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# Advancing criminal justice through mediation: analyzing the integration of mediation in Emirati criminal legislation

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Criminal mediation is viewed as a promising alternative to traditional judicial procedures for resolving criminal disputes, offering a novel approach to alleviating burdens on the judicial system. This study examines the integration of mediation into Emirati criminal legislation, focusing on its potential to improve dispute resolution outcomes and reduce judicial workload. The UAE law has incorporated criminal mediation in the new amendment to the criminal procedures law by Federal Decree-Law No. 38 of 2022. This research aims to elucidate the provisions of criminal mediation and how it is organized within the UAE legal system. Employing an analytical descriptive methodology, the study explores the legal frameworks and procedural nuances of criminal mediation. It demonstrates how it can significantly mitigate the adverse effects on affected parties and decrease the recurrence of criminal behavior. The study recommends establishing a specialized training program for legal mediators, designed to equip them with the necessary skills to effectively handle diverse criminal cases, ensuring that mediation processes are conducted with the highest standards of justice and efficiency. Implementing such training programs would enhance the professionalism of criminal mediation and increase its success rates, contributing to a more effective and humane criminal justice system.

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## Introduction

Criminal mediation can alleviate workloads on authorized judicial agencies and save time and effort for the disputing parties. It aims to settle disputes peacefully to satisfy all involved parties (the State, the defendant, and the offended). Given these benefits, criminal mediation has emerged as a preferred method in contemporary criminal policy, favoring the application of consensual justice under legislative and judicial authority supervision.

Owing to its advantages in simplifying criminal procedures, criminal mediation has been recognized as an alternative method for criminal lawsuits in dispute resolution. This approach is predicated on achieving social justice among litigants within the domain of consensual criminal justice. Furthermore, several comparative procedural legislations have adopted this mediation as a modern, unconventional method for resolving criminal disputes. This method strives for peaceful dispute resolution and consensual justice between the defendant and the offended party, employing available methods under the governance of established controls and procedures. This backdrop has prompted the Emirati legislator to embrace this new mechanism for out-of-court dispute resolution, aligning with criminal legislation that has incorporated criminal mediation as an alternative to criminal lawsuits. In this context, the Emirati law ratified criminal mediation in the recent amendment to the criminal procedures law under Federal Decree-Law No. 38 of 2022.

The study is motivated by the recent incorporation of criminal mediation within Emirati legislation and the contrast with the reluctance observed in many Arab legislations towards adopting this system. The complexities and nuances of this topic have led to several key research questions:

- What is the legal framework governing criminal mediation in Emirati legislation?
- What procedures are involved in criminal mediation?
- What are the implications of successful or unsuccessful criminal mediation in Emirati legislation?

## Methodology of the study

This study employs an analytical descriptive approach to explore the concept and mechanisms of criminal mediation within the context of Emirati legislation. Initially, the descriptive component of the study focuses on delineating the theoretical underpinnings and definitions of criminal mediation, aiming to establish a comprehensive understanding of its scope and significance in legal discourse. This includes an examination of the term 'criminal mediation', its foundational concepts, and its operational dynamics within the legal framework.

Subsequently, the analytical component engages in a detailed examination of the procedures, applications, and implications of criminal mediation as articulated in the Federal Decree-Law No. 38 of 2022. Through a systematic analysis of the law's articles, the study aims to uncover the legislative intent, operational mechanisms, and potential effects of criminal mediation on the judicial process and dispute resolution. This analysis seeks to evaluate the effectiveness, challenges, and opportunities presented by the adoption of criminal mediation in the UAE, providing insights into its practical implications and theoretical contributions to the field of criminal justice.

In conducting this analysis, standard protocols and methods of legal research were adhered to, ensuring a rigorous and replicable study design. The study synthesizes a wide range of legal texts, including statutory provisions, legal commentaries, and previous research, to support the descriptive and analytical inquiries. By integrating these elements, the methodology facilitates a nuanced

understanding of criminal mediation's role and efficacy in contemporary legal practice.

Note: This research focuses on the analysis of legal texts and does not involve human participants; therefore, issues of ethical approval and informed consent do not apply to the study's methodological framework.

## The meaning of criminal mediation

To demonstrate the importance of criminal mediation, we should illustrate its concept and conditions. To do so, this topic was divided into two requirements as follows:

### The concept of criminal mediation

**The jurisprudential definition.** Some scholars defined it as "a procedure performed by an individual- the mediator- to establish a common ground between the disputing parties to solve the dispute between them and terminate the conflict" (Qarfi, 2020). Others defined it as "the procedure made by a person that is agreed on by the dispute parties to put a limit to the disorder resulting from the crime committed against the victim, where the offended party obtains compensation for the harmful effects, and the defendant is rehabilitated" (Adi, 2021. Al-Manei', 2006).

It was also defined as "an intervention made by a mediator to solve the dispute that resulted from a certain crime, where the disputing issue is discussed between the conflicting parties; this dispute was supposed to be solved by the authorized criminal court" (El-Kady, 2024. Mishri, 2017).

Generally, mediation can be defined as a method that is alternative to justice to solve disputes, where a mediator attempts to facilitate the dialog between the conflicting parties to solve the dispute between them.

Based on the previous definitions, we can say that criminal mediation is a procedure that aims to solve disputes peacefully based on a consensual agreement between the two parties, where the offended party is compensated for the harmful effects resulting from the committed crime; in this case, both parties will be satisfied away from the traditional judicial methods of solving disputes.

Accordingly, we can classify criminal mediation as one of the political criminal methods in solving disputes based on consensual agreement, provided that criminal mediation only applies after discussing the dispute by the dispute parties, without coercion.

Criminal mediation aims to find a peaceful consensual solution that serves the interest of both parties and enhances social ties between them without focusing on the reality of the dispute cause. Indeed, there is more focus on establishing convergence points between the two parties and utilizing them in solving the dispute and establishing a strong social relationship away from the past conflicts- this context can't be achieved based on the judicial methods, since the judicial authorities seek to implement the law (Hisan et al, 2024. Abdul-Hamid, 2004. Dewi, 2023).

**The legislative definition.** The Emirati legislator didn't frankly define criminal mediation in the law of criminal procedures, considering it as an alternative procedure for solving criminal disputes. However, the Emirati legislator only demonstrated its provisions, in terms of its tools, parties, and the mechanisms of solving the dispute by using it. Therefore, the study will address the concept of mediation in some Emirati legal contexts.

In this vein, the Emirati legislator organized the procedures of reconciliation by using the criminal mediation mentioned in article 352 of the law of criminal procedures, which stated: "the public prosecution may, in respect of the offenses that are

terminated on grounds of conciliation or waiver, and before the case is transferred to the criminal court, either directly and with the consent of both the defendant and the victim or the persons legally acting on their behalf or at their request, conduct Criminal Mediation between the Defendant and the victim, to establish their conciliation, through a neutral third-party mediator under the supervision of the Public Prosecution, if the latter is convinced, in light of the circumstances and details of the underlying incident, that any such measure would ensure compensating the damage sustained by the victim or would terminate the effects arising out of the offense.”

The previous text showed that the Emirati legislator has adopted criminal mediation; however, certain conditions have been cited in this vein, where the committed crime should be classified as a crime that is terminated on grounds of conciliation or waiver, and that mediation proceedings should take place before the case is referred to the criminal court. Also, both the defendant and the victim should agree on conducting criminal mediation, where the victim is compensated for the damage, or the effects arising out of the offense are terminated.

It is also evident that the Emirati legislator regarded conducting criminal mediation as an optional matter for the public prosecution, which is the only authority responsible for conducting criminal mediation between the defendant and the offended party- this is evident at the beginning of the article (352) “the public prosecution may...”.

The Emirati legislator delegated the task of mediating between the defendant and the offended party to a neutral third-party mediator, who works under the supervision of the Public Prosecution and seeks to achieve reconciliation between the defendant and the offended party.

We noticed that the Emirati legislator has defined mediation in the federal decree law No. 40 of 2022, related to mediation to solve civil and commercial disputes, in article (1), stating that: (mediation is an optional and alternative method for amicable settlement of civil and commercial disputes that have arisen or might arise between parties to a legal contractual or non-contractual relationship, by engaging a neutral third party (mediator), whether mediation is based on the mutual consent of the parties involved or a court order).

In this context, we can see the degree of variation between criminal mediation and civil mediation. According to the definition, civil mediation is an optional alternative method through which civil and commercial disputes, that have arisen or might arise between parties, are settled, either by a legal contractual or non-contractual relationship, where it is based on the mutual consent of the parties involved or a court order. However, criminal mediation is restricted to criminal disputes rather than civil or commercial disputes- it is not optional for the dispute parties, but authorized by the public prosecution, and is related to a current dispute rather than a future one. Also, the criminal mediation doesn't only take place based on their consent, but after a suggestion introduced by the public prosecution- they agree on a third-party mediator who makes more efforts to settle the dispute between the parties.

### **The conditions of criminal mediation**

**The procedural conditions of criminal mediation.** The procedural conditions of criminal mediation are represented by the necessity of the existence of procedural capacity and the satisfaction of its parties:

**First, procedural capacity.** To conduct a valid mediation, the victim and the defendant should have the necessary procedural capacity to conduct mediation, including that they should be in

the legal age, and should be mentally healthy (Adi, 2021. Bin Tibi, 2016). In case the defendant is below the age of criminal responsibility, mediation applies; however, it doesn't prevent conducting the process of mediation, where the mediation of juveniles applies in this case. Here, the juvenile's parent is included as a party in the mediation process (Juventus et al., 2024. Al-Qadi, 2011).

As for the victim, he should be eligible and within the legal age to participate in the mediation proceedings. However, if he isn't an adult yet, his parent or guardian acts on his behalf. Also, the defendant and the victim should be mentally healthy to participate in the proceedings of mediation (El-Kady, 2024. Lazhar, 2020. Hisan et al., 2024).

The illegal age for the victim to participate in the proceedings of mediation in the Emirati legislation is (21) lunar years according to article (85) of the law of civil transactions (Beloulhi, 2019. Al-Qadi, 2011).

This section meticulously outlines the procedural prerequisites for engaging in criminal mediation, emphasizing the essentiality of legal and mental capacity among both victims and defendants. Such criteria ensure participants are sufficiently informed and capable of making voluntary decisions within the mediation framework. This not only safeguards the process's ethical integrity but also inclusively extends its applicability to minors, albeit with parental or guardian involvement.

**Second, the satisfaction of parties.** The Emirati legislator included the consent of the parties as one of the conditions for mediation, as stated in article (352) of the law of criminal proceedings “. The public prosecution may, in respect of the offenses that are terminated on grounds of conciliation or waiver, and before the case is referred to the criminal court, either directly and with the consent of both the defendant and the victim or the persons legally acting on their behalf or at their request, conduct criminal mediation between the defendant and the victim, to establish their conciliation, through a neutral third-party mediator under the supervision of the Public Prosecution, if the latter is convinced, in light of the circumstances and details of the underlying incident, that any such measure would ensure compensating the damage sustained by the victim or would terminate the effects arising out of the offense.”

Criminal mediation is based on the principle of free will; accordingly, it is an optional system that shouldn't be imposed on the defendant or the victim out of their own will. Therefore, such a mediation is not possible without the consent of its parties, as they can't be forced to it. In this vein, the public prosecution or the mediator must inform the concerned parties about the nature and principles of mediation and demonstrate its advantages and effects for each party before they accept the mediation, and thus mediation would be in the appropriate context (Abdul-Rahman, 2020).

The emphasis on mutual consent in the Emirati legislation for criminal mediation underscores the principle of autonomy and free will, central to the mediation process. This legislative approach recognizes the importance of voluntary participation, ensuring that both parties fully understand and agree to engage in mediation. By requiring the consent of both the defendant and the victim—or their legal representatives—before initiating mediation, the law safeguards the rights and interests of all involved. This precondition not only enhances the likelihood of a successful and fair resolution but also respects the individual agency. Furthermore, the role of the public prosecution and the mediator in informing the parties about the mediation process, its benefits, and potential outcomes is critical in establishing an

informed consent framework. This informed process fosters a conducive environment for constructive dialog and resolution, highlighting the legal system's commitment to equitable and voluntary dispute resolution mechanisms.

**Third, writing.** The Emirati legislator required the mediator to write an agreement for the mediation, where the concerned parties should sign it. This agreement includes the data and the conditions that both parties agreed upon, and is introduced to the prosecution member to approve it. In this vein, article (356/1) of the law of criminal proceedings states that "If, after the mediation process, the parties reach an agreement for conciliation and settlement of their dispute, in whole or in part, the mediator shall execute the criminal mediation agreement and shall have the same signed by the parties as well as the mediator himself. The agreement shall indicate the purpose of the mediation and the timeframe set for the defendant to perform his obligations towards the victim. The defendant and the victim shall each receive a copy of the mediation agreement, and the same shall be submitted to the Public Prosecution Member for approval."

The requirement of mutual consent for criminal mediation within Emirati law highlights a commitment to upholding personal autonomy and ensuring voluntary participation in the mediation process. This approach guarantees that both parties, supported by their legal representatives, if necessary, engage in mediation with a full understanding and agreement, thus protecting their rights and promoting a fair outcome. The necessity for informed consent, facilitated by the public prosecution and mediators, further underscores the legal framework's dedication to equitable and non-coercive dispute resolution. This emphasis on consent not only respects individual agency but also sets the stage for more meaningful and constructive outcomes in the mediation process.

### The objective conditions of criminal mediation

Implementing criminal mediation requires the availability of several objective conditions:

#### 1. the existence of a legal bond for conducting the criminal mediation:

The Emirati legislator organized the criminal mediation in articles 352 and 356 from the law of criminal proceedings.

#### 2. The mediation must be within the scope of specified crimes.

According to Article 352 of the UAE Criminal Procedure Code, mediation is applicable in crimes that can be settled through reconciliation or waiver. Article 349 specifies the crimes eligible for criminal reconciliation. Examples of these crimes include:

- Simple Assault Crimes: Any person who assaults the bodily integrity of another by any means, causing illness or inability to perform personal activities (Article 390 of the UAE Crimes and Punishments Law). This includes anyone who negligently causes harm to another's bodily integrity (394/UAE C&P Law).
- Threat Crimes: Any person who threatens another with committing a felony against himself or his property, or against the person or property of others, or attributing dishonorable or disgraceful matters or disclosing them (403/UAE C&P Law).
- Crimes Against Reputation (Defamation, Insult, and Disclosure of Secrets) (425/UAE C&P Law).
- Crimes Infringing on Privacy: Any person who eavesdrops, records, or transmits conversations that occurred in a private place or through a telephone or any other device. This includes anyone who captures or transmits images of a

person in a private place using any device (431/UAE C&P Law).

- Breach of Trust and Related Offenses (453/UAE C&P Law).
- Crime of Property Damage: Any person who destroys or damages another's property, whether immovable or movable, making it unusable or disabling it in any way (464/UAE C&P Law).

#### 3. A lawsuit filed before the public prosecution:

To implement mediation, there should be a lawsuit filed before the public prosecution. According to the requirements of filing a lawsuit, there should be a crime attributed to a certain adult person, and there should be a victim (Lazhar, 2020).

#### 4. The suitability of public prosecution to conduct mediation:

The suitability of the public prosecution refers to acknowledging its jurisdiction to file or keep the public lawsuit. The Emirati legislator didn't allow the public prosecution the absolute power to determine the conditions of mediation. In this vein, its jurisdiction in conducting mediation or not is conditioned by the case that such a procedure is only implemented if the victim is to be compensated for the harmful effects resulting from the crime, or if conducting such a mediation has the potential of terminating the dispute resulting from the crime (Abdul-Karim, 2012).

#### 5. Achieving the purposes of criminal mediation:

The public prosecution should consider that resorting to mediation leads to one of two purposes, these are: assuring compensation for the harm that affected the victim due to the crime or terminating the effects of the crime (Babaseel, 2011).

The delineation of objective conditions for criminal mediation within the Emirati legal framework demonstrates a structured approach to integrating mediation within the criminal justice system. By legislating specific conditions under which criminal mediation can be conducted, such as the necessity of a legal basis within the criminal proceedings law and the requirement of a filed lawsuit before the public prosecution, the law ensures that mediation is not arbitrarily applied but is grounded in legal precedent and procedural integrity.

The restriction of the public prosecution's power to mandate mediation, conditioning it on the potential for compensation to the victim or the resolution of the dispute, further emphasizes a judicious application of mediation, aimed at tangible outcomes that address the consequences of the crime. This careful structuring ensures that mediation serves its intended purpose of offering a restorative alternative to traditional criminal adjudication, focusing on compensation for the victim and resolution of the underlying conflict. It underscores the legal system's commitment to a balanced approach that values the restoration of harm and the resolution of disputes through consensual and informed processes.

Based on the fulfillment of the objective and procedural conditions of mediation, the main advantages can be highlighted as follows: (Aruan, 2024. Dewi, 2023. Bashir, 2022).

Criminal mediation provides a consensual solution to the dispute between the offender and the victim, bypassing traditional criminal procedures. This reduces the burden on the judiciary and saves time, effort, and money for the parties involved. The system ensures that, if mediation efforts succeed, the victim receives fair and adequate compensation for the harm caused by the offender's crime. This compensation helps to ease the victim's anger and promotes social harmony and peace.

Mediation benefits the offender by keeping them out of court and avoiding short-term imprisonment, which can have negative

consequences for both the offender and society. Criminal mediation offers flexibility in determining the form and amount of compensation compared to a court judgment. It allows for material compensation and alternative forms such as community service.

Mediation is a voluntary and amicable means of resolving criminal disputes, aiming for non-judicial resolution without infringing on personal freedom. It prevents the offender from gaining a criminal record and ensures easy implementation of the agreed-upon solution, as it is based on the mutual consent of both parties. This makes mediation an effective, simplified, and legitimate tool for criminal justice, ensuring a fair and speedy trial for the accused.

### **The procedures of criminal mediation and the effects of that**

**The procedures of criminal mediation.** The Emirati legislator allowed the public prosecution to suggest or order conducting the criminal mediation between the defendant and the victim based on their consent, where mediation is facilitated by a third-party mediator- those are referred to as the parties of the criminal mediation. Also, solving the dispute based on criminal mediation passes through certain stages through which the mediator has a central role in bridging the gap between the dispute parties.

### **The parties of mediation**

**First, public prosecution.** The Emirati legislator authorized the public prosecution to conduct criminal mediation. This is evident in article (352) of the law stating “the public prosecution may... conduct criminal mediation between the defendant and the victim.”. Based on the previous article, we can see that the public prosecution has an optional right, where it has the initiative to conduct criminal mediation based on its authorized rights as a security agency- public prosecution has the authority to complete the legal proceedings without mediation, or file the case to the authorized court, or order the system of criminal mediation. Also, it has the authority to take any other procedure according to the rights assigned to it by law (Al-Dhafri, 2009).

Accordingly, the public prosecution has an important role in criminal mediation because it considers it as the authorized agency that has the discretion power of referring the conflict to mediation based on the appropriate conditions that ensure solving the conflict by mediation. Furthermore, the public prosecution has the authority to organize, supervise, and control the process of mediation, which informs the concerned parties about the desire to solve the dispute by using mediation. It also selects a neutral third-party mediator and assigns him a certain mission with a certain topic and period. Moreover, it is the authorized agency for estimating the process of mediation based on the limits assigned by the legislator, given its authority to estimate the suitability for filling the lawsuit based on the mediator’s report, whether mediation is terminated by success or failure (Al-Qadi, 2011).

**Second, the defendant.** The defendant should be criminally responsible, where he shouldn’t be mad or mentally disordered, and has no causes that contradict the criminal responsibility. Therefore, in case the defendant is mentally disordered and can’t realize the consequences of his behaviors or express his opinions, mediation shouldn’t be conducted. Here, the victim- to obtain suitable compensation, can file a lawsuit, since the civil responsibility for the criminal’s behaviors still exists and is never excluded when the criminal responsibility is excluded (Al-Hadithi, 2017).

**Third, the offended party (victim).** The offended party is one of the important parties that should be satisfied in the process of mediation, where the mediator should obtain the consent of the victim to accept mediation (Babaseel, 2011). We can conclude that the system of mediation is considered one of the most important legitimate rights for the offended party to obtain a suitable consensual settlement, apology, or compensation from the defendant (Al-Din, 2017).

**Fourth, the mediator.** The criminal mediator is the person who has the mission of converging the perspective between the defendant and the victim. He should have certain conditions that enable him to do the required mission (Dewi, 2023. Abdul-Hamid, 2004).

In the Emirati legislation, the mediator isn’t a member of the public prosecution but works under its supervision. The mediator has a prominent role in criminal mediation since he makes more efforts to terminate the dispute between the conflicting parties based on several traits characterizing him, where he works in accordance with the legal rules.

Indeed, the Emirati legislator has organized the work of the mediator and provided him with guarantees that ensure his bias and neutrality, and assured his security to do the task of mediation perfectly. In article 353 of the Emirati law of criminal proceedings, the mediator is required to maintain the confidentiality of the mediation proceedings and provide the cases in which the mediator is exempted from confidentiality. Article (354) determined the cases of disqualifying and isolating the mediator.

**The stages of criminal mediation.** Considering the crime committed by the defendant as one of the crimes that can be solved by using criminal mediation is the first step in starting the stages of criminal mediation. In case this condition was met, and was accompanied by the consent of the defendant and victim, the stages of criminal mediation start.

### **First, the crimes in which criminal mediation is allowed**

The Emirati legislator adopted the system of the exclusive determination of the crimes in which conducting criminal mediation is allowed, and determined the crimes of conducting criminal mediation between the defendant and the offended party, where article (352) of the law of criminal proceedings stated: “the public prosecution may, in respect of the offenses that are terminated on grounds of conciliation or waiver, and before the case is transferred to the criminal court”.

Article (349) of the law of criminal proceedings determined the crimes in which criminal mediation is allowed, stating that “the provisions of Criminal Conciliation outlined in this Chapter shall apply to the following offenses: Misdemeanors and infractions described in Articles 382 [Paragraph 1], 390, 394, 403,404, 425, 426, 427, 431, 432 [Paragraph 1], 433, 447, 453, 454, 455, 464 [Paragraph 1], 465 [Paragraph 1], 467, 468, 473 and 474 of the Crimes and Penalties Law [Penal Code]. The other misdemeanors and infractions in respect of which the law provides that the criminal action shall be terminated on the grounds of conciliation or waiver”.

Accordingly, we will mention, some of the crimes in which criminal mediation is allowed in the Emirati legislation:

1. The crime of not paying alimony to the wife or one of the relatives (article 382/1 of the federal law of crimes and penalties).
2. The crime of abusing the physical security of others by using any method, where such abuse resulted in sickness for more than 20 days (article 390 of the federal law of crimes and penalties).

3. The crime of abuse resulting in abortion (article 390 of the federal law of crimes and penalties).
4. The crime of physical harm by mistake (article 394 of the federal law of crimes and penalties).
5. The crime of threatening someone to commit a crime against him, his property, or against the self or property of others, or attributing matters affecting honor, legal personality, or disclosing secrets (article 403 of the federal law of crimes and penalties).
6. Threatening others by words, actions, signs, or writing (article 402–403 of the federal law of crimes and penalties).
7. The crimes of defamation as stated in articles (425–427) of the federal law of crimes and penalties.
8. The crimes of abusing private or family life for the individuals are stated in article 431 of the federal law of crimes and penalties.

## Second, the stages of criminal mediation

### 1. The preliminary stage:

This stage begins as soon as the public prosecution refers the lawsuit to criminal mediation, where a mediator is assigned and given the lawsuit. Before starting his consensual efforts, the mediator should consider several controls that assure the success of the mediation. Due to the lack of legitimate texts that determine those controls, we can see that jurisprudence (Bin Bou Abdallah, 2017) has set some controls that correspond with the principles and purposes that should be achieved by criminal mediation, where- in this stage- the mediator should do the following:

- A. Communicating with the parties of the dispute: the mediator should communicate with the defendant and the victim and inform them that their dispute will be solved soon based on mediation and that mediation is an optional procedure related to their consent. The mediator should allocate a certain time to meet the dispute parties individually, before meeting them in a combined session (Al-Manei, 2006).
- B. Explaining the rules of meditation: the mediator – in the first individual meeting with the defendant and the victim- should clarify the elements that contribute to the success of mediation. Firstly, the mediator should explain the nature of his mediating role, by showing that he is not a judge, but a mediator who aims to solve the dispute out of court (Al-Qadi, 2011).
- C. The written consent: the mediator should obtain written consent from the defendant and the offended party before starting the proceedings of the mediation process. In a case in which any of them refuses to participate in the mediation, the mediator should send a report to the public prosecutor, who has the right to act accordingly (Bin Haida, 2019).
- D. Ensuring the rights of defense to litigants: the mediator should provide the dispute parties with the required guarantees concerning their rights, particularly the right of defense (Khalfi, 2017).

### 2. The stage of meeting with the dispute parties:

After the mediator meets each one of the dispute parties individually, an appointment is assigned for the mediation session, where the dispute parties meet face to face. At the beginning of the meeting, the mediator demonstrates the purpose of mediation and its three objectives, these are: achieving success for both parties, solving the dispute

peacefully for the benefit of the two parties, and controlling the general situation. Then, the offended party can show his complaint and requests in front of the defendant, after which the defendant is allowed to show his perspective. Based on the conversation between the two parties, the mediator can settle the dispute (Baimukhametova, et al., 2023. Jadidi, 2012).

Some researchers suggested that this stage is considered the most important stage in criminal mediation, as it represents a critical point in the efforts of meditation. Indeed, the success of mediation efforts depends on the extent of flexibility, cooperation, and understanding of the dispute parties in order to settle the dispute peacefully in this stage. Without such flexibility and cooperation, the mediation efforts fail, and thus the public prosecution has the right to resume the proceedings of the criminal lawsuit, or suspend it according to its discretion (Aruan, 2024. Bin Haida, 2019).

### 3. The stage of agreement:

In this stage, mediation passes through a critical stage, where the commitments of each party are determined to terminate the dispute (Bin Saghir, 2012). The Emirati legislator didn't state frankly the content of the mediation agreement, where he suggested compensating the offended party or repairing the resulting damage. However, the dispute may be terminated without any paid compensation by the defendant, in case the defendant apologizes to the victim who, in turn, accepts the apology. Also, the mediator may only advise and instruct the defendant, in a procedure that is paired with the consent of the defendant. The mediator writes a document about the agreement, where the dispute parties sign it (Lazhar, 2020).

After approving the final settlement agreement, the Emirati legislator viewed it as protected against any challenge in any way, considering it as an administrative action approved by the public prosecution as an administrative authority, but not as a judicial authority, in an application for article (357/3) (Mansour, 2020). stating "No challenge against, or retraction of the acceptance of, the conciliation agreement by the defendant or the victim shall be admitted after being approved by the prosecutor, and the conciliation approval report shall have the legal force of a Writ of Execution."

### 4. The stage of the implementation of the mediation agreement:

When the mediator reaches an agreement between the two parties of the criminal mediation, he sends the report to the public prosecution to approve it and control its implementation (Al-Ka'bi, 2018). The Emirati legislator suggested that the mediator's role comes to an end after approving the agreement of the criminal mediation between the defendant and the offended party, where he is not required to make sure that the defendant has performed the required obligations. Therefore, we recommend that the Emirati legislator confirm the mediator's role in supervising the implementation of the mediation agreement since he can understand the dispute and the domains relating to settling it.

## The effects of criminal mediation

The criminal mediation is included within two assumptions; either success when the defendant implements the obligations agreed on with the victim, or failure when the defendant doesn't implement the required obligations or if he withdraws before approving the agreement report.

## The effects of the success of criminal mediation

**First, the impact of the success of mediation on the lawsuit.** The criminal lawsuit is terminated when the causes of termination exist. In this case, the judicial power of the State is not allowed to take any criminal procedure against the defendant (Aruan, 2024; Mansour, 2020).

The Emirati legislator determined the cases for terminating the criminal lawsuit in article (21) of the federal law of criminal procedures as follows “The criminal action shall be terminated upon the death of the Accused, when a final judgment or conclusive criminal order is rendered thereon, due to conciliation or waiver of the same by the party legally entitled to makes such waiver, due to pardon, or as a result of repeal of the law under which the criminal act is punishable.” The Emirati legislator stated that the success of the criminal mediation will certainly lead to terminating the lawsuit by settling the dispute by mediation, as stated in article 357/1:” The conciliation shall give rise to the termination of the criminal action or stay of execution of the judgment rendered thereon, as the case may be.” The termination of the lawsuit by mediation entails the inadmissibility of filing a lawsuit for the same crime, and not considering it as a judicial precedent (Amara, 2016).

In the context of exploring criminal mediation and its impact on terminating criminal lawsuits, it's evident that Emirati legislation provides a thoughtfully crafted mechanism for achieving restorative justice. Building upon the previously discussed importance of voluntary satisfaction of the parties involved and the objective conditions for mediation, the legislation indicates that successful criminal mediation conclusively terminates the criminal lawsuit. This provision reflects the law's philosophy of prioritizing dispute resolution through consensual means that allow for reconciliation and recovery, rather than focusing solely on punitive aspects. The reference to Article 21 of the Criminal Procedures Law clarifies the instances in which a criminal action may be terminated, including through successful mediation, underscoring the significance of this mechanism as an effective alternative to traditional litigation. Additionally, the role of mediation in permanently closing the door on criminal lawsuits for the same crime enhances the concept of final justice and moral deterrence. Thus, the legal system's commitment to fostering principles of restorative justice and reconciling parties is highlighted, affirming the value of alternative solutions in addressing criminal disputes. This approach shines a light on the global trend towards adopting more humane and effective mechanisms for achieving justice.

**Second, the impact of the success of the civil lawsuit.** As for the impact of the success of criminal mediation on the civil lawsuit, the Emirati legislator didn't provide any effect for criminal mediation on the civil lawsuit, where article 358 of the Emirati criminal procedures law stated: “Conciliation shall not affect the civil rights of the victim or of the aggrieved party, or on the right of either of them to resort to the civil courts to claim final compensation for the damage sustained unless such rights or waived or covered by the conciliation agreement.”

**The impact of the failure of the civil lawsuit.** The efforts of criminal mediation may be hindered and fail to settle the dispute between the dispute parties. Indeed, this could be attributed to two factors. The first factor is the inability to get to a solution that satisfies both parties, and the second factor is the lack of implementation of the content of the mediation agreement over the period allocated for that. In case the parties refused the criminal mediation, or no agreement was attained between the dispute

parties, or the defendant didn't comply with the obligations required from him, the competent prosecutor may order continuing the proceedings of the lawsuit (Al-Tayib, 2018). as stated in article 356 of the Emirati law of criminal procedures: “If the Defendant fails to perform the said obligations, in whole or in part, the competent prosecutor may decide that the criminal action be reinstated and prosecuted of according to the procedures outlined in this Law.”

Building on the comprehensive exploration of criminal mediation and its legislative underpinnings, this segment delves into the challenges posed by unsuccessful mediation attempts. The factors leading to such outcomes—whether due to the absence of a consensual resolution or non-compliance with agreed terms—underscore the complexities inherent in achieving dispute resolution through mediation. This situation highlights the nuanced balance the legal system must maintain between fostering alternative dispute resolution methods and ensuring justice through traditional legal proceedings. The provision within the Emirati legal framework, allowing for the resumption of legal action in the face of unmet mediation outcomes, serves as a critical safeguard. It ensures that the failure of mediation does not preclude the possibility of seeking and achieving justice through the courts. This layered approach to dispute resolution, which integrates both innovative and traditional pathways, reflects the legal system's adaptability and commitment to upholding justice in varied circumstances.

## Conclusion

This study has explored the multifaceted nature of criminal mediation, highlighting its potential to mitigate the adverse effects on victims. It has been demonstrated that the approach towards mediation is contingent on the crime committed, with solutions ranging from restitution to financial compensation and apologies.

Significantly, the Emirati legal framework has been scrutinized for its selective application of criminal mediation. While it delineates specific crimes eligible for mediation, it lacks explicit guidelines on the mediation agreement's contents. Nevertheless, it mandates victim compensation, with the possibility of resolving disputes through apologies, underscoring the victim's acceptance as crucial.

Moreover, the finality of the mediation settlement, as endorsed by the public prosecution, underscores its non-challengeable status, marking a pivotal shift towards administrative resolution rather than judicial intervention. However, the legislation falls short in addressing the impact of successful criminal mediation on ancillary civil lawsuits, leaving a gap in comprehensive dispute resolution.

To enhance the efficacy and applicability of criminal mediation within the Emirati legal system, this study proposes a series of amendments aimed at refining the process. Firstly, it is recommended to revise the terminology used in the pre-lawsuit mediation stage, substituting “suspect” for “defendant” to more accurately reflect the procedural status of individuals at this early stage. This change would provide clarity and ensure legal precision.

Secondly, the study suggests introducing provisions that allow for withdrawal from the mediation process before the finalization of the mediation report. This flexibility would enable individuals to adapt to evolving case dynamics and reconsider their options based on new evidence or changes in their situation.

Furthermore, assessing the defendant's criminal risk is emphasized as a fundamental criterion for eligibility for mediation. By excluding individuals with significant criminal

records, the mediation process aligns better with its goals of rehabilitation and reform, ensuring that it is reserved for those most likely to benefit from this alternative dispute-resolution mechanism.

Additionally, the study advocates for the inclusion of mediators in the oversight of the implementation of mediation agreements. By leveraging the mediators' deep understanding of the disputes and resolutions agreed upon, this involvement ensures more effective and enduring settlements.

Lastly, the study strongly recommends establishing a specialized training program for legal mediators. This program would equip mediators with the necessary skills to effectively handle diverse criminal cases, ensuring that mediation processes are conducted with the highest standards of justice and efficiency. Implementing such training programs would not only enhance the professionalism of the field of criminal mediation but also increase its success rates, thereby contributing to a more effective and humane criminal justice system.

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## Author contributions

Ahmed Ali Alnuaimi: data collection, Methodology, Writing – original draft. Mohammad Amin Alkrisheh: Corresponding author, methodology, Writing – original draft, Writing – review & editing and supervising.

## Competing interests

The authors declare no competing interests.

## Ethical approval

Ethical approval was not required as the study did not involve human participants.



**Informed consent**

This article does not contain any studies with human participants performed by any of the authors.

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