings. These changes ensure adherence to constitutional principles without compromising criminal liability. They maintain the established guarantees for all parties in criminal proceedings and uphold the state's right to enforce penalties.

---

<sup>1</sup> Program Master of Criminal Science, College of Law, Al Ain University, United Arab Emirates (UAE).

<sup>2</sup> Professor of Criminal Law, Public Law Department, College of Law, Al Ain University, United Arab Emirates (UAE). [mohammad.alkrisheh@aau.ac.ae](mailto:mohammad.alkrisheh@aau.ac.ae)

Based on this, the Emirati legislator embarked on a modern procedural policy by implementing several amendments. The goal was not merely to amend the law for the sake of amendment but was driven by substantive justifications such as facilitating the processes of investigation and trial, achieving swift justice, and reducing the courts' burden. This was achieved through adopting the criminal settlement system as an alternative to traditional criminal prosecution, aiming to benefit from its advantages and features that relieve the judicial system and avoid arduous procedures in criminal proceedings. (Decree-Law No. 38 of 2022)

The importance of this study stems from the fact that criminal settlement is one of the most important mechanisms newly introduced by the Emirati legislator to address the crisis in criminal justice as an alternative to criminal prosecution. Undoubtedly, this offers numerous benefits and advantages that justice in criminal rulings and traditional criminal prosecution procedures could not achieve. Among these are alleviating the justice crisis, sparing the offender from the consequences of judicial proceedings, avoiding the effects of a conviction, and providing the victim an opportunity to compensate for damages incurred due to the crime committed against them. Moreover, implementing criminal settlements inevitably leads to better management of criminal justice by balancing efficiency and the speed of resolving cases while respecting the legal requirements of the state, foremost among them being the respect for human rights and freedoms.

### **Study Problem**

The issues are continuously increasing, and the postponement of their hearings to multiple sessions has become a predominant feature of the judicial system's operations, rendering it incapable of fulfilling its role in achieving criminal justice. Various factors have diminished the effectiveness of the criminal justice system. Legislative inflation, the crisis of punishment, and the prevalence of short-term imprisonment are key issues. Additionally, the emergence of multiple procedural models and the failure of prisons in their rehabilitative role contribute to the problem. The rising cost of crime and a policy mired in procedural formalities also play a role. These factors lead to delays in criminal procedures, file shelving, breaches of the equality principle, and a reduced capacity of the judicial system to combat crime.

Given these serious indicators, it was necessary for criminal policy to reconsider its approach to combating crime through alternatives to criminal prosecution, among which criminal settlement is of paramount importance. Consequently, the researchers pose a central question: How did the Emirati

legislator regulate the criminal settlement system within the texts of the Federal Criminal Procedures Law?

### **Study Methodology**

In this study, we rely on using descriptive and analytical methods, where we describe the nature of the settlement, its conditions, and scope, and detail its procedures, stages, and impacts on civil and criminal proceedings, through analyzing the texts of the Emirati Criminal Procedures Law No. 38 of 2022.

### **The Nature of Criminal Settlement**

Criminal settlement is a modern mechanism incorporated by many contemporary criminal legislations as an effective tool for addressing crises in criminal justice. It aims to achieve settlement and conciliation between the parties involved instead of proceeding to court. It also seeks to provide an alternative to traditional criminal judicial procedures (Ramadan, 2000). Understanding the nature of criminal settlement involves defining its legislative and jurisprudential concept, and clarifying its conditions and scope within Emirati legislation. Thus, this section is divided into two parts as follows:

### **Concept of Criminal Settlement**

#### **Legislative Definition**

The Emirati legislator has not explicitly defined criminal settlement within the texts of the Criminal Procedures Law, but has merely organized its provisions and procedures. The Emirati legislator has categorized criminal settlements into misdemeanors and felonies. Article 360 of Decree-Law No. 38 of 2022 concerning the Criminal Procedures Law stipulates the provisions of criminal settlement in misdemeanors, while Article 368 of the same law details the provisions of criminal settlement in felonies.

According to Article 360, criminal settlement in misdemeanors in Emirati legislation can be defined as a procedure conducted by the Public Prosecution after investigating misdemeanor crimes. If it deems the case suitable for court proceedings, it proposes to the accused to settle the criminal case finally without taking it to court, in exchange for the accused's agreement to implement one of the measures specified in Article 362 of the Emirati Criminal Procedures Law. This settlement becomes effective only upon ratification by the competent judge and results in the termination of the criminal case against the accused.

Under Article 368 of the Criminal Procedures Law, criminal settlement in felonies involves a procedure that can start on its own or at the accused's request. This applies to crimes that include felonies and closely linked misdemeanors. Once the investigation is complete and the crime is attributed to the accused, the

Public Prosecution offers them a chance. They can fully confess to the crime in exchange for a reduced penalty or specific measures. This results in the termination of the criminal case.

### **Jurisprudential Definition**

The jurisprudential definitions of the term "criminal settlement" in Arabic vary. One definition describes it as: "A procedure initiated by a member of the Public Prosecution before initiating criminal proceedings against an offender who admits to committing a crime within a specified category of legally defined offenses. The acceptance of this settlement by the offender and its ratification by a judge result in the termination of the criminal proceedings." (Frag, 2013) It should be noted that this definition does not mention the compensation associated with the settlement, which is the execution of measures specified by the competent court.

Another definition states that criminal settlement is: "A system derived from the criminal mediation system, which involves a third party playing a positive role. This role consists of a proposal imposed on the offender to commit to one or more settlement measures." (Al-Dhahak, 2007) This definition limits the settlement proposal to the offender only, whereas the process also requires the consent of the victim to the proposal.

Some scholars believe that the criminal settlement system is: "A system within the discretionary authority of the Public Prosecution, where the Public Prosecution proposes to the accused in exclusively defined crimes to perform specific actions. This procedure is subject to ratification by a judge and its effect is limited to the termination of the criminal proceedings." This definition does not mention the necessity of the accused's consent to the settlement, nor does it specify the timing of the proposal, which is before the case is referred to the competent court, nor does it mention the condition of the accused's confession to the crime (Al-Hakim, 2005).

Criminal settlement can also be defined as: "One of the newly introduced alternatives to criminal prosecution under judicial supervision, allowing the Public Prosecution, if the case is deemed suitable for court, to propose to an adult offender who has committed one or more misdemeanors or felonies as specified in the Criminal Procedures Law, and after a detailed confession of the crime, to settle the criminal case in exchange for the offender carrying out specific measures or penalties. This proposal must be endorsed by the competent judge, and successful settlement and implementation of the measures result in the termination of the criminal proceedings."

### **Scope of Criminal Settlement**

The Emirati legislator has defined the scope of application of criminal settlement for misdemeanors and felonies as follows:

#### **Firstly: The scope of criminal settlement in misdemeanors**

The Emirati legislator has allowed criminal settlements in all misdemeanors except for certain crimes specified in Article 361 of the Criminal Procedures Law, which includes:

1. **Crimes of Retribution and Blood Money (Diya):** These are crimes that affect human life and body, as specified by the Emirati legislator in the first section titled "Crimes Affecting Human Life and Bodily Safety," within the seventh chapter titled "Crimes Against Persons" in the Penal Code. Article 383 of the Penal Code states: "Without prejudice to the right to blood money, anyone who commits a crime specified in this section shall be punished with the penalties prescribed therein, in cases where retribution punishment is not applicable."
2. **Crimes Affecting State Security:** These are the crimes specified in the first and second chapters of the first title of the second book of the Federal Penal Code, and detailed in Articles 154 to 223 of the Federal Penal Code.
3. **Crimes Specified in the Juvenile Delinquents and At-Risk Juveniles Law:** These are crimes specified in the Federal Law No. (6) of 2022 concerning juvenile delinquents and juveniles at risk. Traditional penalties, such as imprisonment or fines, do not apply to juveniles, but rather precautionary measures that require studying the criminal factors of the juvenile to determine the appropriate measure.
4. **Crimes for which the law decides that the penalty cannot be reduced:** This includes what is determined in Article 67 of the Federal Decree-Law No. (30) of 2021 concerning combating narcotics and psychotropic substances.
5. **Specified crimes to which the Public Prosecution applies the provisions of the summary order:** The Emirati legislator has defined the scope of the summary order, as stated in Article 337 of the Federal Criminal Procedures Law, which reads: "The provisions of the summary order shall apply to misdemeanors and infractions specified in the laws in force in the state and punishable by either a fine, imprisonment, or both. The Attorney General shall issue a decision specifying the misdemeanors and infractions to which the provisions of the summary order apply."

6. **Crimes that are interconnected in an indivisible manner with one of the crimes to which the settlement system does not apply:** Interconnected crimes consist of multiple diverse or identical crimes but with a single criminal intent. Each physical act in itself constitutes a separate crime, but the legislator merges this type of crimes considering them as a single crime accompanied by an aggravating circumstance, yet the total is legally characterized as a crime such as murder combined with a felony or misdemeanor, and robbery under duress combined with breaking and entering, etc (Abu Amer, & Al-Qahwaji, 1989).

By reviewing the criminal statutes, it can be said that interconnected crimes refer to those crimes that inherently depend on the commission of other crimes, such that the subsequent crime cannot be committed without first committing the preceding crime, such as embezzling employee salaries through forgery in payroll lists, and a doctor stealing human organs from a patient by killing them (Hamza, 2019).

Therefore, if a crime is among those where a criminal settlement is permissible but is linked to one of the crimes excluded from criminal settlement proceedings, then a criminal settlement cannot be conducted for these crimes.

### **Secondly: The scope of criminal settlement in felonies**

The Emirati legislator has made amendments regarding the scope of criminal settlement in felonies in Article 369 of the Criminal Procedures Law, through Federal Decree-Law No. 45 of 2023 amending certain provisions of the Criminal Procedures Law issued by Federal Decree-Law No. 38 of 2022. The article stipulates that, without prejudice to Article 361 of this law, the provisions of criminal settlement apply to felonies punishable by temporary imprisonment and the misdemeanors linked thereto in an indivisible manner.

Based on this amendment, felonies specified in Article 361 of the Emirati Criminal Procedures Law are excluded from criminal settlement, which states that the criminal settlement system does not apply to the following crimes:

- Crimes of retribution (Qisas) and blood money (Diya).
- Crimes affecting state security.
- Crimes specified in the Juvenile Delinquents and At-Risk Juveniles Law.
- Crimes for which the law dictates that the penalty may not be reduced.
- Specified crimes to which the Public Prosecution applies the provisions of the summary order.

- Crimes that are interconnected in an indivisible manner with one of the crimes to which the settlement system does not apply.

Thus, criminal settlement is permissible in felony crimes punishable by temporary imprisonment, which is imprisonment lasting no less than three months and no more than fifteen years, and the misdemeanors linked thereto in an indivisible manner. It is not permissible to conduct criminal settlements in felony crimes punishable by life imprisonment, capital punishment, Diya, or retribution, in addition to the crimes excluded based on Article 361 of the Emirati Criminal Procedures Law.

### **Criminal Settlement Procedures and Their Effects**

Criminal settlement serves as an alternative to initiating criminal proceedings. Therefore, it cannot be applied if the criminal case has already been initiated by the Public Prosecution. The criminal settlement system is optional for the Public Prosecution, which may choose between it and initiating criminal proceedings according to standard procedures (Firm, 2017). If the Public Prosecution decides to resort to settlement as an alternative to prosecution or dismissal, then the procedures for criminal settlement begin. Emirati legislation outlines specific procedures for implementing the criminal settlement system. It also details the measures associated with these procedures. Additionally, the legislation defines the consequences of both successful and unsuccessful settlements.

### **Stages of Criminal Settlement**

The Emirati legislator has outlined the conditions and procedures for criminal settlement in both misdemeanors and felonies. If these conditions are met before the initiation of a criminal case by the Public Prosecution or the victim, and the Public Prosecution opts for settlement, the process includes two stages: proposal and judicial ratification.

### **Proposal of Criminal Settlement**

The Emirati legislator differentiates between the proposal of criminal settlement in misdemeanors and felonies as follows:

#### **Firstly, the proposal of criminal settlement in misdemeanors**

The Emirati legislator has limited the proposal of criminal settlement in misdemeanors to the Public Prosecution, which is competent to propose settlements according to Article 362/1 of the Emirati Criminal Procedures Law, which states: ("The criminal settlement in misdemeanors is proposed by the Public Prosecution by imposing one or more of the following penalties or measures...").

According to Article 363 of the Emirati Criminal Procedures Law, the procedures for criminal settlement in misdemeanors begin with an initial settlement offer. The Public Prosecution presents the settlement proposal to the accused if present. If the accused is not present, they are notified through legally specified methods. In all cases, the accused, if present, must be informed or it must be indicated in the notification that they have the right to consult a lawyer before agreeing to the Public Prosecution's proposal.

The role of the Public Prosecution here is limited to notifying the accused of the settlement proposal without having any other active role in the settlement proceedings. The settlement proposal must be written in a separate record, including the accused's information, a description of the charges against them, the applicable legal articles, the proposed penalties, and measures, and must be signed by the accused (Ababsa, & Ottoman, 2021), as stipulated in Article 364 of the Emirati Criminal Procedures Law: ("If the accused accepts the criminal settlement, the Public Prosecution member shall prepare a separate record including the accused's information, a description of the charges against them, the applicable legal articles, the proposed penalties and measures, and it must be signed by the accused.").

The accused may either accept the settlement proposal in its entirety or reject it; they do not have the option to negotiate changes to its content with the Public Prosecution. If the accused agrees to the settlement proposal, this is documented in an official record, a copy of which is given to the accused, and it must subsequently be presented to the ratifying judge for approval. However, if the accused rejects the settlement proposal, the proposal is dropped, and the Attorney General has the option to initiate criminal proceedings (Kamel, 2004).

### **Secondly: The Proposal of Criminal Settlement in Felonies**

The Emirati legislator requires that a proposal for criminal settlement in felonies be made by a member of the Public Prosecution, with a rank no less than the Chief Prosecutor, as determined by a decision from the Attorney General (Article 370 / 1, UAE Code of Criminal Procedure). The procedures for criminal settlement in felonies begin with the Public Prosecution offering the settlement either on its own initiative or upon request, after verifying that the conditions for criminal settlement are met, as per Article 371 of the Emirati Criminal Procedures Law. This article states: "The Public Prosecution shall notify the accused, or whomever it considers among the accused if not present, of the criminal settlement proposal in felonies, according to the notification methods and procedures specified in this law, and the notification must mention the necessity of hiring a lawyer. The accused must express their opinion on the proposal by



accepting or rejecting it within a period not exceeding ten working days from the date it is presented to them or from the date of notification, as applicable, and non-response is considered a rejection of the settlement."

The Public Prosecution mandates the accused to appoint a lawyer to facilitate the criminal settlement procedures in felonies, to provide legal advice to the accused. If the accused accepts the proposal for criminal settlement in felonies, the competent member of the Public Prosecution must interrogate the accused in detail and complete the necessary investigation procedures to corroborate the evidence as required, then document the proposal in a separate record including the accused's information, a description of the charges against them, applicable legal articles, evidence, and the date and place of occurrence, signed by both the Public Prosecution member and the accused (Article 371 / 2, UAE Code of Procedures Law). The Public Prosecution must ensure that the accused's confession is truthful and consistent with reality, by corroborating it with physical evidence and related proofs (Article 372, UAE Code of Procedures Law).

### **Ratification of the Criminal Settlement by the Competent Court**

Ratification is described as a judicial approval subjected to legal scrutiny, wherein the judge reviews the legality and appropriateness of the actions taken, giving the act its enforceability. This also involves a basic verification of the facts and the legality of the procedures undertaken regarding them (Lazhar, 2023). We address ratification through the competent court in both felonies and misdemeanors as follows:

#### **1. Ratification of Criminal Settlement in Misdemeanors**

If the accused agrees to the criminal settlement proposal under Emirati legislation, the Public Prosecution refers the criminal settlement record in misdemeanors, after notifying the accused, to the competent criminal court which reviews the validity of the procedures, appropriateness, and non-nullity in a non-public session. It can, in the same session and by a reasoned decision, either ratify or reject the settlement. The decision to ratify the criminal settlement in misdemeanors serves as a judgment terminating the criminal proceedings against the accused (Article 356, UAE Code of Procedures Law). The accused is then bound by the contents of the ratified criminal settlement record and must fulfill all included obligations. This decision is final and cannot be appealed or retracted (Mouziz, 2022).

#### **2. Ratification of Criminal Settlement in Felonies by the Competent Court**

The Public Prosecution refers the criminal case and the settlement record in felonies to the competent criminal court according to legally prescribed procedures. The court examines the validity of the settlement procedures and their

non-nullity. It must ask the accused, in the presence of their lawyer, whether they confess to committing the alleged act. If the accused confesses, the court may rely solely on this confession and convict them with the punishment proposed by the Public Prosecution or within the range specified by Article 370 of the Criminal Procedures Law.

The accused may retract their confession at any stage before the verdict is issued. If they retract their confession, the criminal case is returned to the Public Prosecution to proceed and complete the procedures by another prosecution member who was not involved in the criminal settlement procedures (Article 374, UAE Code of Procedures Law).

If the accused rejects the settlement proposal or retracts their confession before a verdict, or if the court rejects it, the Public Prosecution may proceed with the criminal case using legally established methods. Thus, the criminal settlement in felonies is considered null, and this nullity of the confession does not affect the validity of other evidence obtained by the Public Prosecution based on that confession. The Public Prosecution must delete or withhold the criminal settlement record and the confession as specified in Article 372 of the Criminal Procedures Law (Article 375, UAE Code of Procedures Law).

It is noted that obtaining evidence based on a settlement proposal makes the accused hesitant or even reluctant to retract their confession, as they are likely to be convicted of the crime committed, especially if the evidence is conclusive of their guilt. The court's impression may still be influenced by the previous confession, despite the law not allowing reliance on it as evidence of guilt against the accused or others. The judge is not a robot who can erase from their memory at will, and the weighing of evidence in criminal matters cannot be devoid of psychological and circumstantial influences, regardless of our precautions. It would have been preferable if the legislator had invalidated the value of such

#### **Proposed Measures and Penalties in the Context of Criminal Settlement**

Under Article 362/1 of the Emirati Criminal Procedures Law, several measures and penalties are proposed as part of a criminal settlement in misdemeanors, including:

- Payment of a fine up to half the maximum limit prescribed by law.
- Forfeiture to the state of items used or intended for use in committing the crime, or derived from it.
- Withdrawal or cancellation of a license granted to the accused for up to six months.
- Closure of the establishment or suspension of business activities for up to six months.

- Community service, in accordance with the relevant legal provisions.
- Prohibition of the accused from frequenting certain public places for up to a year, in line with applicable laws.
- Prohibition on using certain means of communication, or from possessing them for up to six months, subject to general legal provisions.
- Mandatory temporary compensation for damage caused to the victim, if requested and assessed, with the victim being notified of this proposal.

### **Tangible Measures**

These measures are designed to deprive the offender of any benefits obtained from the crime or the tools and means used to commit it. They also aim to deter the offender from future criminal activity and help rehabilitate them by addressing the damages resulting from their actions (Al-Faqi, 2016). Specific measures include:

#### **1. Payment of a Settlement Fine**

Unlike ordinary civil obligations, such as compensation for damages or loss, criminal fines have a punitive nature and must be established by law. The Emirati legislator allows the Public Prosecution to propose that the accused pay a fine, up to half of its maximum limit, to the state treasury. The amount of the fine is determined based on the gravity of the crime, taking into account the accused's income and financial obligations (Al-Hadithi, 1992. Ben Taha, 2017).

#### **2. Forfeiture to the State**

This measure involves relinquishing to the state any items used or prepared for use in the commission of the crime, or anything obtained as a result of the crime. This includes any tools used in the commission and any benefits derived from the crime. Items seized during the investigation or placed under seal by the investigating authority are particularly targeted. Generally, this measure should only apply to items owned by the accused or whose owners cannot be identified, to avoid infringing on third-party rights (El Roushi, 2013).

#### **3. Temporary Compensation to the Victim**

If the victim's identity is known, the Public Prosecution can propose that the accused provide temporary compensation for the damages suffered as a result of the crime, if requested and quantified. The victim must be informed of this proposal (Kamel, 2004). The legislator does not specify a duration for the compensation, suggesting that it may be prudent to establish a fixed period during which the accused must compensate the victim as part of the settlement process.

These measures collectively serve to penalize, deter, and rehabilitate the offender while compensating the victim, thereby fulfilling multiple objectives of criminal justice through the settlement process.

### **Personal Measures**

Personal measures in criminal settlements are divided into: liberty-depriving measures, liberty-restricting measures, and rights and benefits-restricting measures. These measures aim to reform the offender's behavior and effectively integrate them into society.

#### **1. Liberty-Depriving Personal Measures**

Although the Emirati legislator has not specified liberty-depriving measures as part of the criminal settlement, it is recommended to enact such measures due to their potential to reform the accused's behavior and instill social norms that aid in their adjustment and societal reintegration. The accused could be subjected to specific rehabilitation programs predefined by a committee of experts in psychological, behavioral, and social sciences, in addition to programs of religious counseling and guidance.

#### **2. Liberty-Restricting Personal Measures**

These measures operate to restrict the offender's freedom in their daily activities without completely depriving them of liberty. They vary as follows:

- **Community Service:** The Emirati legislator permits the Public Prosecution to propose that the accused engaged in a criminal settlement undertake unpaid work for the benefit of specified non-profit organizations chosen by the Attorney General or an authorized delegate. This service should not exceed three months, or a maximum of sixty hours over a six-month period for misdemeanors, and up to thirty hours over three months for minor offenses.
- **Communication Restrictions:** The Public Prosecution can propose restrictions on the accused from using certain means of communication or from possessing them for up to six months. This measure is suitable if the offender used communication tools to commit the crime or if the crime was of a cyber nature (Al-Ani & Al-Nawaiseh, 2022).
- **Restrictions on Frequenting Certain Public Places:** The Public Prosecution can propose restrictions on the accused from visiting certain public places for up to a year. This measure is included in Article 112 of the Penal Code and applies when the crime is committed under the influence of intoxicants or drugs, among other specified scenarios. The Prosecution determines these places, unless they are places where the person normally resides. The purpose of this measure is to keep the offender away from environments that might

either strengthen their criminal tendencies or prepare the way for them to commit further crimes. It also aims to protect the offender from becoming a victim of new crimes due to their presence in certain environments (Al-Qadi, 2011).

### **3. Personal Measures that Deprive Liberty and Restrict Rights and Benefits**

These measures involve depriving an individual of a right or benefit, which can either be granted or restricted. These types of measures are particularly effective with certain types of offenders for whom the right or benefit holds significant importance (Al-Roushi, 2013). These include:

#### **A. Handing over or canceling licenses**

The Emirati legislator allows the Public Prosecution to propose the revocation or cancellation of licenses granted to the accused for a period not exceeding six months. This measure may be necessary if the crime committed is related to an activity that requires a license to operate or practice (Al-Ani & Al-Nawaiseh, 2022).

#### **B. Business Closure or Suspension of Commercial Activity for up to Six Months**

The Emirati legislator has regulated the closure of establishments in Article 133 of the Penal Code, which states: "Apart from special cases where the law provides for closure, the court, upon sentencing a person to a prohibition from practicing their profession according to Article 131 of this law, may order the closure of the premises where this profession is practiced if the offender owned the premises at the time of the crime for a period not less than one month and not more than one year. This closure entails a prohibition on practicing the same work, trade, or industry in the same premises, whether by the sentenced person, any of his family members, or any other person to whom the sentenced person may have rented or transferred the premises after the commission of the crime. The ban does not apply to the owner of the premises or any person with a real right over it if they were not involved in the crime."

The researcher believes that the closure of an establishment or the suspension of its activities has more disadvantages than benefits, as this punishment may harm non-offenders such as employees and workers at the establishment, and it may be the only source of income for the offender's family. Therefore, this extends the punishment to non-offenders, which contradicts the principle of the personal nature of criminal penalties. Thus, the researcher recommends abolishing this measure from the proposed measures for conducting a criminal settlement.

Regarding criminal settlement in felonies, the Public Prosecutor, when applying a criminal settlement in felonies and related misdemeanors, can propose a penalty for the accused of imprisonment for no more than three years and no less than three months. The Public Prosecutor may propose one or more of the penalties set forth in Article 362 of the Criminal Procedures Law. The competent court, on its own initiative or upon request from a member of the prosecution, may apply the proposed penalty under the settlement system, according to the following: A. Sentencing under electronic monitoring as an alternative to restricting freedom. B. Application of provisions related to suspending the execution of the penalty or granting a pardon. Naturally, the conditions stipulated in the law must be met for applying these alternatives. For example, it is not permissible to place the accused under electronic surveillance if the sentence imposed exceeds two years of imprisonment, according to Article 397 of the Penal Code, nor is it permissible to suspend the execution of a sentence if the duration of the penalty exceeds one year, according to Article 84 of the Penal Code (Al-Ani & Al-Nawaiseh, 2022).

The application of the criminal settlement system in felonies does not prevent the competent court from imposing ancillary or supplementary penalties and the necessary redress and criminal measures, except for deportation measures, according to the rules and procedures provided by law. It is noted that the court is not bound by the penalty proposed by the Public Prosecutor but is bound within the limits of the penalty prescribed by law. It is also noted that the Emirati legislator has excluded the measures listed in Article 362 of the Criminal Procedures Law, so the court does not have the authority to rule on them but may impose one or more of the penalties listed in this article, in addition to the penalty proposed by the Public Prosecutor or whatever penalties it deems appropriate within the legal limits—a period of not less than three months and not more than three years.

### **Effects of the Criminal Settlement**

If the judge approves the proposed criminal settlement and the offender has fully complied with all stipulated measures, the criminal action is thereby extinguished. However, if the victim has not been compensated for the damages caused by the crime, their rights are preserved despite the resolution of the criminal case through the implementation of the criminal settlement measures. Thus, the victim may request compensation from the Public Prosecution (Lazhar, 2023).

### **Effect of the Criminal Settlement on the Criminal Action**

Criminal settlement is a system aimed at preventing the initiation of a criminal action. Its implementation at this stage effectively achieves the intended goals, more efficiently preventing any attempt to initiate the criminal action by completely precluding its presentation to the judiciary, thereby establishing it as a true alternative to criminal prosecution (Obaid, 2005). Thus, the effects of the criminal settlement extend to the criminal action as follows:

#### **Firstly, the Expiry of the Criminal Action**

The criminal action expires when one of the legally specified reasons for its expiry is present. These are reasons that prevent the state from pursuing a criminal action against a specific person for a committed crime, making it impossible to take any criminal action against the accused. Accordingly, the criminal action expires if one of these reasons occurs (Shafiq, A. (2023).

The full implementation of the criminal settlement proposal in misdemeanors results in the expiry of the criminal action arising from the settled crime unless new elements are present (Yousef, 2016). This is in accordance with Article 365/2 of the UAE Criminal Procedures Law, which states: ("The decision endorsing the criminal settlement in misdemeanors shall be considered as a judgment extinguishing the criminal action against the accused").

This effect (the expiry of the criminal action) occurs by force of law, and the criminal action cannot be initiated again for the same facts. Criminal settlement is different from criminal mediation. In successful criminal mediation, the Public Prosecution decides to archive the case. This decision lacks judicial validity and can be reversed. It remains reversible as long as the criminal action has not become statute-barred.

In felonies, successful criminal settlement results in a reduced penalty for the accused, in accordance with Article 368 of the UAE Criminal Procedures Law. If the criminal settlement in misdemeanors fails, whether due to the judge's refusal to endorse the settlement proposal or the offender's refusal to implement or accept the settlement measures, the Public Prosecution is obligated to proceed with the criminal action and has no other option (Obaid, 2005). This is in accordance with Article 366/2 of the UAE Criminal Procedures Law, which states: ("If the accused fails to fulfill the settlement conditions or obligations, the Public Prosecution may bring the criminal action to the competent criminal court and enforce compliance according to the rules set forth in the enforcement of judgments by this law."), which some consider a limitation on the prosecutorial discretion legally granted to the Public Prosecution and a deprivation of its ability to reclaim its powers.

In the case of failed criminal settlements in felonies, according to Article 375 of the UAE Criminal Procedures Law, the Public Prosecution may proceed and handle the criminal action in accordance with legally established procedures. If the accused partially implements the criminal settlement, it may be considered when the court determines the penalty to be imposed on the accused, taking into account the punitive or compensatory actions and measures partially undertaken by the offender (Boursi, 2018), according to Article 366/3 of the UAE Criminal Procedures Law, which states: ("If a conviction is issued, the work, training, or rehabilitation undertaken by the accused in fulfillment of the settlement conditions, and the financial amounts paid by him shall be considered when enforcing the sentenced penalty").

**Second: The effect of the criminal settlement on the statute of limitations on the criminal case**

Statute of limitations is defined as "the period set by the legislator from the date of the crime's occurrence, or from the date of the last investigative action or investigation, without completing the rest of the procedures and without a judgment being issued, leading to the expiration of society's right to initiate this action." (Khalifa, 2016)

Moreover, the specific procedures related to the enactment or implementation of criminal settlements interrupt the statute of limitations of the criminal action. This is stated in Article 379 of the UAE Criminal Procedures Law, which reads: "The period for the statute of limitations of the criminal action is interrupted by the procedures of the criminal settlement system, and if multiple actions are taken, the period recommences from the date of the last action. If there are multiple defendants, the interruption of the period for one defendant will interrupt it for the others."

**Third: The effect of the penal settlement on rehabilitation and the record of precedent**

According to Article 367 of the UAE Criminal Procedures Law, a penalty issued under a criminal settlement in misdemeanors does not constitute a judicial precedent requiring rehabilitation, nor is the Public Prosecution's decision to resort to settlement recorded in the criminal record of the accused. Because a criminal settlement is not a conviction verdict, the criminal action was not initiated in the first place, which has led to an increased uptake of criminal settlements, viewed as a second chance. It allows offenders, despite committing an initial crime, to start anew without a stain on their judicial record. The UAE legislator has omitted specifying the extent to which recidivism rules, as stated in penal laws, apply to settlement measures, including the settlement fine. This is considered by legal



scholars to mean that such precedents should not be taken into account in cases of recidivism (Boursi, 2018).

The researcher suggests that it would be prudent for the UAE legislator to require that the offender has not previously been convicted of or made a settlement for a similar crime in order to benefit from the criminal settlement system.

### **Impact of Criminal Settlement on Civil Action**

The UAE legislator has provided necessary guarantees to the victim for obtaining fair and real compensation. If the victim assesses that the compensation received from the criminal settlement is insufficient, or if they have not been compensated for the damage suffered due to the crime, they may request the Public Prosecution to compel the accused to pay interim compensation for the harm caused. This provision is articulated in Article 380 of the UAE Criminal Procedures Law, which states:

"1. In accordance with the provisions of paragraph (2) of Article (24) of this Law, the victim or the civil rights claimant may request the Public Prosecution to compel the accused to pay interim compensation for the damage incurred, and to record this in the settlement record. In all cases, the submission of the request does not prevent the Public Prosecution from proceeding with the criminal settlement procedures. 2. The criminal settlement record, once ratified, becomes an enforceable instrument, and the settlement does not affect the civil rights of the victim or the person harmed by the crime, nor their right to resort to civil court to claim final compensation for the damage sustained. 3. The victim or the civil rights claimant may not request the application of the criminal settlement with the accused, nor are their statements considered in discussions related to its application."

### **Conclusion**

The UAE legislator has designated criminal settlement as a discretionary tool under the purview of the Public Prosecution, which assesses its appropriateness. This process may be initiated by the Public Prosecution or upon the request of the accused, alternatively proceeding with standard legal procedures. In misdemeanors, the settlement process must commence within a specific timeframe, prior to the initiation of criminal action. For felonies and related misdemeanors, settlements are only considered after thorough investigation procedures have substantiated the evidence linking the accused to the crime, accompanied by a detailed confession.

Throughout the settlement process, the UAE legislation mandates the accused's consent at various stages, from the proposal to the implementation. If the

accused disputes the settlement measures at any stage, the agreement is voided, and criminal prosecution begins. A successfully implemented misdemeanor settlement results in the closure of the associated criminal action, unless further developments arise. In felony cases, a successful settlement generally results in a reduced sentence. Conversely, if a misdemeanor settlement fails, it necessitates the commencement of criminal prosecution by the Public Prosecution.

### **Recommendations**

1. The UAE legislator should mandate that the Public Prosecution not resort to criminal settlement when the accused is detained in connection with the case. This ensures that the settlement is offered when the accused is free, safeguarding the voluntary nature of their consent and ensuring it is free from any coercion or undue influence.
2. It is recommended that the UAE legislator specify a fixed duration during which the accused must compensate the victim as part of the settlement terms. This would provide clarity and ensure that the victim's rights are adequately protected within a defined timeframe.
3. The UAE legislator should consider including a stipulation that prevents individuals who have previously been convicted or have settled in similar crimes from benefiting from the settlement system. This would reinforce the integrity of the system and prevent recidivism by not allowing habitual offenders to repeatedly benefit from settlements.

**References**

- Ababsa, N., & Ottoman, K. (2021). Modern Trends towards Managing Criminal Prosecution, The Model of Criminal Settlement, *Algerian Journal of Human Security*, 6(2), 407.
- Abu Amer, M. Z., & Al-Qahwaji, A. A. (1989). *Penal Law (General Part)*, Al-Dar Al-Jamia'iah for Printing, 1st edition, Beirut, p. 378.
- Al-Ani, M. S., & Al-Nawaiseh, A. M. (2022). *Explanation of the UAE Criminal Procedure Law in Light of the Latest Legislative Amendments*, Previous Reference, United Arab Emirates, p. 277.
- Al-Dhahak, I. (2007). *Reconciliation, Arbitration and Alternative Dispute Resolution Methods*, Security Press, Takaful Association for Judges and Staff of the Supreme Council, 1st edition, Rabat, Morocco, p. 413.
- Al-Faqi, I. I. (2016). "Modern Trends in Criminal Proceedings Management: A Study in the French Procedural System." *Journal of Legal and Economic Studies*, 2(1). 106.
- Al-Hadithi, F. A. R. (1992). *Explanation of the Penal Code (General Section)*." Al-Zaman Printing Press, 1st edition, Iraq, p. 421.
- Al-Hakim, M. H. H. (2005). *The General Theory of Settlement and its Applications in Criminal Matters*, Dar Al-Kutub Al-Qanuniyah, 1st edition, Cairo, Egypt, p. 42.
- Al-Qadi, R. M. (2011). *Settlement Systems in Criminal Cases in French Law*, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, p. 177.
- Al-Roushi, F. (2013). *Settlement and Negotiation in Criminal Procedure Law*, Doctoral Dissertation, Faculty of Law, Cairo University, Egypt, p. 156.
- Ben Taha, M. S. (2017). "Reconciliatory Justice According to Criminal Policy in Jordanian Legislation: A Comparative Study." Doctoral Dissertation, University of Jordan, Graduate School, Jordan, pp. 93-94.
- Boursi, A. (2018). *The Consensual Penalty and its Impact on Rationalizing Criminal Policy*, Doctoral Dissertation, Faculty of Law and Political Science, University of Batna, Algeria, p. 79.
- El Roushi, F. (2013). "Settlement and Negotiation in Criminal Procedure Law." Doctoral Dissertation, Faculty of Law, Cairo University, Egypt, p. 137.
- Farag, M. A. (2013). *Contemporary Criminal Policy and Trends in the Development of Criminal Law*, Police Press, 1st edition, Cairo, Egypt, p. 81.
- Firm, F. Z. (2017). Alternatives to Criminal Prosecution and Their Role in Mitigating the Criminal Justice Crisis, *Journal of Law and Humanities*, 10(3), 81.
- Hamza, S. M. (2019). Interrelated Crimes in Algerian Legislation and Islamic Jurisprudence - A Comparative Study, Master's Thesis, Faculty of Sciences and Political Rights, Zian Achour University, Algeria, p. 10.
- Kamel, S. S. (2004). *The Right to Speed in Criminal Procedures*, Dar Al-Nahda Al-Arabiya, 1st edition, Cairo, Egypt, p. 109.

- Khalfa, A. (2016). The Statute of Limitations and Its Effect on the Expiry of Public Prosecution in Crimes Affecting Honor and Esteem, *Journal of Prince Abdelkader University for Islamic Sciences*, 30(3), 468.
- Lazhar, A. (2023). "Criminal Settlement Provisions in French Legislation: Procedures and Implications." *Dafater Al-Siyasa Wal-Qanoon Journal*, Faculty of Law and Political Science, Kasdi Merbah University. 15(1), 41.
- Mouziz, A. (2022). "Criminal Settlement as a Mechanism to Reduce Recidivism in French Legislation." *Algerian Journal of Legal and Political Sciences*, 59(3), 240
- Obaid, O. H. (2005). *Reconciliation in Criminal Procedure Law and Related Systems: A Comparative Study*, 1st Edition, Dar Al-Nahda Al-Arabiya, p. 310.
- Ramadan, M. A. (2000). *The Summary Procedures to Terminate the Criminal Case, Comparative Study*, 1st edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, p. 162.
- Shafiq, A. (2023). *Reasons for the Expiry of Criminal Cases in Algerian Legislation*, Master's Thesis, Faculty of Law and Political Science, Algeria, p. 47.
- Yousef, H. J. M. (2016). Criminal Settlement as a Novel Method in Resolving Criminal Cases, *Islamic University College Journal*, 4(2), 381.