



## EXTINCTION OF PUBLIC PROSECUTION BY WITHDRAWAL OF COMPLAINT IN ALGERIAN LEGISLATION

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### **Abstract :**

*Although the public prosecutor holds the primary authority to initiate public legal action, the Algerian legislator, in certain cases, considers that the harm caused by the crime affects the victim's interest more than the public interest. In such situations, the victim may personally or based on family circumstances, find it in their best interest not to have public action initiated against the offender. This is achieved through the mechanism of withdrawing a complaint. The purpose behind this provision in Algerian law is to terminate public legal proceedings, thus aligning with modern criminal justice policies that aim to expand the scope of crimes that can be resolved through reconciliation between the offender and the victim. The right to withdraw a complaint stems from the right to file it. If the crime in question is contingent upon the complaint and the victim voluntarily decides to lift this restriction to allow the public prosecutor to proceed with legal action, the law grants the victim the right to halt the proceedings and retract their complaint.*

**Keywords:** *withdrawal, complaint, public legal action, crime, victim.*

### **INTRODUCTION:**

The general principle in criminal procedures is that the Public Prosecution holds the exclusive authority to initiate and pursue public prosecution in accordance with the principle of appropriateness. As the representative of society's interests, the Public Prosecution has the primary jurisdiction to initiate public prosecution for any crime once it becomes aware of it, without any restrictions or limitations on its authority. However, this authority is not absolute. As an exception to this principle, the legislator has stipulated in certain crimes the necessity of filing a complaint by the victim before the Public Prosecution can proceed with criminal prosecution.

The complaint requirement is considered an exception that restricts the Public Prosecution's ability to file a public prosecution. The purpose of this system in Algerian legislation is to halt criminal prosecution in cases where the crime primarily affects the victim's interests more than it does societal interests. The rationale is that the victim, in these cases, is better positioned to assess their interest in pursuing or refraining from taking criminal action.

The aim of this research paper is to study and analyze the subject of the withdrawal of a complaint as a procedure employed by the victim to stop the progression of public prosecution. In light of the above, the following key question is posed:

To what extent has the system of complaint withdrawal contributed to the extinction of public prosecution by prioritizing the personal interest of the defendant over the collective interest in Algerian legislation?



To answer this question, we relied on the descriptive method to present the substantive rules of the complaint withdrawal system, in addition to the analytical method to analyze the various aspects of this subject.

We have divided the study into two main sections: the first section addresses the concept of the complaint withdrawal system, while the second section covers the general rules governing the complaint withdrawal system.

### **The First Chapter: The Concept of Withdrawing a Complaint**

In this chapter, we will explore the concept of withdrawing a complaint by defining it from both legal and legislative perspectives. We will then determine the legal nature of this system, and finally, outline its scope by reviewing the crimes in which withdrawal is permitted under Algerian law, as follows:

#### **First: The Definition of Withdrawing a Complaint**

The right to file a complaint precedes the right to withdraw it. The complainant first acquires the right to file a complaint, and from it stems another right, which is the right to withdraw, serving as a counterpart to the right to file the complaint and resulting from it. Through this right, the victim is entitled to halt the progress of the public lawsuit, provided that this right is exercised before the lawsuit is concluded for any reason.<sup>1</sup> Given that the concept of withdrawing a complaint is closely linked to the concept of a complaint itself, it is necessary to first define the latter. Legal scholars have provided several definitions of a complaint, the most prominent of which are as follows:

- A complaint is the procedure initiated by the victim to express their intention to proceed with legal action against the offender. The complaint binds the hands of the public prosecutor, who cannot take any action unless the complaint is filed.<sup>2</sup>
- A complaint is a procedure initiated by a specific person, the victim, in certain crimes. Through this procedure, the victim expresses their explicit will to lift the restriction limiting the public prosecutor's authority to initiate criminal proceedings, aimed at establishing criminal responsibility and imposing punishment on the accused.<sup>3</sup>
- A complaint is also defined as the victim's right to inform the public prosecutor or one of the judicial police officers about the occurrence of a specific crime, requesting the initiation of a public lawsuit to seek punishment for the perpetrator.<sup>4</sup>

Thus, the concept of a complaint as a procedural restriction is an expression of the victim's will that produces a legal effect within the framework of criminal proceedings. This effect is the removal of the procedural barrier preventing the public prosecutor from taking steps to initiate a public lawsuit. In essence, it means lifting the restriction that previously limited the prosecutor's freedom and authority to initiate proceedings. By filing the complaint, the public prosecutor regains this authority, allowing them to either proceed with the case or issue a decision to dismiss it if there are justifiable reasons for doing so.<sup>5</sup>

The withdrawal of a complaint has not been specifically defined by comparative legislations. However, according to various legal scholars, several definitions have been proposed, including the following:

- The legal scholar Ghali Al-Dhahabi defines it as "a legal action issued by the victim, expressing their intention to halt the legal proceedings."<sup>6</sup>
- The legal scholar Hasanein Obeid defines the withdrawal of a complaint as "a legal act issued unilaterally, through which the complainant expresses their will not to proceed with the legal measures or to stop the legal effect of their complaint, meaning the cessation of legal proceedings."<sup>7</sup>



Many penal legislations have adopted the system of complaint withdrawal to prevent the initiation of public prosecution if the victim does not submit a complaint, allowing room for the offender and their family to reach an agreement with the victim. Alternatively, the victim might see that their interest lies in not proceeding with the public prosecution.<sup>8</sup> Among these legislations is the Algerian law, which organized this procedure in the Code of Criminal Procedure and the Penal Code. Article 6, Paragraph 3 of the CCP states: "The public lawsuit shall be extinguished by mediation and the withdrawal of the complaint if it is a necessary condition for prosecution."

The term "complaint" has also been mentioned in various legal texts, though the Algerian legislator has not provided a comprehensive and exclusive definition for it. This term appears in Article 72 of the CCP, which relates to civil claims before the investigating judge. Furthermore, the term "complaint" is used in Article 164 of the Penal Code concerning felonies and misdemeanors related to supplying the National People's Army, where public prosecution cannot be initiated except based on a complaint filed by the Minister of National Defense. It is also mentioned in Article 369 and subsequent articles of the Penal Code, dealing with thefts among relatives up to the fourth degree of kinship.<sup>9</sup>

The considerations that the legislator imposed to limit the public prosecutor's freedom to initiate a public lawsuit based on the victim's complaint are the same reasons that allow the victim to withdraw their complaint if they deem that continuing with the legal proceedings would be against their interest.<sup>10</sup>

The rationale behind adopting this system is likely the legislator's assessment that the victim in complaint-based crimes is the most qualified and capable of deciding whether legal measures should be taken, prioritizing personal interest over the community's interest in initiating public prosecution in such crimes.<sup>11</sup>

Thus, the withdrawal of a complaint can be defined as a legal procedure initiated by the victim, expressing their intention to stop the public lawsuit's proceedings in crimes that require the victim's complaint, resulting in the extinction of the public lawsuit.

## **Second: The Legal Nature of the Complaint Withdrawal System**

The determination of the legal nature of complaint withdrawal has sparked significant debate in criminal jurisprudence. Some scholars view the withdrawal as having a substantive nature, others believe it has a personal nature, and a third group considers it to have a procedural nature. These perspectives are discussed as follows:

### **1. The Personal Nature of Complaint Withdrawal**

Since withdrawal is a right derived from the right to file a complaint, its essence lies in the victim's intention to cease the legal effect of their complaint. It is a right intimately linked to the person of the victim and can only be exercised by them or their representative. The legislator granted this right to the victim, as they are the only one deemed suitable to assess the reasons for initiating public prosecution or withdrawing their complaint.<sup>12</sup>

For the victim's will to produce its legal effect in terminating the public lawsuit, it must be a decisive and irrevocable intention. That is, once the victim expresses their will to withdraw the complaint, this legal act immediately takes effect. The will must be conclusive and not conditional. If it is conditional, it contradicts the legislator's purpose of granting the victim the right to withdraw their complaint until a final judgment is rendered in the case.<sup>13</sup>

As a result of considering the withdrawal of a complaint as a right of personal nature, this right cannot be transferred to another person, either with or without compensation, except through a special power of attorney. This special power of attorney allows the victim to appoint another person to make the withdrawal on their behalf. This power of attorney must specifically address the withdrawal of the complaint concerning the same incident for which the complaint was previously



filed.<sup>14</sup> Furthermore, since the right is of a personal nature, it is extinguished upon the death of the victim, and the heirs cannot withdraw the complaint on their behalf.

## **2. The Substantive Nature of Complaint Withdrawal**

When reviewing some comparative legislations, it appears that these laws distribute provisions related to complaints between the Penal Code and the Code of Criminal Procedure. The former contains the crimes for which this system applies, while the latter governs the rules to which it is subject. This distribution has blurred the lines in defining the legal nature of this system: Is it substantive or procedural? Or is it a mix of both?

The determination of whether the right to file and withdraw a complaint is substantive or procedural impacts the legal rules and principles governing it. Some argue that the limitations placed on public prosecution are restrictions on the state's power to punish, which cannot be exercised unless the victim files a complaint in crimes where the law requires such a complaint to initiate public prosecution. These limitations, therefore, are not imposed on the public lawsuit itself. Thus, proponents of this view consider complaint withdrawal to be of a substantive nature, as it constitutes a condition for punishment. If a complaint is not filed, or if it is withdrawn, no punishment can be imposed on the offender. This perspective is rooted in defining the meaning of punishment and its place among the elements of the crime. Some scholars regard punishment as one of the essential components of a crime, meaning that the conditions related to imposing or exempting from punishment are of substantive nature.<sup>15</sup>

Based on this, we can determine the position of the concept of punishment and its conditions in relation to the crime as follows:

### **2.1 The Position of Punishment in Relation to the Crime**

A criminal law rule consists of two parts: it defines the types of behavior that the legislator considers crimes and establishes the legal penalties resulting from the violation of these rules. The state's right to impose punishment arises when the crime is fully committed. Once the criminal act is committed and its result is achieved, punishment for the offender is realized as a consequence. However, some scholars, like the Italian jurist Battalini, argue otherwise, considering punishment as a component of the crime itself. According to Battalini, if the imposition of punishment is impossible for any reason, the act should be considered lawful.<sup>16</sup>

This view has been criticized on several grounds. First, punishment is not a component of the crime but rather a consequence that follows from it. The elements of a crime are the prerequisites for its existence, while punishment is the result of the crime's occurrence. Including punishment as part of the crime's composition would blur the distinction between cause and effect. The material and moral elements of the crime serve as the cause that creates the state's right to punish, and without them, punishment cannot be imposed.<sup>17</sup> Furthermore, proponents of this view confuse an essential element with a characteristic, although there is a significant difference between the two. An element of something is what constitutes it and its essence, and its absence renders the crime non-existent. Once the crime is established, it can be subject to specific characteristics, such as punishment. Thus, the crime is completed by fulfilling its material and moral elements, and only then can the punishment assigned to it be applied. Punishment is not an element of the crime but rather a characteristic imposed after the crime's elements are fulfilled.<sup>18</sup>

### **2.2 The Position of Punishment Conditions in Relation to the Crime**

A legal debate has arisen regarding whether punishment conditions are part of the crime's components, where their absence would prevent the crime from existing, or whether their impact is limited to determining the punishment.<sup>19</sup>

Another group of scholars considers the substantive conditions for punishment as necessary elements for the crime's existence, although they do not constitute its core components. What distinguishes



them from the elements of the crime is that the victim's knowledge and intent are not required for these conditions, unlike the essential components of the crime. Since a crime is a legal event that generates legal consequences, namely the imposition of punishment on the perpetrator, the inability to achieve this legal outcome strips the act of its legal status as a crime. Thus, punishment conditions are of a substantive nature.<sup>20</sup>

The Italian jurist Manzini distinguishes between punishment conditions related to the act and punishment conditions related to the crime. The former are considered part of the act that constitutes the crime, and their absence prevents the offender from being punished because the act is not complete in its substantive form, such as the involvement of multiple offenders or the public nature of the act. The latter conditions assume that the act constituting the crime has been completed but are still necessary for imposing punishment, such as a complaint, authorization, or request.<sup>21</sup>

This opinion has been criticized by some scholars, particularly regarding the differentiation between these types of conditions. It is unreasonable to consider the public nature of the act or the involvement of multiple offenders as external circumstances unrelated to the act itself, or to consider a situation like "flagrante delicto" as part of the act's composition. Such differentiation has been deemed invalid because it is not founded on a correct legal principle.<sup>22</sup>

The Italian jurist Santraro believes that punishment conditions are entirely independent of the crime's components. The reasoning behind this is that although the state's right to punish arises upon the occurrence of the crime, in some cases, the legal consequences of the crime may be suspended until a subsequent condition is fulfilled. The crime may be considered complete from the outset, but its legal effect remains in suspense, and the failure to fulfill the subsequent condition would prevent the crime from producing its legal effect (i.e., punishment).

The jurist Pannain argues that a victim's complaint, in crimes where the law requires the filing of a complaint to initiate public prosecution, has a substantive nature because it pertains to the state's right to punish. In other words, it is a substantive condition for punishment. Pannain emphasizes that the effect of failing to meet a punishment condition results in halting the punishment's legal effect, and the fact that these conditions are regulated in procedural law does not change their substantive nature. The absence of these conditions means no punishment will be imposed.<sup>23</sup>

In conclusion, those who argue that a complaint has a substantive nature believe that it relates to the conditions of punishment rather than the conditions for initiating public prosecution. According to this view, punishment is not an element of the crime but a consequence of it, and the substantive conditions for punishment are external to the crime's components.<sup>24</sup>

### **3. The Procedural Nature of Complaint Withdrawal**

A significant number of legal scholars argue that the right to file a complaint has a procedural nature. This is because it relates to the public lawsuit, which serves as a means for the state to exercise its right to punishment. The complaint has a direct impact on this lawsuit, as the failure to submit it prevents the public prosecutor from initiating the public lawsuit. The absence of a complaint blocks the initiation of the lawsuit, even if it ultimately results in the expiration of the state's right to punish. Therefore, the direct effect of withdrawing a complaint is purely procedural.<sup>25</sup>

To further analyze the procedural nature of complaint withdrawal, we will examine two major legal perspectives:

#### **3.1 The First Perspective**

According to this view, the state's right to punish arises at the moment the crime is committed. Simultaneously, another right emerges, known as the right to file a lawsuit. While the right to punish is substantive, the right to file a lawsuit is procedural, allowing society to turn to the judiciary to affirm or deny its substantive right. It is possible for the right to file a public lawsuit to exist without



the right to punish, as in the case of a final judgment acquitting the defendant. Similarly, the right to punish may exist without the right to file a lawsuit, as in crimes committed by members of diplomatic missions.

The public lawsuit differs from the right to punish in that the lawsuit consists of the legal procedures conducted by the public prosecutor before the judiciary, demanding the state's right to punish when the act committed aligns with a crime as defined by the Penal Code. Thus, the public lawsuit is independent of the right to punish; it is merely a tool to claim this right, meaning it does not interfere with the state's right to punish.<sup>26</sup> However, the public prosecutor's exclusive right to initiate a public lawsuit does not prevent individuals from requesting the initiation of the lawsuit, either through civil claims under Articles 74 and subsequent articles of the CCP or through direct summons according to Article 337 bis of the CCP. Additionally, the public prosecutor operates automatically, meaning they initiate the public lawsuit as soon as they become aware of the crime. The situation of complaint withdrawal is an exception to this automatic characteristic.<sup>27</sup>

### 3.2 The Second Perspective

Proponents of this view believe that the absence of punishment when a complaint is not filed is not due to the expiration of the state's right to punish. Rather, it is due to the failure to initiate the public lawsuit, which, in turn, prevents the imposition of punishment on the offender. Thus, the absence of punishment is an indirect consequence of the inability to initiate the public lawsuit, which itself is the direct result of the absence of a complaint.<sup>28</sup>

The procedural nature of the complaint also becomes evident when the complaint is either not submitted or is submitted without meeting legal conditions, leading the court to dismiss it as inadmissible. Even if this ruling becomes final, it does not prevent the prosecution of the same offender for the same incident if the complaint is later properly filed. This indicates that the complaint is procedural and unrelated to the substantive aspects of the case. If it were otherwise, re-prosecuting the offender would be impossible under the principle of double jeopardy (*ne bis in idem*).<sup>29</sup>

The Italian jurist Santtoro highlights the procedural nature of complaints by noting that this procedural nature explains some specific legal provisions regarding complaints. For instance, in cases where there are multiple victims, it is sufficient for one victim to file a complaint to initiate the public lawsuit, reflecting the broad effect of some procedural actions. Additionally, the complaint remains valid even if the complainant dies, as they exercised a purely procedural right before their death by submitting the complaint. If the complaint had a substantive nature, the public lawsuit would have been extinguished upon the complainant's death.<sup>30</sup>

Based on the above, the Algerian legislator has adopted the procedural nature of complaint withdrawal. This is evident from the procedural effect attached to it, which is the termination of the public lawsuit, considering it the only means by which the state exercises its right to punishment. The legislator emphasized this procedural effect in Article 6 of the Code of Criminal Procedure, using procedural terms such as "no follow-up action shall be taken" and "no follow-up action may be taken."

However, while the legislator has specified the crimes in which a complaint can be filed or withdrawn in the Penal Code, this does not necessarily mean that the legislator is leaning toward the substantive nature of complaint withdrawal. It is not accurate to argue that substantive rules are those mentioned in the Penal Code, while procedural rules are those mentioned in the Code of Criminal Procedure. The Algerian legislator has included procedural rules in the Penal Code, such as the provisions related to complaints in adultery cases, and has also included substantive rules in the Code of Criminal Procedure, such as those concerning the crime of a witness failing to appear, as outlined in Article 97, Paragraph 2 of the CCP.





### Third: The Scope of Complaint Withdrawal

Most legal systems agree that the crimes subject to a victim's complaint are exhaustively listed, not open-ended.<sup>31</sup> However, they differ on the scope of crimes covered by withdrawal. Initially, the Algerian legislator limited the scope of complaint-based crimes to the Penal Code, focusing on crimes such as adultery, kidnapping a minor under 18 years of age and marrying her, theft, fraud, breach of trust, and concealing stolen property committed between relatives up to the fourth degree, as well as abandonment of the family. With the enactment of Law No. 06/23 dated 20/12/2006, amending the Penal Code, the legislator adopted the system of victim reconciliation, considering it a reason to terminate prosecution in many misdemeanors.

The Penal Code was further amended by Law No. 15/19 dated 30/12/2015, adding new misdemeanors such as intentional injury or assault on a spouse leading to a disability exceeding 15 days, repeated verbal or psychological violence against a spouse, and coercion or intimidation of a spouse to control her property or financial resources. As a result, these crimes can be divided into two categories: withdrawal in crimes that require a complaint and reconciliation in crimes that do not require a complaint.

#### 1. Withdrawal in Crimes That Require a Complaint

This category includes two subgroups: crimes against the family and crimes concerning the victim's personal safety.

##### 1.1 Withdrawal in Crimes Against the Family

This subgroup is divided into two categories:

- **Crimes against individuals with a familial character, such as:**
  - Adultery, under Article 339 Paragraph 4 of the Penal Code.
  - Kidnapping or removing a minor under 18 years of age and marrying her, under Article 326 of the Penal Code.
  - Abandonment of the family, under Article 330 Paragraph 1 of the Penal Code.
  - Desertion of the wife, under Article 330 Paragraph 2 of the Penal Code.
  - Refusal to hand over a child whose custody has been legally decided, under Articles 328 and 329 bis of the Penal Code.
- **Crimes against property with a familial connection, as stipulated in Articles 369, 373, and 377 of the Penal Code, include:**
  - Theft committed between spouses or between relatives and in-laws up to the fourth degree, as per Articles 350 to 361 of the Penal Code and Article 369 of the Penal Code.
  - Fraud committed between spouses, relatives, and in-laws up to the fourth degree, under Article 372 of the Penal Code.
  - Breach of trust committed between spouses, relatives, and in-laws up to the fourth degree, under Article 376 of the Penal Code.
  - Concealing stolen, embezzled, or misappropriated items committed between spouses, relatives, and in-laws up to the fourth degree, under Article 387 of the Penal Code.

##### 1.2 Crimes Concerning the Victim's Personal Safety

This includes offenses such as involuntary injury, as outlined in Article 442 Paragraph 2 of the Penal Code.



## 2. Reconciliation in Crimes That Do Not Require a Complaint

This category includes three subgroups:

### 2.1 Reconciliation for Family Considerations

These crimes include:

- Endangering the health, safety, or morals of children, under Article 330 of the Penal Code.
- Failure to pay alimony, under Article 331 of the Penal Code.
- Intentional injury or assault on a spouse, under Article 266 bis Paragraphs 1 and 2 of the Penal Code.
- Repeated verbal or psychological abuse of a spouse, under Article 266 bis 1 of the Penal Code, as amended by Law No. 15/19.
- Coercion or intimidation of a spouse to control her property or financial resources, under Article 330 bis of the Penal Code.

### 2.2 Reconciliation to Preserve the Victim's Honor and Reputation

These crimes include:

- Defamation, under Articles 296 and 298 of the Penal Code.
- Insult, under Articles 296 and 298 of the Penal Code.
- Invasion of privacy, under Article 303 bis of the Penal Code.
- Invasion of privacy through publication, under Article 303 bis of the Penal Code.

### 2.3 Reconciliation in the Victim's Interest to Protect Their Own Safety

This includes offenses such as assault and battery, under Article 442 of the Penal Code.

## Second Chapter: General Provisions of Complaint Withdrawal

The Algerian legislator has laid out the legal provisions regarding the system of complaint withdrawal across various articles in both the Penal Code and the Code of Criminal Procedure. In this section, we will first examine the conditions required for this system to be valid, followed by the legal effects it has on both public and civil lawsuits.

### First: Conditions for Complaint Withdrawal

For the withdrawal of a complaint to have a proper legal effect, certain **formal** and **substantive** conditions must be met. These are explained as follows:

#### 1. Formal Conditions

The formal conditions of complaint withdrawal include the form of withdrawal, who has the right to withdraw, and the capacity to withdraw, which we will address below:

##### 1.1 The Form of Complaint Withdrawal

Similar to the complaint itself, the law does not require any specific formalities for the withdrawal. However, the victim must clearly express their will to drop their complaint and renounce its consequences without leaving room for doubt. The withdrawal can be made in writing or orally, and it can be explicit or implicit. In the case of implicit withdrawal, the actions of the victim must be unequivocal and not open to interpretation.<sup>32</sup>

When reviewing the Algerian Code of Criminal Procedure, we find no explicit provision requiring the victim to submit a written complaint or permitting an oral submission. However, in practice, it is essential to determine the authority before which the complaint is presented. If the victim files their





complaint with the public prosecutor, the complaint must be in writing, as all complaints and petitions submitted to judicial authorities must be written, such as in civil claims filed before the investigating judge under Article 72 of the CCP, or direct summonses to the court under Article 337 bis of the CCP.

On the other hand, if the complaint is filed before the judicial police, the victim may appear in person before the officer and give their statement, which is then recorded in an official report by the judicial police officer. This report is later forwarded to the public prosecutor, who may initiate the public lawsuit based on the complaint recorded in the report.<sup>33</sup>

## 1.2 The Right to Withdraw a Complaint

The right to withdraw a complaint belongs solely to the victim (not the person harmed by the crime), as the victim is the one who might find that continuing the public prosecution is not in their best interest. The legislator grants the victim this right, provided they have the legal capacity to file a complaint.<sup>34</sup> It is important to emphasize that restricting the right to file and withdraw a complaint to the victim alone narrows the scope of complaints, aligning with the legal nature of complaints. This is because complaints are exceptional legal mechanisms that restrict the public prosecutor's ability to initiate a public lawsuit.

Limiting the right to file a complaint to the victim, even if others were also harmed by the crime, is logical. This stands in contrast to the right to bring a civil claim, where the right belongs to the person harmed by the crime, whether the harmed person is the victim themselves or another individual.<sup>35</sup>

The withdrawal of a complaint is considered a personal right, meaning it is closely tied to the person whose body, reputation, or property was harmed. As such, only the victim can evaluate the circumstances surrounding the withdrawal, and they cannot transfer this right to another person, whether for compensation or otherwise, because the right is based on personal considerations.<sup>36</sup> Additionally, this right does not pass to the victim's heirs after their death, even if the victim explicitly expressed their desire to withdraw the complaint before passing. Consequently, only the victim can exercise this right personally or through a specific power of attorney issued before the crime occurred. A general power of attorney is not sufficient for this purpose; the power of attorney must specifically authorize the withdrawal of the complaint.<sup>37</sup>

In cases where multiple victims have the right to file a complaint, if one of them withdraws it after it has been filed, this withdrawal is valid only if all the victims entitled to withdraw have done so.<sup>38</sup> The withdrawal takes legal effect for the accused, where the law requires that no lawsuit be filed against them except based on the victim's complaint. However, for the other accused individuals against whom the public lawsuit was initiated without a complaint, the withdrawal has no legal effect.

If there are multiple accused persons, and all require a complaint from the victim to initiate the lawsuit, the withdrawal by one accused applies to all of them, resulting in the termination of the public lawsuit.<sup>39</sup>

The withdrawal becomes impossible if one of the complainants dies. Even if all the surviving complainants agree to withdraw the complaint, their withdrawal is not valid as long as there is a deceased victim who did not withdraw during their lifetime.<sup>40</sup> However, it seems unreasonable to tie the withdrawal to a deceased person's will, especially if all the living parties have agreed to withdraw. The decisive factor should be the will of the surviving parties, as it is not logical to be bound by the will of a deceased person who did not express a withdrawal during their lifetime.

## 1.3 Capacity to Withdraw a Complaint

The capacity required to withdraw a complaint is the same as that required to file a complaint. In this context, procedural capacity refers to the age and mental competence necessary for the victim



to be able to file a complaint, thus lifting the restriction on the public prosecutor's authority to initiate a public lawsuit.<sup>41</sup>

For the victim to be able to withdraw their complaint, they must possess mental discernment and not suffer from any mental impairment. If the victim is a minor, mentally ill, or incapacitated, their guardian, legal representative, or custodian will act on their behalf, depending on the situation. The burden of proving the victim's capacity to withdraw a complaint rests with the accused.<sup>42</sup>

Upon reviewing Algerian law, we find that the legislator has not specified, either in the Penal Code or the Code of Criminal Procedure, a clear provision defining the procedural age of capacity required for the victim to file or withdraw a complaint. In the absence of specific provisions, the capacity of the person filing the complaint is determined by referring to general legal principles, specifically Articles 40 Paragraph 2 and 459 of the Civil Code, and Article 13 of the Code of Civil and Administrative Procedure. The first states: "...the age of civil majority is 19 full years," while the second stipulates: "No one may bring an action unless they have standing, a legitimate interest, or a legal basis." The capacity to litigate is thus defined as the age of majority, set at 19 full years in Article 40 Paragraph 2 of the Algerian Civil Code.<sup>43</sup> If the victim is younger than this age or has reached the age of majority but suffers from a legal incapacity, their complaint will not be accepted, and it must be filed by their legal representative, guardian, or custodian, depending on the situation.<sup>44</sup>

The age of the victim is determined at the time of withdrawing the complaint, not at the time of filing it. However, if the victim was of legal age when the complaint was filed but later lost their capacity for any reason, they can no longer withdraw the complaint. In such cases, their legal representative, guardian, or custodian must withdraw the complaint on their behalf, and only the legal representative's withdrawal will be considered valid.<sup>45</sup>

## **2. Substantive Conditions**

For the withdrawal of a complaint to be legally valid, a set of substantive conditions must be met, which include the following:

### **2.1 2-The Withdrawal Must Be Made by the Person Entitled to File the Complaint**

The right to file a complaint is granted to the victim who has reached the legal age for doing so and is in full possession of their mental faculties. The legal age is determined to be 19 full years. As such, the withdrawal of a complaint will only be valid and effective if it is issued by the same victim who possesses procedural capacity and is of sound mind.<sup>46</sup> The withdrawal can be made either by the victim themselves or by their authorized representative, provided the representative has a special power of attorney. If the victim is under the legal age, the withdrawal can be made by their legal representative, such as a guardian or custodian. If the complaint was initially filed by the guardian or custodian before the victim reached legal age, the victim may withdraw the complaint themselves once they come of age. Conversely, if the victim filed the complaint after reaching the legal age but subsequently lost their mental capacity due to insanity or dementia, the withdrawal can be made by their legal representative.<sup>47</sup>

### **2.2 The Withdrawal Must Relate to a Crime That Requires a Complaint to Initiate Public Prosecution or Where the Law Allows for Victim Reconciliation**

For the withdrawal to be valid, it must pertain to the specific incident for which the complaint was originally filed. It cannot extend to any prior or subsequent crimes, nor to related crimes that do not require a complaint to initiate prosecution.<sup>48</sup> However, there may be situations involving apparent multiple offenses, such as when adultery is committed in public, leading to both a charge of adultery (under Article 339 of the Penal Code) and a charge of committing an indecent act in public (under Article 333 of the Penal Code). Similarly, material multiple offenses may occur, such as committing adultery alongside the offense of breaking into a home. In such cases, the withdrawal will only affect



the adultery charge, and it must be clear that the withdrawal pertains specifically to the complaint filed for that crime.

### 2.3 The Withdrawal Must Occur Before a Final Judgment Is Issued

The legislator allows the withdrawal of a complaint from the moment it is filed. However, any withdrawal made before the complaint is filed has no legal effect; the victim's prior consent to the crime does not constitute a valid withdrawal. The withdrawal that produces legal consequences must take place after the complaint has been filed and before a final and binding judgment is issued in the case. Based on this, the withdrawal can be made at any stage of the public lawsuit, whether during the investigation phase by the judicial police, leading the public prosecutor to dismiss the case, or during the judicial investigation phase before the investigating judge, resulting in a decision of no grounds for prosecution. The withdrawal can also be made during the trial phase, whether in the lower court, the appellate court, or even before the Supreme Court, as long as no final, unappealable judgment has been issued.<sup>49</sup>

Once a final and binding judgment is issued in the public lawsuit, the sentence must be executed, and the victim no longer has the right to withdraw the complaint and stop the execution of the sentence.

In Algerian law, there is no specific provision explicitly stating this, but general legal principles indicate that a withdrawal made after a final judgment is not valid. Therefore, the right to withdraw only exists after the complaint is filed and before a final and binding judgment is issued.<sup>50</sup>

Regarding the crime of adultery, before the amendment of Article 339 of the Penal Code by Law No. 82/04 dated February 13, 1982, the injured spouse could forgive the offender even after a final judgment had been issued. However, after this amendment, the injured spouse's forgiveness has no legal effect once a final, unappealable judgment is rendered. The legislator now requires that forgiveness from the spouse occur before the judgment becomes final.

### 2.4 The Withdrawal Must Not Be Conditional

For the withdrawal to be valid, it must be unconditional and final, as expressly stated in some Arab legislations, such as Jordanian and Syrian law. However, this requirement is not explicitly mentioned in other laws, such as those in Algeria and Egypt. In practice, a victim may attach a condition to their withdrawal, such as demanding compensation from the offender, a public apology, or the provision of a service to another individual or entity. This has led to differing opinions among scholars.

Some scholars argue that a conditional withdrawal can be valid if the condition is fulfilled; if the condition is not fulfilled, the withdrawal becomes void and has no legal effect.<sup>51</sup>

Another group of scholars contends that a conditional withdrawal is considered final and irrevocable, even if the condition is attached. According to this view, the withdrawal is valid, but the condition is void, based on the principle of "the law more favorable to the defendant." This view is flawed because it disregards the true intent of the withdrawing victim.

A third opinion holds that the withdrawal should never be conditional. According to this view, the victim must choose between two options: either continue the legal proceedings, rejecting the possibility of withdrawal, or withdraw the complaint unconditionally. If the withdrawal is conditional, the victim should not submit the withdrawal until the condition is fulfilled.<sup>52</sup>

Another opinion emphasizes the will and intent of the victim. Since the right to withdraw is a personal right, the victim should have the freedom to attach a condition to the withdrawal if they see fit. If the condition is fulfilled, the withdrawal takes effect; if the condition is not met, the withdrawal is considered void, following the principle of "the law more favorable to the defendant."<sup>53</sup>



From our perspective, we support the opinion that the withdrawal of a complaint should be final and unconditional. If the withdrawal is conditional, it should be considered void, allowing the victim to either continue with the legal proceedings or withdraw their complaint without conditions.

## **Second: Effects of the Withdrawal of a Complaint**

The withdrawal of a complaint has various effects depending on the stage of the public lawsuit, as well as its impact on the civil lawsuit. Additionally, the effects on individuals and facts will also be explored. The following sections detail these effects:

### **1. Effects of the Withdrawal on Public and Civil Lawsuits**

The withdrawal of a complaint affects both the public lawsuit and the civil lawsuit associated with it:

#### **1.1 Effects of the Withdrawal on the Public Lawsuit**

If the victim withdraws their complaint in relation to a crime that requires a complaint for prosecution at any stage before a final and binding judgment is issued, the victim cannot retract the withdrawal, as it leads to the extinguishment of the public lawsuit. This is explicitly stated in Article 6, Paragraph 3 of the Algerian Code of Criminal Procedure.<sup>54</sup>

##### **1.1.1 Extinguishment of the Public Lawsuit**

The withdrawal of the complaint results in the extinguishment of the public lawsuit, as confirmed by Article 6, Paragraph 3 of the Code of Criminal Procedure: "The public lawsuit is extinguished in the case of the withdrawal of a complaint if the latter was a necessary condition for prosecution." No further legal action can be taken in relation to the lawsuit. However, the effects of the withdrawal vary depending on the stage of the lawsuit.

- **During the investigation stage:** If the withdrawal occurs during the investigation phase before the public prosecutor takes any action, they must refrain from initiating the lawsuit and issue an order to archive the file due to the extinguishment of the public lawsuit, as provided for in Article 6, Paragraph 3, and Article 36 of the Code of Criminal Procedure. This is contingent on the fact that the offense requires a complaint to initiate prosecution.
- **During the judicial investigation:** If the public prosecutor has already initiated proceedings by issuing an opening order, the investigating judge must refrain from taking further steps and issue an order stating there are no grounds for prosecution.
- **When the case is before the prosecutor, investigating judge, or trial court:** If the withdrawal occurs when the case is between the prosecutor, investigating judge, or the trial court, the case must proceed to the appropriate legal body to issue the necessary decision or order.<sup>55</sup>
- **During the trial phase:** If the withdrawal occurs during the trial phase, whether in the lower court or the appellate court, the court must dismiss the criminal prosecution and issue a ruling that the public lawsuit is extinguished due to the withdrawal of the complaint, as per Article 6, Paragraph 3 of the Code of Criminal Procedure.

There is some disagreement among scholars regarding the appropriate judgment. Some believe that the court should issue an acquittal because withdrawal precludes the punishment of the accused, and acquittal is the default outcome for the defendant.<sup>56</sup> For them, the withdrawal indicates the absence of a crime. However, the majority opinion holds that the court should declare the public lawsuit extinguished, not issue an acquittal. An acquittal suggests that the evidence of the crime is insufficient or that the crime itself is not punishable or lacks the necessary legal elements.<sup>57</sup> A third opinion argues that the court should rule that the trial cannot proceed, even if the accused requests to continue the trial to prove their innocence.<sup>58</sup>



- **During the cassation phase:** If the withdrawal occurs during the cassation stage or after an appeal to the Supreme Court, the court must rule to discontinue the review of the appeal and declare the public lawsuit extinguished. This is affirmed by a decision of the Supreme Court's Criminal Chamber, dated 15/07/2009, ruling on appeal No. 603414 (unpublished).<sup>59</sup>

From our perspective, the court should rule that the public lawsuit is extinguished, not issue an acquittal. An acquittal would indicate that the evidence is insufficient, the crime is incomplete in its legal elements, or the act is not punishable. None of these conditions may apply in cases where the complaint is withdrawn, as explicitly stated by the Algerian legislator in Article 6 of the Code of Criminal Procedure: "The public lawsuit is extinguished..."

- **After a final judgment:** If the withdrawal occurs after a final judgment has been issued, the withdrawal has no legal effect, as the right to withdraw is extinguished upon the issuance of a final judgment. However, as an exception, some legislations allow the victim to stop the execution of the final judgment in two cases: **adultery** and **theft** between spouses and close relatives (ascendants and descendants).<sup>60</sup>

Once the complaint is withdrawn, the public prosecutor is prohibited from taking any further action against the accused for the same incident covered by the withdrawal. Any action in violation of these rules is considered null and void.

### 1.1.2 Irrevocability of Complaint Withdrawal

Once the withdrawal of a complaint is issued by the victim and meets all the legal conditions, the victim cannot revoke or retract it. The withdrawal is binding on the person who made it, even if no judgment has been issued, as its legal effect arises upon its issuance and is not contingent upon a ruling.<sup>61</sup> Moreover, the victim cannot retract the withdrawal even if they discover new facts that were previously unknown to them, provided that these facts are part of the same crime, particularly if it is a continuous crime. However, if new facts constitute a separate crime, the victim may file a new complaint without being bound by the previous withdrawal.<sup>62</sup>

The principle of irrevocability of complaint withdrawal is based on the following reasons:

- **Judicial stability:** Allowing the withdrawal to be revoked would undermine the stability of judicial rulings and the legal positions established by them.
- **Judicial proceedings must not depend on the victim's will:** The legislator already grants the victim the freedom to initiate the public lawsuit and the right to withdraw the complaint when they believe it serves their interest. Allowing the victim to revoke the withdrawal would give them excessive control over the judicial process.
- **Finality of withdrawal:** The withdrawal must be final because it is an exception to the general rule that gives the public prosecutor the authority to initiate a public lawsuit. Therefore, this exception should not be expanded, and the withdrawal must not be subject to reversal.
- **Efficiency in criminal justice:** The irrevocability of complaint withdrawal aligns with modern criminal policy, which emphasizes the need for swift resolution of cases.<sup>63</sup>
- **Protection of the accused:** Allowing the withdrawal to be revoked would place the accused at the mercy of the victim without clear rules or conditions. The complaint and its withdrawal could become tools of **revenge and blackmail**, used by the victim to exploit the accused for financial gain.

### 1.1.3 Withdrawal of a Complaint as a Matter of Public Order

The withdrawal of a complaint results in the extinguishment of the public lawsuit, and this extinguishment is considered a matter of public order. This means that the court must declare the public lawsuit extinguished on its own initiative, even if the accused does not invoke it. The



extinguishment can be raised at any stage of the lawsuit, even for the first time before the Supreme Court.<sup>64</sup>

Any legal action taken by the public prosecutor after the withdrawal by the victim is considered null and void, as the extinguishment of the public lawsuit is determined by law. The withdrawal creates a procedural obstacle that prevents any further legal action in the case from the moment it is validly issued. Moreover, the public prosecutor is prohibited from taking any action against the accused for the same incident covered by the withdrawal. Any action that violates these rules is deemed invalid, as the withdrawal is a conclusive presumption in criminal proceedings that the crime did not occur.<sup>65</sup>

## **1.2 1-Effects of the Withdrawal of a Complaint on the Civil Lawsuit**

To clarify the effect of withdrawing a complaint on the civil lawsuit arising from the crime for which the complaint was filed, we will outline the general rule and the exceptions to it as follows:

### **1.2.1 General Rule**

The general rule is that the withdrawal of a complaint only affects the public lawsuit and not the civil lawsuit. The civil lawsuit remains unaffected unless the victim explicitly states that their withdrawal applies to both lawsuits. If the victim is silent on this matter, the withdrawal will only terminate the public lawsuit, and the victim may still choose to pursue compensation through a civil claim. The victim has the option to choose between pursuing compensation through the civil courts or the criminal courts.<sup>66</sup>

If the victim chooses the civil route, they can file a separate lawsuit in the civil courts to claim damages resulting from the crime. This lawsuit would be filed in the jurisdiction where the harmful act occurred, in accordance with Article 39 of the Code of Civil and Administrative Procedure, which states: "Lawsuits related to the following matters are filed before the following courts... in matters of compensation for harm resulting from a felony, misdemeanor, or infraction... before the court within whose jurisdiction the harmful act occurred."<sup>67</sup>

### **1.2.2 Exceptions to the General Rule**

There are two key exceptions to the general rule:

1. **Explicit declaration by the victim:** If the victim clearly declares that their withdrawal applies to both the public and civil lawsuits, the withdrawal will affect both. If the victim remains silent, the withdrawal only applies to the public lawsuit.
2. **Special nature of certain crimes, such as adultery:** In the case of adultery, legal scholars agree that the withdrawal of a complaint by the victim affects both the public and civil lawsuits. This is because the withdrawal aims to prevent further legal action, including civil claims for compensation, due to the sensitive nature of the crime. Pursuing a civil claim against the adulterer or their partner would involve re-exposing the facts of the crime, thereby reigniting the scandal that the victim (usually the spouse) wishes to conceal through the withdrawal.<sup>68</sup>

## **2. Effects of the Withdrawal on Persons and Facts**

When a victim withdraws their complaint within the legal framework, it produces personal effects that apply to both the victim and the accused. These effects not only impact the individuals involved but also extend to the facts of the crime itself. The following sections outline these effects:

### **2.1 Effects of the Withdrawal on Persons**

Just as the withdrawal of a complaint affects both the public and civil lawsuits, it also impacts the parties involved in the lawsuit, namely the victim and the accused. Below is an explanation of these effects:

#### **2.1.1 Effects of the Withdrawal on the Victim**





The withdrawal of a complaint is binding on the victim who made it, as it takes effect immediately upon issuance. The victim cannot retract it, regardless of whether they regret the decision later. The withdrawal must be made by the victim personally or by their legal representative. If there are multiple victims, all must agree to the withdrawal. We differentiate between two situations: a single victim and multiple victims.

#### **2.1.1.1 Single Victim**

If a single victim withdraws their complaint, the withdrawal is binding on them alone, and they cannot later file a second complaint for the same act under any description, even if the statute of limitations for filing the complaint has not yet expired, according to laws that prescribe a deadline for initiating a lawsuit.<sup>69</sup>

#### **2.1.1.2 Multiple Victims**

If there are multiple victims, the withdrawal must be made by all of them. A withdrawal made by one victim does not affect the others unless they all agree to the withdrawal. If only some of the victims withdraw while others do not, the withdrawal is not considered valid for the entire group.<sup>70</sup> The Algerian legislator has not specifically addressed this issue in the law.

#### **2.1.2 Effects of the Withdrawal on the Accused**

The general rule is that only the accused who requires a complaint to initiate a public lawsuit benefits from the withdrawal, and not any other accused individuals who may be involved in the case but against whom the prosecutor's authority was not limited by the need for a complaint.<sup>71</sup> To clarify the effects of the withdrawal on the accused, we distinguish between two situations:

##### **2.1.2.1 Multiple Accused Requiring a Complaint to Initiate the Public Lawsuit**

In cases where multiple accused individuals require a complaint to initiate the public lawsuit, if a complaint is filed against one of them, it is considered filed against all. Similarly, if the victim withdraws their complaint against one accused, the withdrawal applies to all co-defendants involved in the same crime. The public lawsuit is extinguished for all accused parties as a result of the withdrawal, in line with the principle of the unity of the crime and the indivisibility of the complaint.<sup>72</sup> For example, if two relatives steal from the victim, the victim's withdrawal of the complaint against one relative extends to the other as well.

##### **2.1.2.2 Multiple Accused Not All Requiring a Complaint**

In cases where multiple accused are involved but only some of them require a complaint to initiate the public lawsuit, the victim's withdrawal benefits only the accused directly affected by the complaint, and not the others. For example, if the victim's relative, along with a friend not related to the victim, steals from the victim, and the victim files a complaint against their relative, the withdrawal of the complaint will only benefit the relative. The public lawsuit will continue against the other accused individual who does not require a complaint for prosecution.<sup>73</sup>

#### **2.2 Effects of the Withdrawal on Facts**

The scope of the withdrawal is limited to the specific incident that was the subject of the complaint. It does not extend to other incidents, whether they occurred before or after the withdrawn incident.<sup>76</sup> Thus, the effect of the withdrawal focuses exclusively on the incident for which the complaint was filed. The same incident may involve multiple crimes or descriptions, and in such cases, we distinguish between two situations: material plurality of facts and formal plurality of facts.

##### **2.2.1 Material Plurality of Facts**

In the case of material plurality, the withdrawal of the complaint applies only to the fact for which the law requires a complaint to initiate the public lawsuit. It does not extend to other facts, whether they are subject to a complaint requirement or not. For example, if a husband commits both adultery



and fails to pay alimony, and the wife files a complaint covering both incidents, but later withdraws her complaint, the withdrawal applies only to the crime of adultery, while the other crime (failure to pay alimony) remains actionable by the public prosecutor.<sup>77</sup>

Similarly, if a victim withdraws their complaint in relation to one specific fact but the complaint also includes other crimes for which a complaint is required to initiate the public lawsuit, the withdrawal only affects the crime specified in the complaint. For instance, if a husband commits both adultery and intentional assault against his wife, and the wife files a complaint for both crimes but later withdraws it, the withdrawal applies only to the adultery, and the intentional assault remains subject to prosecution.<sup>78</sup>

### 2.2.2 Formal Plurality of Facts

In the case of formal plurality, a single act may have multiple legal descriptions. For example, if adultery is committed publicly, the act consists of both the offense of adultery and the offense of committing an indecent act in public. Some legal scholars argue that the withdrawal of the complaint covers all these descriptions because they result from a single act. However, the prevailing view is to apply the principle of the most serious description. According to Article 32 of the Penal Code, the single act that has multiple legal descriptions is classified according to the most serious one. Therefore, if the most serious description relates to a crime for which a complaint is required, and the complaint has been filed, the legal proceedings will continue based on that crime, and the subsequent withdrawal of the complaint will result in the extinguishment of the public lawsuit.<sup>79</sup>

On the other hand, if the most serious description pertains to a crime that does not require a complaint, the legal proceedings will continue based on that crime, and the withdrawal of the complaint will have no effect in this case.

### Conclusion:

The system of complaint withdrawal serves to protect individual relationships by prioritizing personal interests over collective interests and striking a balance between the rights of the victim and the state's right to impose punishment. The harm suffered by the victim in these crimes often outweighs the harm inflicted on society. The legislator's intention in establishing this system is primarily to safeguard family stability and individual relationships, with societal protection as a secondary goal. This system is applied to a limited number of specific crimes, as is the case in most other criminal legislations. Each of these crimes represents an infringement on societal interests, though the direct harm is inflicted on the individual victim's rights.

### Findings:

- The Algerian legislator has employed an exhaustive listing approach to define the scope of crimes covered by this system, refraining from adopting a more general rule, and has not expanded the application of the system.
- The system is designed to allow the victim to determine whether continuing the legal process or withdrawing the complaint is appropriate, making them the best judge of the situation.
- This system helps prevent the imposition of punishment, thereby sparing the offender and their family from the negative effects of a criminal sentence, contributing to the rehabilitation and reintegration of the offender into society.
- Procedurally, the Code of Criminal Procedure lacks detailed provisions regarding the procedural aspects of complaint withdrawal. The legislator simply states that the public lawsuit ends with the withdrawal of the complaint, without providing a comprehensive framework to ensure the proper application of this system.

### Recommendations:



- While the Algerian legislator has enabled the victim to participate in managing the public lawsuit, this participation remains limited. The legislator should further enhance the role of the victim in shaping the trajectory of the public lawsuit by expanding the scope of complaint withdrawal and including other crimes. This would reduce the burden on the judicial system and promote a culture of reconciliation within society. Suggested crimes for inclusion are crimes against individuals, such as intentional and unintentional offenses, property crimes, and moral crimes.
- The legislator should introduce procedural regulations for complaint withdrawal, specifying the form, the authority to which the withdrawal is submitted, the method of submission, and its impact on the public lawsuit. This would provide clearer guidelines for the system's application.
- It is recommended that adultery be excluded from the scope of complaint withdrawal, given the religious context of this crime, as it is one of the hudud crimes in Islamic law, which are not subject to forgiveness within the limits prescribed by Allah.

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