DOKUZ EYLÜL UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF BUSINESS ADMINISTRATION
CONFLICT RESOLUTIONS PROGRAM
MASTER'S THESIS

CONCILIATION IN TURKISH CRIMINAL PROCEDURE LAW

Pakize Pelin ÖZŞAHİNLİ

Supervisor
Assist. Prof. Dr. Koray Doğan

İZMİR-2014

THESIS APPROVAL PAGE

DECLARATION

I hereby declare that this master's thesis as **"Conciliation in Turkish Criminal Procedure Law"** has been written by myself in accordance with the academic rules and ethical conduct. I also declare that all materials benefited in this thesis consist of the mentioned resources in the reference list. I verify all these with my honour.

…/…/…….

Pakize Pelin ÖZŞAHİNLİ

ABSTRACT

Master's Thesis

Conciliation in Turkish Criminal Procedure Law

Pakize Pelin ÖZŞAHİNLİ

Dokuz Eylül University

Graduate School of Social Sciences

Department of Business Administration

Conflict Resolutions Program

Conciliation that is one of the alternative conflict resolution methods, developed as a result of the sense of reparative justice. It takes part in the criminal justice system of many countries, and it is performed effectively. In our country, conciliation method is not performed commonly except İzmir Courthouse. Conciliation is a beneficial institution in the sense that it provides the peace of society between victim, person affected by crime and suspect or defendant. Because of that the positive results occurred in the case that conciliation is used effectively and commonly, are significant; the institution of conciliation in Turkish Criminal Procedure Law has been examined by this thesis.

Our study consists of three chapters. In the first chapter; the concepts of reconciliation, conciliation and conciliator, the purpose and importance of conciliation, conciliation in the international and comparative law, and conciliation in children are present.

In the second chapter, conciliation in Turkish Criminal Procedure Law and legal nature of conciliation and its terms are explained in detail. Crimes in the scope of conciliation are examined one by one within the natures relating to conciliation, and the samples faced in practice are included. In resolutions of conflict that the conciliation method performed; the criteria considered by the parties in the processes of evaluation of conciliation offer and making decision, are explained.

Required qualifications of the conciliator, educations and obligations of the conciliators and characteristics of conciliation negotiations and results of negotiation process are examined in the third section.

The results occurring in our study, are collected under two main titles together with suggestions. Firstly, regularizations in the Rules and Regulations, results occurring during application process of conciliation method and that if therefore new adjustments are needed. Secondly, the obstacles to perform the conciliation institution commonly and effectively and the suggestions related to this, are developed.

The purpose of our study is examination of legal related to the conciliation institution regulations, and evaluation of conformability taking into account the results occurring in the practice.

Keywords: Conciliation, Reconciliation, Conciliator, Conciliation Act, Conciliation in İzmir Courthouse, Negotiation, Reparative Justice.

ÖZET

Yüksek Lisans Tezi

Türk Ceza Muhakemesi Hukukunda Uzlaştırma

Pakize Pelin ÖZŞAHİNLİ

Dokuz Eylül Üniversitesi

Sosyal Bilimler Enstitüsü

İngilizce İşletme Anabilim Dalı

Anlaşmazlık Çözümü Programı

Alternatif uyuşmazlık çözüm yöntemlerinden biri olan uzlaştırma, onarıcı adalet anlayışının bir sonucu olarak ortaya çıkmıştır. Birçok ülkenin ceza adalet sisteminde yer almakta ve etkin bir şekilde uygulanmaktadır. Ülkemizde ise uzlaştırma yöntemi İzmir Adliyesi dışında yaygın olarak uygulanmamaktadır. Uzlaştırma, mağdur, suçtan zarar gören, şüpheli veya sanık ile toplum barışının sağlaması bakımından faydalı bir kurumdur. Uzlaştırmanın etkin ve yaygın olarak kullanılması halinde ortaya çıkan pozitif sonuçlar dikkate değer olduğundan bu tezimiz ile Türk Ceza Muhakemesi Hukukunda uzlaştırma müessesesi incelenmiştir.

Çalışmamız üç bölümden oluşmaktadır. Birinci bölümde uzlaşma, uzlaştırma ve uzlaştırmacı kavramları, uzlaştırmanın amacı ve önemi, uluslararası ve karşılaştırmalı hukukta uzlaştırma ile çocuklarda uzlaştırma yer almaktadır.

İkinci bölümde, Türk Ceza Muhakemesi Hukukunda Uzlaştırma ve uzlaştırmanın hukuki niteliği ile koşulları detaylı olarak anlatılmaktadır. Uzlaştırma kapsamındaki suçlar, uzlaştırmaya ilişkin özellikleri dâhilinde tek tek incelenmiş ve uygulamada karşılaşılan örneklere yer verilmiştir. Uzlaştırma yönteminin uygulandığı uyuşmazlıkların çözümünde, tarafların uzlaştırma teklifini değerlendirmeleri ve karar verme aşamasında dikkate aldığı ölçütler açıklanmıştır.

Uzlaştırmacıda bulunması gereken özellikler, uzlaştırmacıların eğitimi ve yükümlülükleri ile uzlaştırma müzakerelerinin özellikleri ve sürecinin sonuçları ise üçüncü bölümde incelenmiştir.

Çalışmamızda ortaya çıkan sonuçlar ise önerilerle birlikte iki ana başlık altında toplanmıştır. Öncelikle Kanun ve Yönetmelikteki düzenlemeler ile uzlaştırma usulünün uygulanması sürecinde ortaya çıkan sonuçlar ve bu nedenle yeni düzenlemelere ihtiyaç olup olmadığı ele alınmıştır. İkinci olarak, uzlaştırma kurumunun yaygın ve etkin bir şekilde uygulanmasının önündeki engeller ve buna ilişkin öneriler geliştirilmiştir.

Çalışmamızın amacı, uzlaştırma kurumuna ilişkin yasal düzenlemelerin incelenmesi ve uygulamada ortaya çıkan sonuçlar dikkate alınarak yerindeliğinin değerlendirilmesidir.

Anahtar Kelimeler: Uzlaştırma, Uzlaşma, Uzlaştırmacı, Uzlaştırma Edimi, İzmir Adliyesinde Uzlaştırma, Müzakere, Onarıcı Adalet.

CONCILIATION IN TURKISH CRIMINAL PROCEDURE LAW

CONTENTS

SECOND SECTION

CONCILIATION IN TURKISH CRIMINAL PROCEDURE, THE LEGAL NATURE AND CONDITIONS OF CONCILIATION

ABBREVIATIONS

a.	Article
ACMER	Dokuz Eylül University Conflict Resolution Research and Application Center
ASIGM	General Directorate of Criminal Records and Statistics
CCP	Code of Criminal Procedure
CD	Penal Department of Supreme Court
CGK	General Board of Criminal Department
CISST	Non-Governmental Organisation in The Punishment Execution System
CONST	The Constitution of The Republic of Turkey
CPL	Child Protection Law
CRC	Convention on the Rights of the Child
DEABL	Debt Enforcement and Bankruptcy Law
DPL	Decree with Power of Law
ECHR	European Convention on Human Rights
etc.	Et cetera
EU	European Union
GNAT	Turkey Grand National Assembly
IMEI	International Mobile Equipment Identity
PTT	Directorate of Postal Telegraph and Telephone
RICCP	Regulation for The Interpretation of Conciliation in accordance with Code of Criminal Procedure
See	See
SEGBIS	The Audio and Video Information System
SIM	Subscriber Identity Module (SIM)
SIR	Social Investigation Report
SMS	Short Message Service
TBB	Union of Turkish Bar Association
TCL	Turkish Criminal Law

TCO	Turkish Code of Obligations
TIB	The Ministry of Telecommunication and Communication of Turkey
TMK	Turkish Civil Code
TPA	Turkısh Penal Act
TPC	Turkish Penal Code
TTA	Turkish Trade Act
TV	Television
UN	United Nations
USA	United States of America
UNDP	United Nations Development Program, Turkey Representative
UYAP	National Judiciary Informatics System
VTR	Video Tape Recording

INTRODUCTION

Conciliation Institution, which entered into Turkish Criminal Justice System in 2005 for the first time, became a reformative development in respect to resolving penalty conflicts with alternative solution ways. The first regulation in the subject of conciliation within the Code of Criminal Procedure was made in 2005, and it took its present shape by making change in 2006. In the first regulation, the condition of that the perpetrator recover and pay all or the most part of material and moral damages arising from his crime and action is included. However; since practice of the conciliation method conditioned to acceptance of the crime had not been mostly accepted by the perpetrator, the conciliation institution did not draw interest as it deserved. In 2006, the provisions related to conciliation was changed and adjusted again and the legislator dispensed with the condition of perpetrator' s crime acceptance. Thus, even if slowly, the conciliation institution began to make progress.

Conciliation is an agreement that purposes to provide a peace environment both between the suspect or the defendant and the victim or the sufferer of the crime, and in society because of the crime within the scope of conciliation, and that is intended to recover the victim' s damages, relieving of the suspect or the defendant from the results of the judgment. Conciliation is the performing process of this agreement determined by the parties by a third party in accordance with method and principles defined in legal regulations.

Conciliation was arranged in the 253, 254 and 255th articles of the Code of Criminal Procedure and the Regulation for the Interpretation of Conciliation in accordance with the Code of Criminal Procedure. In the 24th article of Child Protection Law, the provision, which the provisions related to conciliation of the Code of Criminal Procedure will be performed in terms of children who are fallen into crime, is included.

In our study; the legal regulations within the subject of conciliation, the purpose and importance of conciliation, conciliation in comparative law and conciliation in children are subjects of study. The legal nature, conditions and results of conciliation and the criteria related to conciliation of the crimes within conciliation were explained. Examples were given from the practices of the Public

Prosecutor of İzmir, the Department of Conciliation that conciliation is performed effectively and commonly, and many conflicts are resulted with conciliation. In our study that we think it makes contribution especially to the implementers, the problems that are met in practice of conciliation institution and also solution proposals were presented.

THE FIRST CHAPTER

THE CONCEPTS AND DEFINITIONS, THE PURPOSE AND IMPORTANCE OF CONCILIATION,

CONCILIATION IN THE INTERNATIONAL AND COMPARATIVE LAW,

CONCILIATION IN CHILDREN

I. THE CONCEPTS AND DEFINITIONS

A. Reconciliation

As a word reconciliation means "reconcile state, agreement, consensus, convention and conformity''; and reconcile is defined as "to agree, compromise mutually and come to agreement[1]" by resolving difference of opinion and benefit between them, with mutual concessions.'' As the institution of Turkish Criminal Procedure Law, conciliation was arranged in 253, 254 and 255th articles of 5271 numbered Code of Criminal Procedure (CCP). The definition of conciliation that we used a term particular to the Criminal Procedure Law, was not made in the law. In 4th article, (b) paragraph of Regulation for The Interpretation of Conciliation in accordance with Code of Criminal Procedure[2] (RICCP); reconciliation is defined as an expression of agreement between the suspect or the defendant and the victim or the sufferer of crime, or making them agree until the end of conciliation process in accordance with the procedures and provisions in Rules and this Regulation. The definition in the regulation is a basis, and other definitions made were developed on the basis of definition in the regulation[3].

In the doctrine, different definitions of the conciliation applied in Turkish Law. Conciliation is ending the conflict and the perpetrator' s riddance from the risk of being sentenced thereby recovering the victim' s damage and as a result of

[1] Turkish Linguistic Society, http://www.tdk.gov.tr/, (01.01.2014).
[2] It was established in 26 July 2007 dated and 2594 numbered Official Gazette.
[3] Mehmet Emin Yapar, **Ceza Muhakemesinde İddia Pazarlığı**, Adalet Publshing House, Ankara, 2013, p. 250.

agreeing mutually with the victim[4]. The purpose of conciliation meaning being unable to exercise the criminal procedure and ending the judgment if it began is to avoid judgment when the conditions become effective and to provide the case economy by this way[5].

"In Crimes prosecuted based on complaint and some crimes specified in Law, *when the suspect or the defendant accepts to fulfill a performance, and the victim accepts to be contended with this, the organization providing to decide that prosecution is unnecessary or delaying initiating a criminal case during investigation; dismissal of case or adjournment of announcement of the decision is called conciliation[6]."*

In the practitioners' mind, conciliation is regarded as an institution decreasing workload of the courts, providing recovery of the victim' s damages and bringing positive results especially with regards to not putting the minor offences on the defendant' s criminal record, additionally, effecting to maintain social peace and to reintegrate the defendant to the society as a helper for resolving hate and anger in the society[7].

The concepts of conciliation and reconciliation are used in a way that they have the same meaning in both practice and doctrine. Between the reasons; it can be said that when the title of 253rd article of CCP is ''Reconciliation'', the title of 254th article is ''Conciliation by Court'' and the title of 255th article is ''Conciliation When The Number of Perpetrators is More Than One." In addition, since the name of the regulation is Regulation related to Practice of Conciliation in accordance with the Code of Criminal Procedure, a contradiction occurs between the words of reconciliation and conciliation in terms and both words are used in a way that they have the same meaning. Within this scope, while the definition of the practice is made in the doctrine, it is regarded as active attendance to solution of the problems arising from the crime by the parties, making a deal according to their own will and

---

[4] Ali İhsan İpek and Engin Parlak, **Mevzuatta Yapılan En Son Değişiklikler ile Ceza Muhakemesinde Uzlaşma**, 2. Edition, Adalet Publshing House, Ankara 2013, p. 250.

[5] Erdener Yurtcan, **CMK Avukatının ve Uzlaşma Avukatının Başvuru Kitabı**, 5. Edition, Beta Publication, İstanbul, 2007, p 78.

[6] Yener Ünver and Hakan Hakeri, **Ceza Muhakemesi Hukuku**, 5. Edition, Adalet Publishing House, Ankara, 2012, p. 798.

[7] Seda Kalem, "Ceza Davalarında Uzlaşma: Uygulayıcı Görüşü", **Onarıcı Adalet Mağdur – Fail Arabuluculuğu ve Uzlaşma Uygulamaları: Türkiye ve Avrupa Bakışı**, (Ed. Galma Jahic and Burcu Yeşiladalı), İstanbul Bilgi University Publications, İstanbul, 2008, p. 89.

resolving the penalty conflict by them8. Because of that "…agreement of the parties or making the parties agree…" is stated in the definition within RICCP, Regulation for The Interpretation of Conciliation in accordance with Code of Criminal Procedure, it is not inevitable that conciliation results in front of a third party, in our opinion. As it is explained in the 16th paragraph of 253rd article of CCP; the parties can declare that they reconciled, by applying to Public prosecutor with a document showing that they reconciled until at least the date that accusation was made, despite the fact that conciliation offer was refused. In the process of resolving the conflict, the provision of existence of a non-partial third party is included in definition of conciliation. In the definition in respect to the term, it can be discussed that which notion is superior between "conciliation" and "reconciliation". When defining conciliation, it is stated that a third party contributed. By conciliation arranged in CCP; it is asserted that the purpose is reconciliation of perpetrator and sufferer by way of conciliator, the conciliation involves also the process of reconciliation, it is broader in terms of meaning; therefore, it is necessary that it gains an advantage to the concept of reconciliation according to the concept of conciliation[9].

The most significant difference between conciliation and reconciliation is based on existence or non-existence of a third party in the conciliation negotiations. As conciliation results by means of a third party as a conciliator commissioned under the low, it can be resulted by means of a neighbor not commissioned officially or an influential relative. On conciliation, while the parties agreed between each other or were agreed by a third party, it is required that the parties were agreed by means of certain existence of a third party. In the case that crime is subject to reconciliation in CCP, it is thought that the process of making the parties reconciliate is taken as a basis, not the process of reconciliation between the parties, because of that it is specified that an action will be taken to make the parties reconciliate.

In the criminal procedure law, during investigation, conciliation is an situation of agreement providing relieving of the suspect from judgment and its potential results, recovery of the victim' s material and/or moral damages or taking

[8] Nur Centel and Hamide Zafer, **Ceza Muhakemesi Hukuku El Kitabı**, 3rd Print, Beta Publication, İstanbul, 2012, p. 428.; Vahit Bıçak, **Suç Muhakemesi Hukuku**, Seçkin Publishing, Ankara, 2010, p. 303.

[9] Ferda Eser, **Ceza Muhakemesinde Uzlaşmada İzmir Modeli**, (Unpublished Master Degree Thesis) Yaşar University, Institute of Social Sciences, İzmir, 2013, p. 2.

them out of the judgment. As the parties make this agreement (conciliation) with method of negotiation, they can make this with help of a third party.

As said in the Supreme Court' s decision, when the legal nature of conciliation institution and whether it is a law rule established only on behalf of defendant or not, were examined; in Turkish dictionary of Turkish Language Society, reconciliation has many meanings such as agreement according to *Şafak,* peace according to *Yılmaz*, negotiated justice according to *Şahin*. According to *Kunter / Yenisey / Nuhoğlu*; it is defined as providing a criminal dispute to be out of the court but fair, and resolving that as it will provide to recover the victim' s damages. Conciliation taken to criminal justice system has sides serving to the victim and the society[10].

Based on the explanations in the doctrine and Supreme Court decisions, we define reconciliation as "an agreement that purposes, because of a crime within the scope of reconciliation, to provide a peace environment both between the suspect or defendant and the victim or the sufferer of the crime, and in society, and that is intended to recover the victim' s material and/or moral damages and to relieve the suspect or the defendant from the results of judgment."

B. Conciliation

As a word, conciliation means "action to conciliate[11]." Conciliation is defined as "all of legal works made on the purposes of resolving the conflict; providing an agreement in the opposite requests of two parties, in the way of approximation of the mutual advantages[12]" and "dispute resolution by independent negotiator action taken by an independent negotiator to bring disputing sides together with the goal of restoring trust or goodwill and reaching an agreement or bringing about a reconciliation[13]."

[10] Supreme Court CGK 25.09.2007 date, 2007/6-189 E., 2007/188 K. http://emsal.yargitay.gov.tr/VeriBankasiIstemciWeb/, (01.01.2014).
[11] Turkish Linguistic Society, http://www.tdk.gov.tr/, (02.01.2014).
[12] Turkish Linguistic Society, http://www.tdk.gov.tr/, (02.01.2014).
[13] QFinance: **The Ultimate Resource**, A & C Black, London, 2010, http://nj8bs2kt8z.search.serialssolutions.com/, (04.09.2014), p. 2208.

In the article 4/c paragraph of RICCP, Regulation for The Interpretation of Conciliation in accordance with Code of Criminal Procedure; it is stated that conciliation expresses, because of a crime within the scope of conciliation, the process of resolving the conflict by making the suspect or defendant and victim or sufferer of the crime conciliate by way of conciliator or judge or Public prosecutor in accordance with the procedures and provisions in the law and this regulation.

As said above; the concepts of reconciliation and conciliation are used in the same meaning within doctrine and practice[14]. However; there is a difference between reconciliation and conciliation in terms of the periods identified by the law. According to the first paragraph of 17th article of RICCP; conciliator results the conciliation procedures within at least thirty days from giving himself every sample of the documents within the file. The Public prosecutor can extend this time more twenty days at the most, ex officio and on request. According to the third paragraph, the periods specified in the first paragraph are performed in the case that the conciliation is made by the Public prosecutor or the judge. Thus, the rule of that the interviews had by means of the conciliator are concluded within fifty days with additional time at most. However; despite the fact that the offer of conciliation is refused by the parties, or before the conciliator is tasked; the suspect and the victim or the sufferer because of the crime can declare that they reconciliated, by applying to the Public prosecutor, with a document showing that they reconciliated, until at least the date that the accusation issued. While it is necessary that the interviews had by means of the conciliator are concluded within fifty days, reconciliation can be provided without a limiting time in reconciliation by the parties without a conciliator. It is enough that this agreement was declared to Public prosecutor until the date when the accusation is made.

In the end of conciliation negotiations, a conciliation report is prepared by the conciliator in accordance with the procedures and principles in the law and legislation. The report is signed by the parties and also the conciliator. In the reconciliation, the parties can declare that they reconciliated because of the crime

[14] Şamil Demir, **Avukatın Uzlaşma Sağlama Yetkisi**, Adalet Publishing House, Ankara 2011, p. 20.; Centel and Zafer, p. 428. ; Bıçak, p. 303; Supreme Court, 2nd Criminal Department, 01.12.2005 date, 2004/16749 E., 2005/27656 K.; Supreme Court 4th Criminal Department 21.01.2008 date, 2006/7825 E., 2008/358 K., http://emsal.yargitay.gov.tr/VeriBankasiIstemciWeb, (02.01.2014).

subject to the investigation, by applying to the Public prosecutor. In this point, it is a matter of reconciliation of the parties without a third party. In either events; the Public prosecutor seals and signs the report and document if he specifies that the reconciliation is based on the parties' free will and the action of reconciliation is in conformity with the law. The report or document of reconciliation is ranked as the documents having the nature of written notice in article 38 of enforcement and bankruptcy law no. 2004 dated 09.06.1932. Even if the parties reconciled between each other either by means of attendance of a commissioned third party or, an equal document occurs in consequence.

Conciliation is an alternative solution method of conflict that serving to the sense of reparative justice. The reparative justice is a way of reacting to the behavior causing crime, by balancing the needs of society, sufferers and perpetrators. This is a developing concept, and it caused to the different comments in the different countries, and a certain consensus was not reached[15]. Conciliation is a solution way of conflict that the parties who have conflict and disagreement between them, attended voluntarily. This process includes the help of a conciliator who has not the authority of binding decision making[16]. "The mediator who will help bring the parties to the dispute to a reconciliation agreement[17]." Because of that the conflict method forms an environment of confidence[18], the existence of a conciliator who manages the conflict in the disagreement period, makes the solution of conflict easy. When making an evaluation in the scope of the reparative justice; the most important main factor in conciliation is finding a third person who provides that the parties will find their solution ways, and that manages the process of negotiation related to the conflict, by helping to the solution of the conflict.

[15]Reparative Justice, **Onarıcı Adalet Programları El Kitabı**, Criminal Justice Handbooks, translated by Civil Society Association in Criminal Execution System (CISST), New York, 2006, http://www.unodc.org/documents/justice-and-prisoreform/HBRestorative_JusticeTurkish.pdf, (02.01.2014), p. 6.

[16]Christopher W. Moore and Peter J. Woodrow, **Handbook of Global and Multicultural, Negotiation**, Jossey- Bass, San Francisco, 2010, p. 409.

[17] Robert Curl Schehr, "From Restoration to Transformation: Victim-Offender Mediation as Transformative Justice", **Conflict Resolution Quarterly**, Wiley Subscription Services, Inc., A Wiley Company, 2000, Volume 18, Issue 2, http://deu.summon.serialssolutions.com, (04.09.2014), p. 159.

[18] Peter Wallensteen, **Understanding Conflict Resolution War, Peace and the Global System, Sage Publications**, London, 2002, p. 5.

In the doctrine and practice; the conciliation of the victim-perpetrator issued in CCP, is mostly stated with the term of ‘’reconciliation’’. However; by the reasons that we explained in above, we are going to use the concept of “conciliation” in our study because of that we think, the concept of “conciliation” will be more suitable.

C. Conciliator

With the lexical meaning, the concept of peacemaker is used instead of the concept of conciliator. The peacemaker is defined as “a person who provides the conciliation, arbiter, and a person chosen for solving a problem at the request of the both parties[19].”

As a term of law on criminal procedure, in the article 4/c paragraph of RICCP Regulation for The Interpretation of Conciliation in accordance with Code of Criminal Procedure, conciliator is defined as a person studied law commissioned by the Public prosecutor or the court, managing conciliation negotiations between the suspect or defendant and the victim or the sufferer of the crime, or as a lawyer commissioned by the bar upon request of the Public prosecutor or the court.

As in the concepts of reconciliation and conciliation, we see that the concepts of conciliator and peacemaker are used in the same meaning in the practice. In this study, we are going to use the term of conciliator, with reference to the definition of RICCP.

Conciliator represents the society that is one of the factors of the reparative justice. Thus, he fulfils important tasks in the process of conciliation. It is necessary that the qualifications, task and responsibilities, selection and education of the conciliator have to be presented clearly[20]. Conciliator is a person who establishes a connection between the parties. Conciliator should interview the parties, and should provide that the demands of the parties can be transmitted each other. However; conciliator should avoid the impolite words that can affect the parties’ will, and should try to find that which party is faulty[21].

[19] Turkish Linguistic Society, http://www.tdk.gov.tr/, (02.01.2014).
[20] Ekrem Çetintürk, **Ceza Adalet Sisteminde Uzlaştırma**, HD Publishing, İstanbul, 2009, p. 62.
[21] Centel and Zafer, p. 434.

Conciliator is not judge or arbitrator. He cannot decide about how to solve the conflict. It helps the parties to make the decision related to solution of the conflict on they own by using smoothing the parties' way to find their own solutions. Within the scope of criminal law, it does not research if the crime was committed, if so, how it was committed, if the victim had a function or contribute to commit the crime being the matter in reconciliation by the suspect. The conciliator is commissioned to provide managing the process in accordance with Rules, Regulation and law. He is obliged to make the necessary explanations to the parties about that the agreement made by the parties is not against to public order, personal rights, law and morals, and the execution agreed by them is practicable, and is not possible to practice in point of its matter. Therefore, the required qualifications of the conciliator to be commissioned by the lawyers registered to the bar or the conciliators studied law, have been determined.

According to the 253/9 article of CCP; as the Public prosecutor can provide conciliation on his own, he can request the bar to post a lawyer as a conciliator, or he can commission a conciliator from the people studied law. Accordingly, the lawyers registered to the bar or the persons studied law can be conciliators. It is necessary that the persons studied law, have to graduate from the faculties of law of universities, or have to receive the higher education for at least four years in the departments of political sciences, administrative sciences, economics and finance that include sufficiently law and law knowledge in its programs. Under the title "Conciliator" in the forthcoming sections, our critics about that the conciliators studied law and graduates of faculty of law or the people who did a master degree including the principles and rules of Turkish Criminal Justice System in their program are aimed, broadening, however, this provision with Regulation have been explained in detail.

II. THE PURPOSE AND IMPORTANCE OF CONCILIATION

A. In Point of Victim

In the principle of traditional criminal law, it is generally essential to take the necessary measures so that the defendant will not commit a crime, to impose the necessary penalty and to reintegrate the defendant to the society by the deterrent effect of the penalty[22]. According to classic jurists, as a requirement of sense of justice, the penalty to be imposed should be proportional to the criminal' s offence, fair and beneficial. Protecting the rights of the victims against the needs changing and growing in time, and resolving the victimhood began to come into prominence. The defendant will bear the consequences of his crime of course, but is the will of the victim being punished of the defendant or recovery of arising damage? Or being satisfied with the thought of reaching to justice including both being punished of the defendant and the defendant' s recovery of the material damage arising from the action the victim was incurred? At the first glance, it can be thought that the victim naturally wants both of them. However, when considering that humanity is scrambling for a living under constantly changing conditions and a big rat race, actually the victim is interested in the legal results about himself rather than being interested in the defendant or the defendant' s legal status.

Individuals of the same society share the fate of suffering uneasiness together. Every man needs to develop a protection system for himself. This protection system called "Elevation of Morale" is a harmony of spirit and brain obtained with the principles providing human to be strong and balanced, making human being human. The aim of elevation of morale to ask our consciences the question "what is correct, convenient, enough and necessary in justice?" not "who is right?", and to have the power of determining our thoughts and actions on this base in whole life[23]. If the victim sharing the fate of living in society with the defendant is conscious of this, he

[22] Bahri Öztürk and Mustafa Ruhan Erdem, **Uygulamalı Ceza Hukuku ve Güvenlik Tedbirleri**, 13. Edition, Seçkin Publishing, Ankara, 2005, p. 52.
[23]Ergun Zoga, "Yüceleşmenin Yüceliği", **İnsanımsılıktan Kurtuluş**, 3. Edition, Repa Publishing, Ankara, 1996, pp. 92, 93.

can think the action he is incurred within this scope and can also look the legal results of his victimhood from this aspect.

The key criterion of reconciliation is being in harmony with life and perceiving of belief related to this, by making the right thing in the right place, at the right time and in the correct form, with the correct qualifications, and also in the necessary and sufficient activity. It is not possible that a person, who is not in harmony with his/her personal characteristics, can reconcile with the environment and also can find peace[24]. A person, who is in harmony with himself/herself by avoiding sensuality, can fit into a person who thinks differently according to him/her. If the person incurred by an illegal action thinks in this way, a remark in accord with reconciliation culture can be made. However; the persons, who show teenager characteristics although they reached to the adult ages[25], have insufficient senses of reconciliation and peace because of that they have difficulty to accept him/her and also other people' s characteristics. In fact, effective peace requires the synchronous and mutual harmony[26].

Both in the society and in legal order, meeting the requests and needs of the victim adopting reconciliation culture, is not ignored, contrary to this, a chance is given to the victim to state his thoughts and feelings. In conciliation prepared with restorative justice concept, the aim is to recover the victim' s damages because, if the victim does not accept the offer of reconciliation, conciliation cannot be provided.

If the purpose of victim is only based on punishing the defendant, the victim has the right to refuse the offer of reconciliation in accordance with Turkish Law System. In the conciliation within the Law on Criminal Procedure, the victim is entitled to choose in this matter. If plaintiff does not accept the offer of reconciliation, public case is opened.

As we see in the practice, especially on negligent crimes, the victims' stands with conciliation not to bear hostility, to provide resolving the victimhood immediately, trying the possibility of recovery of the damages without taking part in

[24] Ergun Zoga, "Huzurdaki Sır", **İnsanımsılıktan Kurtuluş**, pp. 226, 227.
[25] Müge Tamar, **Gençlikte Değişim ve Süreklilik**, Çelikkol Publishing, İzmir, 2005, p. 74.
[26] Chadwick F., Alger, **The United Nations System A Reference Handbook**, Abc-clio, California, 2006, p. 214.

prosecution process. On intentional crimes, it is seen that they predict reciprocal reconciliation for not increasing of hostility, and providing peace environment.

The legal status of victim in judicial process, has importance as much as at least the defendant' s legal status. However; in the recent years, the rights of victim are defined as the forgotten part of human rights[27]. The victim' s rights must not be ignored against the problems arising from neglecting the victims suffering from the crime during or after judgment process, making visible this neglect and remedies about the defendant. The defendant is taken a basis as main focal point of the criminal law, and the rights of defendant are brought into prominence by the last changes made in the criminal law in Turkey and also in the world. In the framework of equality of arms principle within the criminal law; if equal rights are not given also to the victim as the rights of defendant, the victim is suffered one more time during the process of judgment[28].

Criminal law must consider satisfaction of the victim and his interest about resolving his victimhood. In the event that the victim is really left to his fate, the efforts to humanize the criminal law significantly take a knock[29].

Consequently, conciliation is an organization providing the victim to recover immediately his damages arising from the crime, and making him reach to his aim, with the thought of that protecting the defendant' s rights as much as the victim' s rights and that in today' s Turkey, lagging justice is also injustice.

B. In Point of Suspect / Defendant

For the purpose of ending the contradiction in terms experienced in the doctrine, in a. 2 of the CCP, Code of Criminal Procedure, defined the concepts of suspect and defendant. The suspect expresses "a person who is under the criminal

[27] Grand NationalAssembly of Turkey (TBMM), Meeting Records of Human Rights Investigation Commission, Ankara, 2013, http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.goruntule?pTutanakId=91, (07.05.2014), p. 1.

[28] Ayhan Sefer Üstün, Grand National Assembly of Turkey (TBMM), Meeting Records of Human Rights Investigation Commission, Ankara,2013, http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.goruntule?pTutanakId=91, (07.05.2014), p. 2.

[29] Veli Özer Özbek et al., **Ceza Muhakemesi Hukuku**, 5. Edition, Seçkin Publishing, Ankara, 2013, **(Ceza Muhakemesi)**, p. 882.

suspicion in the period of investigation"; and the defendant expresses "a person who is under the criminal suspicion in the period from the beginning of prosecution to finalization of the decision". The suspect and defendant is the most important person of the criminal procedure, because he and his action are the reason of judgment. The defendant is the person who is suspect. However; every person who is suspect, is not defendant. The person, who is suspect, is named as defendant because of opening a case. The suspect or the defendant can be only natural person; legal persons cannot be suspect or defendant. In the case that a crime is committed by the persons who are entitled to act on behalf of the legal person, the suspect or the defendant is the natural persons who committed that crime[30]. According to European Convention on Human Rights (ECHR), the defendant is not only limited to the persons prosecuted in criminal courts. ECHR prescribes protection methods to the persons under incrimination, in other words the defendants[31].

Even if the person accepting trying conciliation is either the suspect or the defendant, he cannot be deemed to accept the crime by accepting the conciliation offer. Thus, the suspect or the defendant knows that the aim of conciliation is not a process for making him accept the crime, that its main aim is peace[32] and to be able to evaluate a potential option of agreement with the victim or the sufferer of the crime by accepting the conciliation offer.

Before changing article 24 of the Law no.5560 of article 253 of CCP, the Public prosecutor used to ask the perpetrator if he accept the responsibility of the crime. When the perpetrator accept to pay and recover the material and moral damage of his action, the Public prosecutor used to notify the victim, and if the victim notify that he will reconciliate, he used to initiate the conciliation process. In this way, initiating the conciliation process requires the perpetrator not to deny his action and to accept his crime. If the defendant asserts that he did not commit the imputed crimes, the conciliation institution could not be operated. When initiating the conciliation process is up to the perpetrator' s acceptance of the crime, it is

[30] Bahri Öztürk et al., **Nazari ve Uygulamalı Ceza Muhakemesi Hukuku**, 5. Edition, Seçkin Publishing, Ankara, 2013, pp. 243, 244.
[31] Güney Dinç. **Avrupa İnsan Hakları Sözleşmesi' ne Göre Adil Yargılanma Hakkı**, , İzmir Bar Publications, İzmir, 2006, pp. 13, 186.
[32] Feridun Yenisey, "Ceza Muhakemesi Hukukunda "Uzlaştırma Hakkında Temel Bilgiler", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Hournal, İstanbul, 2010 Special: 1, p. 9.

detected that the perpetrator does not accept the crime, prefers the court to material fact and therefore, there is no possibility of conciliation. With the abovementioned change, as a positive development[33], the charter of the perpetrator' s acceptance of the crime has been abandoned, a new arrangement as including that his acceptance of the conciliation offer and attendance to the conciliation negotiations does not mean acceptance of the crime. In the 3rd paragraph of article 8 of RICCP, it is stated that the conciliation offer will be made by explaining the information in the Proposal Form of Reconciliation including the legal results of the acceptance or denial of reconciliation with the nature of reconciliation in the Regulation appendix. In the Proposal Form of Reconciliation in the regulation appendix, the explanation, "Accepting the conciliation offer and meeting with the opposite party does not mean acceptance of the crime or dispensing with the rights. This situation does not cause them to lose their rights." This arrangement became pretty well-directed. Moreover, in the practice, it is seen that the perpetrators who committed the imputed crime accepted the conciliation offer and preferred the court to investigate the material fact because there is no need to accept the crime in front of a person or an authorized office commissioned to investigate the crime. In this case, by meeting with the victim, the suspect or the defendant can tell the victim that he did not commit the crime and find out the material fact. In the event that reconciliation comes out well, by trying the conciliation method, the suspect relieves from criminal procedure and transact in his own favour.

"Participation in victim-offender mediation programs can offer benefits for both parties. Meetings between victims and offenders can help victims gain some satisfaction and allow criminals to witness the hurt they have caused[34]." Owing to conciliation, the suspect or the defendant relieves from the probability of punishment at the end of criminal procedure and the results with regards to recording the crime to his criminal record. If he regrets because of the crime he committed, he can understand the victim' s feelings and recover the victim' s damages. He can empathize with the victim, tries to the victim' s thoughts and feelings and his

[33] Bıçak, p. 305.
[34] Henry J., Reske, **Victim – Offender Mediation Catching On**, ABA Journal, Volume: 81, Chicago, 1995, http://search.proquest.com/docview/194372070?pq-origsite=summon#center, (04.09.2014), p. 14.

possibility of committing a new crime decreases. In this way, the suspect or the defendant reintegrated into the society, relieves from being criminal within law and conducts the results of his action with the victim.

In the conciliation management, it is thought that the worries of the suspect of the defendant whose financial power is weak, bearing the critic and worry of "does the people who have financial power purchase justice?[35]" are pointless. When examining the conciliation provisions practiced on Turkish Criminal Justice System, it is seen that the executions such as apologizing or working for the public weal is also included in conciliation executions, and that the suspect or the defendant who is financial ability to pay is weak can reconciliate with these executions. Moreover, because when the defendant is fined, a side between the poor and the rich is not taken, and in this way, the principle of constitutional state is not bruised, materially recovery of the victim' s damages by the way of conciliation should not be inconvenient. Accepting on condition that the money is paid to the state, not accepting to pay to the victim will not be sincere[36].

C. In Point of Society

Reconciliation is a result by the legal extent. As it is an individual concept firstly, it is a social culture and understanding form. If this understanding form related to reconciliation becomes an upper norm in society, the sense of justice and the superiority of law will increase in that society. By this means, peace in the society will be provided more easily[37].

In resolving of the conflicts in Turkish society, reconciliation is used commonly for long years. Especially in interparental conflicts, it is a method applied traditionally. However; acceptance of this method as a part of the criminal justice system caused to big discussions. Taking place of some new institutions such as reconciliation in the criminal justice system is approached with suspicion and fear.

---

[35] Eser, p. 109.
[36] V.Ö. Özbek et al., **Ceza Muhakemesi**, p. 902.
[32]Eser, p. 109.
[33]V.Ö. Özbek et al., **Ceza Muhakemesi**, p. 902.
[34]Rifat Çulha, "Uzlaşma", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010 Special: 1, İstanbul, 2010, p. 185.

Because, in Turkish society, law is regarded as a modernization medium against the conventional and patriarchal practices that the strong ones are protected, the weak ones are squashed[38].

Reconciliation recreates society' s public order corrupted because of a crime, in petty crimes. It is a new institution like a sanction administering the justice by means of the parties' peace and recovery of the victim' s damages. Conciliation is a beneficial institution in terms of solving the damage of society. The main purpose of reconciliation is making peace[39]. "The primary goal of victim offender mediation and reconciliation programs is to provide a conflict resolution process which is perceived as fair by both the victim and the offender[40]."

In reconciliation, it is believed that the victims and also the perpetrators are reintegrated into the society and their damages suffered will be recovered. However; moral factor is present in addition to reparation and solving the damages, in reconciliation. Therefore, as reconciliation helps to "special prevention" function of the penalty, it provides protection of the victim and public interests in general. Reconciliation emphasizes also the public validity of legal rules disregarded by an action, and contributes to provide the social peace[41]. In resolving of the conflict by the help of reconciliation, a result that the victim' s own will is effective, occurs; and the victim agrees with the perpetrator in a way that the victim accepted. Because of that the justice is against revenge[42], the victim' s sense of revenge is removed, and the social peace corrupted by crime, is reformed again[43].

---

[38] Asuman Aytekin İnceoğlu and Ulaş Karan, "Türkiye'de Ceza Davalarında Uzlaşma Uygulamaları: Hukuki Çerçevenin Değerlendirilmesi", **Onarıcı Adalet Mağdur – Fail Arabuluculuğu ve Uzlaşma Uygulamaları: Türkiye ve Avrupa Bakışı**, (Ed. Galma Jahic and Burcu Yeşiladalı), İstanbul Bilgi University Publications, İstanbul, 2008, p. 45.

[39] Nurullah Kunter et al., **Muhakeme Hukuku Dalı olarak Ceza Muhakemesi Hukuku**, 18. Edition, Beta, Press, İstanbul, 2010, pp. 1232, 1233.

[40] Mark S. Umbreit, "Mediation of Victim Offender Conflict", **Journal of Dispute Resolution**, University of Missouri, Columbia, 1988, http://deu.summon.serialssolutions.com, (04.09.2014), p. 87.

[41] Dieter Dölling, "İşlenen Suç Nedeniyle, Suç Failleri ve Mağdurları Arasında Arabuluculuk", çev. Sulhi Dönmezer, **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010 Special: 1, p. 18; Conciliation in Criminal Justice System, http://www.uzlasma.adalet.gov.tr/, (06.03.2014).

[42] Faruk Erem, **Diyalektik Açısından Ceza Yargılaması Hukuku**, 6. Edition, Işın Publishing, Ankara, 1986, p. 36.

[43] Cumhur Şahin and Neslihan Göktürk, **Ceza Muhakemesi Hukuku**, Volume: 2, 2. Edition, Seçkin Publishing, Ankara, 2013, p. 188.

Social values changes from society to society and in time. People, who behave in accord with the values, are valuable in the eyes of the society[44]. In a society that reconciliation culture developed, resolving of disputes related to the criminal law by help of conciliation, contributes to enrichment of the social values in the direction of reconciliation and peace.

D. In Point of Criminal Justice System

In conjunction with development of science and technology; new crimes committed with new tools, appears day by day. Accordingly, the number of files in the courts already working to secure the justice with a heavy workload increases day by day. In many countries, as a remedy of this, alternative solutions both to fulfill the legal needs and to decrease the workload of judge have been begun to use. "Victim offender mediation has grown to establish itself among criminal justice practices as an alternative to traditionally retributive notions of justice. As the number of programs claiming to be restorative in nature continues to grow, victim – offender mediation programs are emerging as one of the state' s preferred delivery methods for restorative justice[45]." With conciliation performed in the law on criminal procedure; in every year, thousands of complaint files are resulted in the period of investigation, and also they are resolved in accordance with the parties' rights and interests before they are submitted to the court.

Determining the material fact with the judgment that may continue for months through litigation and resolving the conflict can be provided within a shorter time by the way of conciliation. In this case, it brings the result of swiftly administering the law and speeds up the criminal justice system. In the case that a conflict is resulted in the way of conciliation, it is contributed economically to the criminal justice system in accordance with the principles of procedural economy. "When considered from the aspect of procedural economy; the work-load of trial courts and also Supreme Court reduces, and the court charges decrease because of

[44] Üstün Dökmen, **Küçük Şeyler**, 11. Edition, Sistem Publishing, İstanbul, 2007, p. 60.
[45] Patrick M. Gerkin, "Participation in Victim-Offender Madiation: Lessons Learned From Observations", **Criminal Justice Review**, Volume: 34, Issue: 2, Georgia State University, 2009, http://deu.summon.serialssolutions.com, (04.09.2014), p. 226.

that the conflicts result in shorter time and with less cost[46].” When comparing the costs of the case expenses to the states with the costs related to conciliation including the amount to be paid for the conciliator, it can be seen that there is a substantial difference in favour of conciliation. In the case that the conflicts resulted by reconciliation because of that the costs of conciliation is less than the costs of case, it can be said the state will economize highly. Since the conciliation offer is made during investigation being the beginning of law on the criminal procedure, it is not necessary to make the expenses related to prosecution process.

In the scope of the reparative justice; conciliation which is one of alternative methods of settling disputes, is an institution decreasing the work-load of courts in the criminal justice system, speeding the process related to solving of the dispute, and relieving the system by keeping the expenses at the lowest level as far as possible.

By satisfying the victim and recovering the damage, it is aimed to initiate fewer criminal cases and recover the victim’ s damages through the conciliation institution instead of spending more time an effort because of continuing to judgment during prosecution process[47].

Reparative justice, which is an alternative and definer approach to classic criminal justice approach by theoretically bringing the recovery of the damages arising from criminal actions, is an approach even if partly, to be able to be a solution the unreliable criminal justice system that cannot have created a solution to the criminal problem so far[48]. Because “restorative justice holds offenders accountable and requires them to take responsibility for their actions. It attaches fundamental importance to meeting needs of victims and enables them to actively participate in the justice process. The restorative model aspires to change the offending behaviour not through therapeutic methods, but through other very distinctive means[49].”

---

[46] Şahin and Göktürk, p. 188.

[47] Soner H. Çetin, **Ceza Muhakemesi Kanununda Uzlaşma (CMK m. 253, 254, 255)**, TBB (Union of Bars of Turkey) Journal, Number:82, Ankara, 2009,http://tbbdergisi.barobirlik.org.tr/m2009-82-516, (23.07.2014), p. 9.

[48] Galma Jahic and Burcu Yeşiladalı, “Onarıcı Adalet: Yeni Bir Yaklaşım”, **Onarıcı Adalet Mağdur – Fail Arabuluculuğu ve Uzlaşma Uygulamaları: Türkiye ve Avrupa Bakışı**, (Ed. Galma Jahic and Burcu Yeşiladalı), İstanbul Bilgi University Publications, İstanbul, 2008, pp. 16, 17.

[49] Margarita Zernova, **Restorative Justice: Ideals and Realities**, Ashgate Publishing Ltd, Abingdon, Oxon, GBR, 2007, http://nj8bs2kt8z.search.serialssolutions.com, (04.09.2014), p. 40.

III. CONCILIATION AS ALTERNATIVE DISPUTE RESOLUTION WAY

In many countries in the world, the efforts for the heavy workload problem of the court and extensification the social peace reveal to think new methods to solve the conflicts amicably and developing existing methods[50.]

Alternative dispute resolution ways is the whole of legal protection ways that help to the judgment and take sides with the judgment. Because of that it is effective and peaceful; the expression "alternative dispute resolutions" terminologically causes to comprehend that a system trying to take the place of judgment and competing with judgment. Thus, it will be more convenient to call that "amicably solution methods of conflicts." Such an expressing will serve that the purpose and function can be defined better[51].

Negotiation, peacemaking and arbitration are a few of the alternative dispute resolution ways in the practice. Negotiation is a method that the parties make an effort for solving their disputes by help of their lawyers or without the lawyers. For solving of the dispute in the method of peacemaking, the parties conduct negotiation, but they want to help from a peacemaker, in other words, a third person. The peacemaker directs the parties to the negotiation for solving of the disputes, in an environment that the parties will not see each other as enemy. Conciliation is the most amicable dispute resolution way, with its structure. In arbitration, experts in subject and objective third persons are chosen as arbitrator. Decision is made by the arbitrator, and decision given is binding for the parties. It is the most important difference between other alternative dispute resolution ways and arbitration[52].

Having difficulty of individuals in reaching to justice because of increasing litigation costs and extreme workload in the courts is the most important critic directed to the justice system. During litigation, the solution of the dispute is taken to appellate legal remedies, usually ends in trial court. This circumstance causes extra

---

[50] Demir, p. 5.

[51] Süha Tanrıver, **Hukuk Uyuşmazlıkları Bağlamında Alternatif Uyuşmazlık Çözüm Yolları ve Özellikle Arabuluculuk**, TBBD, Number: 64, 2006, http://tbbdergisi.barobirlik.org.tr/m2006-64-227, (08.12.2013), p. 155. Although the writer used the term "Affably, dispute resolution methods", we will use in our study the term "alternative dispute resolution ways" because of the permanent usage.

[52] Mustafa Özbek, **Dünya Çapındaki Adalete Ulaşma Hareketiyle Ortaya Çıkan Gelişmeler ve Alternatif Uyuşmazlık Çözümü**, Ankara University Law Faculty Journal, 2002-51-02, http://auhf.ankara.edu.tr/dergiler/auhfd-arsiv/AUHF-2002-51-02/AUHF-2002-51-02-Ozbek.pdf, (08.12.2013), pp. 138, 139, 142.

expense and time. As a result, it can take years to solve the dispute. When adding the subject of that the disputes gradually get more complicated, and include technical information to the problems related to increasing workload and expenses, the judges' professional knowledge are not enough, and the solution is assigned to the expert[53]. Generally, against this accepted detection, it is necessary to use alternative dispute resolution ways effectively and to extend them.

IV. CONCILIATION IN THE INTERNATIONAL LAW

A. In General

The aims of easing the workload of courts becoming difficult because of work density, reaching to the justice in the crimes being difficult to prove by the way of reconciliation, keeping the defendant and the victim safe from suffering during a public judgment process prompt countries to regulate the conciliation institution in their laws[54.]

Since the end of 1990s, studies have been made at national and also international level for the purpose of developing the conciliation institution. In this matter, international documents have been issued by the European Council, the European Union and the United Nations. The Recommendation related to Conciliation in 1999 dated Criminal Law accepted by the Committee of Ministers of the Council of Europe, the Framework Decision related to the Status of Victim in Law on Criminal Procedure accepted by the European Council in 2001, and the Decision about Basic Principles related to Use of Reparative Justice Programs in the Criminal Justice accepted by the United Nations Economic and Social Council in 2002, have great importance[55].

---

[53] Mustafa Özbek, **Adalete Ulaşmanın İyileştirilmesi ve Alternatif Uyuşmazlık Çözümüne Yöneliş,** Hukuk Merceği 7, Conference and Panels, Ankara Bar, 2006, http://www.ankarabarosu.org.tr/Siteler/1940-2010/Kitaplar/pdf/until2007/05-07.pdf, (08.12.2013), pp. 523, 524.

[54] Nazım Tunç, **Ceza Muhakemesi Hukukunda Uzlaştırma**, (Unpublished Master Degree Thesis), Bilecik University, The Institute of Social Sciences, Bilecik, 2010, https://tez.yok.gov.tr/UlusalTezMerkezi/, (10.05.2014), p. 35.

[55] Çetintürk, p. 236.

B. European Council

Since European Council is an organization upholding human rights and supremacy of law, it worked on development of extrajudicial solutions in member states. It made important advisory decisions about peacemaking of victim-perpetrator in the field of criminal justice. These advisory decisions are for both recovering the victim' s or the sufferer' s damages and increasing the caseload of the courts[56.]

Some of the advisory decisions are these[57]:

- R (85) 11 Numbered Decision about the Status of Victim in the Criminal Law.
- R (87) 18 Numbered Decision about Simplification of the Criminal Justice. .
- R (87) 20 Numbered Decision about Social Reactions against Children Crimes.
- R (87) 21 Numbered Decision about Assistance to Victims and Prevention of Being Wronged.
- R (92) 16 Numbered Decision about the European Rules related to Social Sanctions and Measures.
- R (95) 12 Numbered Decision about the Management of Criminal Justice.
- R (99) 19 Numbered Decision about Conciliation in Criminal Disputes.

These decisions of European Council advice the member states to examine conciliation opportunities between the victim and the perpetrator, to extend the alternative dispute resolution ways, to do researches and works to develop conciliation, to encourage to reparative justice, to give the victim an opportunity for conciliation and when the victim accepts it, to provide the defendant to pay compensation for him, and to institutionalize peacemaking of victim-perpetrator[58].

---

[56] Ahmet Sezer, **Öğreti ve Uygulamada Ceza Usul Hukukunda Uzlaşma**, Adalet Publishing House, Ankara, 2010, p. 26.

[57] Mustafa Özbek, "**Avrupa Konseyi Bakanlar Komitesinin Ceza Uyuşmazlıklarında** P.: 1, İzmir, **Arabuluculuk Konulu Tavsiye Kararı"**, Dokuz Eylül University, Law Faculty Journal, Volume:VII, Number: 1, İzmir, 2005, http://web.deu.edu.tr/hukuk/dergiler/DergiMiz71/PDF/ozbek7.pdf, (10.05.2014), pp. 127 – 130.

[58] M. Özbek, **Avrupa Konseyi**, pp. 127, 129.

Since the benefits of conciliation for the victim is mostly mentioned, it is seen that European Council primarily considers important to the victim and recovering his damage.

With R (99) 19 numbered advisory decision of the European Union, an alternative conflict-resolution system is presented to the member states, increasing workload of courts in the criminal justice system, and the principles of traditional judgment procedures[59].

Within the advisory decisions related to improvement of the criminal justice system of the European Council, very detailed regulations are present in R (99) 19 numbered decision that is one of the most important international documents in the conciliation procedures. In the decision, it is stipulated to use peacemaking as a complementary of criminal proceeding or an alternative, to increase active personal involvement. It is explained that it is necessary to communicate with the perpetrator by the victim, to apologize from him and pay compensation to him, and to accept that having a say about that the results of his victimhood is his legal interest. The importance of stimulating the perpetrators' sense of responsibility besides the victims' rights, giving opportunity to the perpetrators to recover damage arising from the crime and to correct their mistakes is pointed out[60].

In the advisory decision, to the member states, it is advised the member countries to practice the reconciliation and the principles required to be considered in relevant regulations to be made is stated. Detailed information is given about conciliation and it is requested to pay attention to these principles. However the advisory decision is not binding with regards to the member countries[61].

C. European Union

The works of European Union (EU) on merging about cooperation of the member states in the field of justice involves the minimum standards especially in

[59] Ebru Gümüşel, **Ceza Usul Hukukunda Uzlaşma Kurumu**, (Unpublished Master Degree Thesis), İstanbul University, Institute of Social Sciences, İstanbul, 2007, https://tez.yok.gov.tr/UlusalTezMerkezi/, (10.05.2014), p. 29.
[60] M. Özbek, **Avrupa Konseyi**, pp. 130, 131.
[61] Adnan Küçükyumuk, **Ceza Muhakemesinde Uzlaşma**, (Unpublished Master Degree Thesis), Selçuk University, Institute of Social Sciences, Konya, 2010, https://tez.yok.gov.tr/UlusalTezMerkezi/, (10.05.2014), p. 51.

the field of criminal justice. One of the primary issues of the Union about justice is reparative justice and conciliation. In this context, in Tempere meeting of European Council in 1999, it is decided to set minimum standards to protect the victim' s rights. After the studies made, the Framework Decision related to the Status of Victims in the Law on Criminal Procedure. By this decision, detailed regulations have been made to act respectfully to the victim, to protect the victims in many issues such as the right to information, the right of conciliation, protection and compensation and to develop that. The member states have to regulate the rules of criminal justice to provide these rights and have to comply with this decision in their national laws[62].

Since the Framework Decision is binding in point of the member states, the essential importance of this document emerges. The second important matter is that the execution scope of this document is not limited with criminal procedure and that it is compulsory to take the necessary measures to protect the victims before and after criminal procedure. Since the special regulations about conciliation in criminal suits takes place in this decision being binding for the member states, a new ground broken about conciliation. In sub clause (e) of article 1 of the Framework Decision, conciliation is defined as resolution way to be try to find while criminal procedure is continuing and earlier than that, at the end of the meeting to be made between the perpetrator and the victim under a competent person' s peacemaking. In this Framework Decision, within the scope of the practices reparative justice, in criminal justice system, conciliation has been clearly accepted and conciliation has been stated as a right[63].

EU Commission established COM (2002) 196 final numbered Green Paper[64] in the date of 19.04.2002. In this document, it was expressed that the interest shown for the alternative dispute resolution ways, increased in the Europe. Three main reasons about increase of the interest were detected. The first of these reasons is that general interest for the alternative dispute resolution which is seen as a tool for

[62] Çetintürk, pp. 245, 246.
[63] Çetintürk, p. 247.
[64] Green Paper is an EU term. They are documents prepared by the European Commission for the purpose of starting a discussion and consultation process by making suggestion in a specific area. T.R. European Union Ministry, **Temel AB Terimleri (EU Fundamental Terms)**, http://www.ab.gov.tr/files/rehber/10_rehber.pdf (07.05.2014), p. 42.

improvement of reaching to justice in daily life, increases. The other one is that the alternative dispute resolution is attracted attention in many member states, and that this situation gives encourage to pass for legalization. Another one is that the alternative dispute resolution ways are informed again and again by EU institutions to the member states, and that the member states are encouraged to development the alternative techniques primarily[65]. In information societies, it is met with the alternative dispute resolution ways, and in the Green Paper, it was emphasized that the access to justice is a fundamental right and an obligation at the same time.

D. United Nations

The United Nations (UN) whose one of the aims is to maintain[66] the peace in the world, stimulates to set better life standards for the main human rights under the convenient conditions in international arena by respecting the honor and value of personality[67]. UN has works about conciliation and reparative justice like European Council and European Union. We think that these works will continue because of the societies/individuals developing day by day and social, psychological needs increasing more and more.

One of the main reasons of emergence of the conciliation institution is resolving the victimhood. By the declaration, which was also called "the victims' Magna Carta" at the end of UN' s 7th Congress in 1985, four fundamentals was pointed out for the victims. These are; the right of fair treatment in criminal procedure, restoration of the damaged situation, the right of recovering the damage and the right of help and appropriate treatment[68]. The victims' rights stated in the declaration are important developments among the reasons of emergence of the conciliation institution.

UN discusses about crime, preventing crime, criminal justice, making the criminals good and victim by quinquennially making congress. Owing to these

[65] European Commission, **Green Paper on Alternative Dispute Resolution in Civil and Commercial Law**, Brussels, 2002, http://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_6_raporlar/1_2_green_papers/com2002_green_paper_on_alternative_dispute_resolution.pdf, (07.05.2014), p. 5.
[66] European Commission, http://www.un.org/en/aboutun/index.shtml, (16.02.2014).
[67] Alger, p. 126.
[68] V.Ö. Özbek et al, **Ceza Muhakemesi**, p. 888.

congresses, the countries can find opportunity to discuss their criminal justice problems and experiences about that. In the congress in 1995, it was decided to establish a Working Association about reparative justice. This Working Association worked to make the notion of reparative justice one of the discussion issues and to revive the international attention to the issue of reparative justice[69].

UN Crime Prevention and Criminal Justice Commission accepted "Declaration of Obligation and Equity in Justice Procedure" in 1997. By this declaration, the roles and the rights of the victims in restorative justice and criminal justice have been explained[70].

The Draft Decision about "The Fundamentals about Using Reparative Justice in Criminal Justice" was accepted by UN Criminal Justice and Crime Prevention Commission in 2000. This Draft was revised, approved by Economical and Social Council in 2002. The countries, which want to practice the accepted fundamentals about reparative justice, can benefit from the experiences of the other countries by means of these fundamentals.

Some of These Fundamentals are[71]:

- *"Reparative Justice Program" expresses any program that a reparative procedure is performed or reparative results are aimed.*
- *"Reparative Procedure" expresses the procedure that the victim, perpetrator and/or other persons or society members affected by the crime, leagued together for the purpose of finding a solution to the problems arising from the crime, generally by the help of a facilitator. Conciliation, reconciliation, conference and punitive circle can be given as example for the reparative procedure.*
- *"Reparative Result"' expresses a reconciliation reached in the end of a reparative process. The reparative results include the reactions that will provide the needs of persons or society such as recovering the loss, reinstatement and working benefit of society, and also will provide to reintegrate victim and/or perpetrator into society.*

[69] Çetintürk, p. 249.
[70] Gümüşel, p. 27.
[71] Çetintürk, p. 251.

- *"Parties", expresses the victim, perpetrator and other persons or society members affected by the crime, and that can attend to a reparative justice program.*
- *"Facilitator" expresses an objective and fair third person who the role is easing the participation of victim and perpetrator in a program made face to face.*

V. CONCILIATION IN COMPARATIVE LAW

A. In General

It is thought that recognizing that the process beginning with an international strategic bargain ends as it will provide peace with a constitutive approach[72], encourages the states to search constitutive-peaceful ways to resolve the criminal disputes in their national laws.

In 1960s, reform works were started in criminal justice in United States of America (USA) and affected Europe. These reform works fundamentally became focused on the perpetrator and tended to reintegrate the perpetrator into society. In 1970s, it was recognized that this approach focused on the perpetrator had caused to ignore the victim. The conventional approach that the real victim is the state by reason of committing a crime caused to ignore the victim' s attendance to the criminal procedure process and resolution of his victimhood remained in the second importance. The practices such as the delays bruising the sense of justice and judgments of non-prosecution without justification, caused to suffer the victim repeatedly. Thus, initiatives were launched to simplify and shorten the judgment procedure, to integrate the victim to the process and resolution of the victimhood. In consequence of these initiatives, the attitude of reparative justice began to arise[73]. "The terms in contemporary literature about reparative justice are restitution, reparative schemes, victim-offender reconciliation, redress, mediation programmes,

[72] Charles A. Kupchan, **How Enemies Become Friends: The Sources of Stable Peace**, Princeton University Press, New Jersey, 2010, p. 20.
[73] Mualla Buket Soygüt Arslan, "Ceza Hukukunda Mağdurun Korunması ve Onarıcı Adalet Anlayışı", **Uzlaşma**, Bahçe Şehir Üniversitesi Hukuk Fakültesi, Kazancı Refereed Law Journal, İstanbul, 2010 Special: 1, p. 284.

community service, atonement, indemnification, compensation and are used interchangeably, meaning basically the same or having at least the same intentions: repairing the damage done by the offender, getting the victim involved, reconciliation between the victim and the offender, creating an alternative to imprisonment and current criminal justice sanctions and making society at large more humane[74]." Reconciliation is a dispute resolution way often applied in USA and Europe and it was taken to our law because of the works to be a member of EU[75].

As well as there are differences in practices of countries about reconciliation, in many countries, regulations about reconciliation are made and practiced with the changes made in classic criminal justice system[76].

B. Conciliation in German Law

In Germany, the first studies related to conciliation started in the year of 1984. These studies were made on the purpose of examining the deficiencies of present justice system, and searching for new method. Lawyers, academicians and social service specialist, led to the first efforts. The opinion of that the people who have committed a crime before, have high tendency to commit a crime, causes ideas for removing existing system[77].

Law about the Protection of Victim was introduced based on supporting the status of victim in the process of the law on criminal procedure, in Germany and at the date of 1986. By this law, the necessity about resolving the victimhood arising from the crime, was accepted first by legislator. In the period after the enactment, the

[74] Elmar Weitekamp, "Reparative Justice: Towards A Victim Oriented System", **European Journal on Criminal Policy and Research**, 1993, Volume: 1, Issue: 1, http://nj8bs2kt8z.search.serialssolutions.com, (04.09.2014), p. 70.
[75] Kemal Mecit and İsmail Ademoğlu, "Alternatif Uyuşmazlık Çözüm Yollarından Uzlaşma Kurumunun Gelişimi ve Hukukumuzdaki Yeri", **Uzlaşma**, Bahçeşehir University Law Faculty, Kazancı Refereed Law Journal, İstanbul, 2010 Special: 1, p. 348.
[76] Tunç, p. 43.
[77] Clara Casado Coronas, "Mağdur-Fail Arabuluculuğu Hizmetlerinde İyi Uygulamalar", **Onarıcı Adalet Mağdur – Fail Arabuluculuğu ve Uzlaşma Uygulamaları: Türkiye ve Avrupa Bakışı**, (Ed. Galma Jahic and Burcu Yeşiladalı), İstanbul Bilgi University Publications, İstanbul, 2008, p.115.

place of resolving the victimhood arising from the crime was discussed in criminal law. These discussions are collected in three different views[78]:

- The place of criminal law sanctions should be taken by the actions related to resolving the victimhood, and the criminal law should be abolished.
- The sanctions related to resolving the victimhood should take place in the criminal law system, as an independent sanction. As resolving the victimhood can take place as a third sanction in addition to the traditional sanctions related to the criminal law, it can be accepted also as a penalty. The criminal law is indispensable.
- Resolving the victimhood neither is accepted as a sanction, nor takes the place of criminal law sanctions. Criminal law can benefit from resolving the victimhood. In this context, resolving the victimhood should be added in criminal law.

German Criminal Law includes many provisions about the essentials of peacemaking between the perpetrator and the victim and explains the required procedures to recover the damage the perpetrator causes. Some changes were made in procedure law with an act that changed the Act about Juvenile Court in 1990, the acts establishing peacemaking in fight against criminalness in 1994 and in criminal system in 1999[79].

Reparative justice programs emerging from the attempts of the courts aimed at only adults in the beginning. The programs for the young people started later. Nevertheless, the attempts related to the young people spread faster than the programs for adults[80].

In German criminal law; when examining the provisions about recovery of the damage and conciliation together, it is seen that conciliation has not been clearly mentioned in the provisions giving opportunity of conciliation. Yet, in the practice it is provided the perpetrator in these provisions to benefit from the opportunities such as not to be punished or reducing his punishment. Conciliation is used a medium for

[78] Veli Özer Özbek, **Ceza Hukukunda Suçtan Doğan Mağduriyetin Giderilmesi,** Seçkin Punlishing House, Ankara, 1999, **(Mağduriyetin Giderilmesi),** pp. 165, 166.
[79] Dölling, p. 18.
[80] Coronas, p. 115.

the perpetrator to benefit from these provisions that conciliation have not been mentioned. Thus; the fields, that conciliation can be practiced, increase[81].

In the circumstances that the perpetrator and the victim want to attend to peacemaking, in Germany, 80% of the cases are successfully resolved[82]. There is a review of the peacemaker with the expressions of "successful", "not successful", "partly successful", or "not completely resolved" in the report prepared by the peacemaker at the end of peacemaking process. By this review, the peacemaker explains, if the disputed issues was resolved completely or partly and an agreement was made or not[83].

In German law system, the parties are free to start to peacemaking and to maintain that. The peacemaker is commissioned to provide the parties to justly attend to the peacemaking proceedings. The peacemakers do facilitative peacemaking and they cannot offer a solution[84].

C. Conciliation in United States of America Law

The American legal system is based on the Anglo-Saxon legal system, where there is an absence of comprehensive legislation and which is based on the rulings at the end of cases and precedents. In this way it is different from the legal system of the European Continent which contains strict rules.

A majority of legal disputes in the United States of America, can be resolved without going to court. Some of the basic factors allowing for disputes to be resolved more rapidly and economically are as follows[85]:

- Pre-trial discovery of evidence: In the process called "the discovery of evidence", lawyers have been given varied and broad powers for the collection of evidence to be accepted in the trial. Thus, without the need for

[81] Çetintürk, p. 266.
[82] Dölling, p. 21.
[83] Coronas, p. 155.
[84] Renate Dendorfer, **"**Almanya ve Avusturya Örnekleri", **Dünyada Arabuluculuk Uygulamaları Konferansı**, (Union of Bars of Turkey) Publications: 216, Ankara, 2012, http://tbbyayinlari.barobirlik.org.tr/TBBBooks/436-d.pdf (17.05.2014), pp. 49, 51.
[85] Muhsin Macuncu, "Amerikan Hukuk Siteminde Anlaşmazlıkların Alternatif Çözümleri", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010 Special: 1, pp. 75 – 77.

the judge to allocate more time for investigation, a significant portion of the preliminary investigation is conducted by the lawyers.

- The requirement for parties to pay their own legal costs: In normal practice in the American legal system, the parties are required to pay the lawyer costs of the preparation and presentation stag as well as their own legal expenses.
- Active case management for judges: There has been a trend to increase the powers of judges to enable them to be more active in the management of pre-trial settlement of disputes. These powers allow the judges the opportunity to understand whether the parties will wish to settle or not before the trial starts. Thus, cases are resolved more rapidly and economically.
- The increase of alternative dispute resolution: The delays and costs resulting from the traditional jury system in the American legal system can be listed among the reasons for the development of alternative methods. With alternative dispute resolution methods, parties can voluntarily waive their right to a trial by jury, and can have lower cost and faster access to justice. In America the most commonly used methods of dispute resolution are; negotiation, mediation and arbitration.
- Court appointed lawyers supporting the judges: In the American judicial system, the opportunity for lawyers to be assigned to aid them in pre-trial and trial proceedings has been given to judges. These lawyers, under the supervision of a judge, examine whether the parties can or cannot agree on certain issues. They can also work as mediators or arbitrators. Thanks to court-appointed lawyers, judges becoming snowed under is avoided.

In the United States of America, one of the duties of lawyers is negotiation, disputes, when they come to the lawyer' s office, are resolved without going to trial. This situation removes judges from being "must have' s" in dispute resolution and renders it possible for disputes resolution to be achieved by means other than judicial means, with the lawyers informing the parties[86].

[86] M. Serhat Sarısözen, **Uyuşmazlıkların Alternatif Çözüm Yolları Işığında Avukatlık Hukukunda Uzlaştırma**, Yetkin Publications, Ankara, 2011, p. 54.

"Reconciliation is mainly an institution specific to Anglo-American law[87]." In the United States of America, the restorative justice mechanism is widely used to restore social peace. In American criminal law "plea bargaining" is applied. Plea bargaining; is an agreement between the parties, whereby the prosecutor offers the defendant a deal whereby the defendant receives a lighter penalty upon pleading "guilty" and with the acceptance of this deal by the defendant. Plea bargaining is a concept used to describe this process of negotiating an agreement[88]. Plea bargaining is not an institution related to ensuring justice, it is mainly a system which makes life easier for the prosecutor, the defendant' s lawyer, and to a degree, the judge. It can be described as an application which does not equally protect the rights of the parties, which does not prove without reasonable double that the defendant has committed the crime and which does not demonstrate material facts[89]. Plea bargains are conducted between the prosecutor and the defendant. The defendant is concerned about being sentenced to a heavy penalty in the event of the plea bargain not being accepted, and this concern is placing pressure on the defendant. Therefore, the defendant is unable to carry out plea bargaining to to demonstrate a real sense of free will[90]. It if often mentioned that this method, also called plea bargaining and plea deal, is in contravention of a right to fair trial[91]. Despite this, this system is widely used in criminal proceedings in the USA[92].

In a study conducted on victim-offender mediation according to statistics of 1985 in the USA, it emerged that in approximately one third of all mediation applications, the participants exhibited positive changes of behaviour towards one another. One of the reasons for this low rate, is that the objectives of the victim, the offender and the criminal justice personnel are different. The objective in terms of the victim is the recover loss. Offenders however aim to avoid a heavy sentence. The primary purpose of the criminal justice personnel, is to humanize the criminal justice process through face to face negotiations and to mostly compensate the victim for

[87] Nur Centel and Hamide Zafer, **Ceza Muhakemesi Hukuku**, 7. Edition, Beta Printing, İstanbul, 2010, **(CMH)**, p. 472.
[88] Yapar, pp. 248, 249.
[89] Yapar, pp. 302, 303.
[90] Pınar Bacaksız, **İddianame Pazarlığı**, Journal of Criminal Law, Ankara, 2008, Issue: 7, p. 165.
[91] Bıçak, p. 311.
[92] Tamer Soysal, "Türk Ceza Hukukunda Uzlaşma", **Ceza Muhakemesi Hukukunda Uzlaşma**, (Ed. Feridun Yenisey), Arıkan Printing House, İstanbul, 2005, pp. 215, 216.

their loss. For this reason, mediation, remains an institution with secondary level importance in terms of other requests and objectives[93].

D. Conciliation in Canadian Law

Conciliation in Canadian history is seen in "Aboriginal (native) justice". The basis of native justice is forgiveness, working for the community and rehabilitation. The main idea in the social life of native justice is to mediate between the victim and the offender and bring harmony to society[94]. A practice implemented in 1974 in Canada is accepted as the first implementation of a settlement today[95].

In the "Elmiro" case tried in 1974 in Ontario, a decision was made by an audit officer that the face to face meeting between two children who committed the crime of damage to property belonging to another person and the victims and ensuring the negotiation of rectifying of damage in this way would be the best form of treatment for these children. The parties were brought together with a mediator and the rectifying of damages was resolved within six months. As the result was satisfactory, a victim offender mediation committee was established with support from the government and a gravitation towards mediation occurred in a majority of cases over time[96].

A joint project was started between the Victim Offender Mediation Project in Ontario Kitchner and some other institutions, and the objectives of this project are[97]:

- *Identify crime that can be successfully dealt with in the community,*
- *Bring the victim and the perpetrator together to effect reconciliation and understanding between victims and offenders,*
- *Make use of a third party to promote a conciliation between the parties,*
- *Find a solution to crime as a dispute which requires resolution.*

Canada has adopted a system similar to that in the United States of America, with less detailed regulations with regards to conciliation. In practice, conciliation is

[93] Mustafa Serdar Özbek, "Çağdaş Ceza Adaleti Sistemlerinde Alternatif Çözüm Arayışları ve Arabuluculuk Uygulaması", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010, **(Arabuluculuk Uygulaması)**, Special: 1, p. 177.
[94] Gümüşel, p. 21.
[95] Çetintürk, p. 44.
[96] M. Özbek, **Arabuluculuk Uygulaması**, p. 133.
[97] M. Özbek, **Arabuluculuk Uygulaması**, p. 133.

used widely. For rapid finalization of criminal procedure and to reduce the workload of the participating lawyers, the parties are directed to conciliation. The police first determining the criminal charges to be brought by the prosecutor is also influential in the conciliation. In this way, initially there is no question of benefit to the prosecutor. The duty of the judge under conciliation is to accept the suspect' s confession and, taking into account the recommendations of the prosecutor, to determine the sentence. A judge is not present at conciliation. The judge is not able to determine the cause of the confession of the suspect and cannot control whether the confession is his true will[98].

Canada consists of ten provinces and three regions, and there are several differences in conciliation. Mediation is performed by volunteers and they are not remunerated. Mediation organizations are supported by the state and receive various grants[99].

In Canadian law if a restorative justice program has been applied to a person regarding a previously committed crime, in the event of a subsequent crime being committed, another right is offered. However, people who commit a third crime are tried. Thus, the abuse of the institution of conciliation is avoided[100].

E. Conciliation in French Law

Victim-offender mediation programs in France, were developed as a preventative system in response to the increasing sense of insecurity and fear of being victimized experienced by people living in the cities.[101]. With the efforts of legislators and lawyers with knowledge of foreign legal systems, the resolution of disputes with alternative solution methods has widened over time[102].

---

[98] Cumhur Şahin, **Ceza Muhakemesi Kanunu Gazi Şerhi**, Seçkin Publishing, Ankara, 2005, pp. 787, 788.
[99] Andrei Berzins, **Ceza Adalet Sisteminde Uzlaştırma Uygulamalarının Geliştirilmesi Projesi Çalıştay Raporu**, İstanbul, 2008, http://www.uzlasma.adalet.gov.tr/doc/clstplnt/rapor.pdf, (18.05.2014), p. 5.
[100] Mualla Buket Soygüt Arslan, **Ceza Muhakemesinde Uzlaşma: Temel Sorunlar ve Öneriler**, Journal of Crime and Punishment, M.B., 2008, http://www.turkhukuksitesi.com/makale_936.htm, (18.05.2014), p. 1.
[101] Coronas, p. 113.
[102] Sarısözen, p. 57.

Within the scope of legal execution in France, the word "conciliation" is used on principle in the criminal justice system for adults, whereas the word "repair" used used for similar applications in juvenile criminal law[103].

In offences without specific victims, the perpetrator conciliates with the state. In the case that there is a specific victim, the victim and perpetrator come together in the presence of a mediator and a proposal is made to the offender. The victim is notified of the offer made to the offender, however the approval of the victim is not required[104]. In France, the investigation can be terminated with certain conditions such as the suspect performing community service or making good on the loss of the victim[105].

Mediators in France can work as professionals under the roof of an accredited unit or as volunteers, or they may work independently. In both cases, there are umbrella organizations where mediation services are offered. The main two organizations, are the Institut National d'Aide aux Victimes et de Médiation (INAVEM) and Citoyens et Justice[106].

Victims' associations and civil associations in France have been instrumental in the progress in victim-offender mediation[107]. Victims' rights associations have led the implementation of mediation programs, on one hand to overcome the feeling of lack of safety by the victims and on the other hand to enable them to respond to the suffering they have experienced.[108]

In the event that the parties agree to participate in mediation, the parties have reached an agreement in 70 to 80% of cases at the end of the conciliation process[109]. If we were to give an example from the Turkish Criminal Justice System, in 3.865 cases where conciliation procedure was applied in 2011 by the Izmir Public Prosecutor, 3.506 conciliations were achieved. In 2012, in 3.780 cases where conciliation principle was applied, 3.441 conciliations were achieved[110].

---

[103] Gümüşel, p. 8.
[104] Çetintürk, p. 328.
[105] Şahin, p. 800.
[106] Coronas, pp. 120, 121.
[107] Erim Tekin, **Türk Ceza Adalet Sisteminde Mağdur-Fail Arabuluculuğu: Uzlaşma Kurumunun Yasal Analizi**, (Unpublished Post-graduate Thesis), Institue of Social Sciences, İstanbul Bilgi University, İstanbul, 2010, p. 46.
[108] Coronas, p. 135.
[109] Çetintürk, p. 338.
[110] Eser, p. 62.

Accordingly, in 2011 90.71% and in 2012 91.03% have conciliated at the end of the conciliation process.

F. Conciliation in English Law

In 1985 mediation UK was established to regulate the developments in the field of mediation and compensation in the United Kingdom. This organization has supported victim-offender mediation programs, and determined implementation rules. It took measures against the threat to the purposes and impartiality of mediation institutions, helped in the training of mediators and encouraged the development of new plans and projects. In 1999 in England, national organizations with a common interest in the development of the restorative criminal justice system came together and the Restorative Justice Consortium was founded. This cooperation, brought together all expert communities working within criminal justice and all voluntary organizations[111].

In England, the parties to the dispute are aware of the advantages of out of court conflict resolution. The culture of out of court conflict resolution is fully settled[112].

It is a legal requirement in England for lawyers to guide their clients and the parties about alternative conflict resolution methods and give reminders[113].

In accordance with the minimum work requirement, there is a requirement for mediators to deal with at least 10 files a year. The association of mediation services with actual case experience and applications has lead to the introduction of such a minimum work load condition. The aim in introducing the minimum file number in a year for mediators is to increase the quality of the application[114].

[111] M. Özbek, **Arabuluculuk Uygulaması**, pp. 144, 147.
[112] Sarısözen, p. 53.
[113] Alper Bulur, "Arabuluculukta Avukatın Rolü", **Dünyada Arabuluculuk Uygulamaları Konferansı**, TBB Publications: 216, Ankara, 2012, p. 74.
[114] Coronas, p. 188.

VI. RECONCILIATION IN CHILDREN

The Convention on the Rights of the Child (CRC), adopted by the United Nations on 29.11.1989, was signed by Turkey on 14.09.1990. The GNAT passed the Convention as law on 09.12.1994. According to article 1 of the CRC; *"In accordance with this Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."* In accordance with this provision, any person below the age of eighteen, even if majority is attained earlier, is defined as a child according to article 3/1 of the CPL. In article 6/1-b of the TPC, it has been specified that a person under the age of eighteen should be understood from the statement of child. In article 31 of the TPC, the period until the age of eighteen has been divided into three. As this distinction is important in terms of conciliations involving children, its disclosure is required. According to this distinction; the first stage is children below the age of twelve, and these children have no criminal responsibility. The second stage are for children above the age of twelve but under the age of fifteen when committing the act, in the event that they are unable to comprehend the legal meaning and consequences of their actions or their ability to guide their own behaviour is not sufficiently developed, then they also have no criminal responsibility. If there is comprehension of the legal meaning and consequences of the action and the ability to direct their behaviour then there is criminal responsibility, however the sentences are reduced. In this case, in accordance with article 35 of the CPL, an investigation is carried out showing the individual characteristics and social environment of the child. As described in article justification, in the content of the social investigation report (SIR), there must not be an assessment on the ability to understand and capacity of will regarding the act committed by the child. Because this assessment is the discretion of the court exclusively. A social worker will, in a capacity of an expert witness, conduct the examination and evaluation of the individual characteristics and social environment of the child. According to article 31 of the TPC, the third stage is where the child is above the age of fifteen but below the age of eighteen, these children have criminal responsibility, however their sentences are reduced.

When one person who committed the crime and one person subjected to the crime is an adult, we can see that there is a generally accepted view that conciliation process should be applied. Conciliation is an institution which is useful both in terms of society and the parties of the incident and which should be implemented. However, if a child is in question, there is no consensus between lawyers regarding the implementation of conciliation regarding the victim or child who has committed a crime. While there are lawyers who believe conciliation must not be applied to children under any circumstances, there are also lawyers of the opinion that conciliation is quite accurate in terms of application with children.

Authors, who are of the opinion that conciliation provisions should not be applied in crimes where children are the victims or the offenders, state that conciliation cannot be reached with children, and that it should be banned. If the child is the offender, they explain that the duty of the state is to restore the child into the community and not negotiate with and conciliate with a child committing a crime[115].

According to lawyers with differing opinions however; it is very helpful for disputes which children are party to to be resolved through conciliation. Conciliation is the reintegration of the victim and offender into society. The request to participate in conciliation is completely voluntary and the privacy of conciliation is essential. The process provides for the resolution of conflicts without being based on fear, pressure and punishment. The juvenile justice system, is not always an appropriate process for the resolution of problems related to children. Conciliation process may be a good education for the children. It helps with the development of social and individual talents of children[116]. In comparative law, it can be seen that conciliation was first developed for children and that crimes which can be subject to conciliation are higher in children than in adults. There must be differences between the implementation of conciliation with children and adults, and arrangements should be made in favour of children[117].

---

[115] Öztürk et al., p. 839; Eser, p. 111; Soygüt Arslan, p. 304.
[116] Bıçak, p. 303; Mustafa Özbek, "Ceza Muhakemesi Kanununda Uzlaştırma", **Ankara University Law Faculty Journal,** 2005, Volume: 54, Issue: 3, **(CMK' da Uzlaştırma)**, http://auhf.ankara.edu.tr/dergiler/auhfd-arsiv/AUHF-2005-54-03/AUHF-2005-54-03-Ozbek.pdf, (10.03.2014), pp. 294, 314.; Soygüt Arslan, p. 302.
[117] Çetintürk, p. 486.

The provisions of the CCP relating to conciliation are also applied in terms of children driven to crime. The specific characteristics for child law prior in existence prior to 2006 not being preserved and the removal of rules specific to child law has been a mistake[118]. An arrangement specific to children has not been made in terms of conciliation in neither the CPC or the CPL. In the regulations prior to the changes the conciliation authority was bound to the complete resolution or the resolution in large of the damages and this situation has been criticized in doctrine. It has been stated that, instead of damages, the introduction of obligations aiming for spiritual satisfaction such as something else being given or done, or an apology was required and that the existing situation was incorrect in terms of those economically weaker, and children in particular. With the change made to the text of the law in 2006 from "remedy of damages" to "the fulfilment of the action", it can be said that the issues criticized have been addressed to a significant degree[119].

While considering the critics in the teachings, it is thought that the application of conciliation is appropriate in children. In a. 253/3 of the CPP, crimes with the provisions of effective remorse and sexual inviolability have been kept separate, and it has been regulated that conciliation cannot be applied in this offences. This regulation has also contributed to our opinion that conciliation be tried in offences where a child is a party.

Within the scope of conciliation a distinction has not been made in terms of child victims and children drawn into crime. In teachings it is stated that in child proceedings, it is important for the victim to be personally involved in the conciliation process, and for the child to see the situation of the victim and comprehend their emotions and pain, and thus be reintegrated into society, however that it is not possible to say the same in offences where the victim is a child and the offender is an adult[120]. Conciliation, is a method where the victim and the offender are aware of the terms and consequences and which they can, with their free will and independently, reject or accept. Despite separate regulations being implemented in terms of child victims being prudent, according to the existing regulation the legal representative of the child victim has the freedom to reject the conciliation offer. In

[118] Kunter et al., p. 1245.
[119] Ünver and Hakeri, pp. 822, 823.
[120] Centel and Zafer, **CMH**, p. 481.

the event of one of the parties not accepting the offer of conciliation, as there is no regulating compelling the implementation of conciliation, superiority of the will of the parties has been ensured. The ability to freely explain the will of the parties and conciliation being bound by this supports our view that conciliation be applied in cases with child victims.

As we can see in the conciliation applications, we can state that conciliation gives positive results in terms of both child victims and children driven to crime and that its implementation in children is quite accurate in general. In the files we were appointed as mediator between 2012 - 2014 by the Izmir Public Prosecutor' s Office Children' s Bureau, all the files resulted in conciliation. As we have personally witnessed both parties being happy to be a part of the process and making the decision regarding them together, we are of an opinion that including children somehow involved in crime directly into the judicial process without attempting conciliation is not suitable. However, we do agree with a portion of the criticisms made in the doctrine. Different legal arrangements must be made in terms of children and adults[121] and for conciliation applications to be made in term of children a detailed arrangement must be made taking into consideration the principles of child law.

There are three basic principles in juvenile justice. These are[122];

- The principle of priority of benefit to child,
- The principle of the child having a right to a say in their own affairs,
- Is the respect of the right, where possible, for the child to know their mother and father and be in their care.

In the juvenile justice system in many European countries a victim-offender mediation program is applied. In legal policies regarding children, as must help as possible and as little punishment as necessary must be the basic philosophy[123].

According to the fundamental case-law of the Supreme Court, the passing of judgement without attempting conciliation is a reason for reversal[124].

---

[121] Bıçak, p. 304.
[122] Durmuş Tezcan et al., **İnsan Hakları El Kitabı**, 4. Edition, Seçkin Publishing, Ankara, 2011, p. 469.
[123]Uğur Tekin, "Çocuk Yargılamasında Avrupa' daki Yeni Uygulamalar", **Çocuklar ve Suç – Ceza**, (ed. Yener Ünver), Comperative Current Criminal Law Series: 4, Seçkin Publishing, Ankara, 2005, pp. 491, 492.

SECOND SECTION
CONCILIATION IN TURKISH CRIMINAL PROCEDURE, THE LEGAL NATURE AND CONDITIONS OF CONCILIATION

I. IN GENERAL

Mediation and conciliation entered into our law as a new concept with the 5271 numbered Criminal Procedure Law which entered into force on 01.06.2005 with its publication the Official Gazette dated 17.12.2004 numbered 25673, and was regulated with Second Section, Chapter 1, articles 253, 254 and 255. The 5237 numbered Turkish Penal Code also entered into course with the exception of a few articles on 01.06.2005 having been published in the 12.10.2004 dated 25611 dated Official Gazette. In terms of determination of offences subject to complaint and conciliation with the entry into force of the TPC and in terms of the rules of procedure with the entry into force of the CPP, conciliation has begun to be applied as an alternative conflict resolution method in or criminal law. In addition to these two basic Laws, article 24 of the Child Protection Act (CPL), article 41 of Law 5560 has been changed and in the Criminal procedure Act it has been specified that the provisions regarding conciliation would be applied in regards to chilren driven to crime.

These revolutionary new regulations regarding out of court resolution of conflicts in parallel with developments in the world in criminal law, serves to both protect the rights of the victim, strengthen their position and for the offender to take responsibility for the consequences of the offence. In sentences to be given at the end of criminal proceedings as "criminal law has a special function, a conveying consideration valid today[125]", out of court settlement method conciliation has a special preventative function.

Out of court conflict resolution is not a new concept in Turkish law, and applications such as official mediators in disputes relating to business law and

---

[124] 2. CD., 06.06.2013 date, 2012/28226 E., 2013/15038 K., 4. CD., 26.09.2012 date, 2010/22111 E., 2008/17316 E., 2011/44702 K., 9. CD., 26.09.2011 date, 2009/15147 E., 2011/27231 K., https://www.corpus.com.tr/, (12.07.2014).

[125] Timur Demirbaş, **İnfaz Hukuku**, 3. Edition, Seçkin Publishing, Ankara, 2013, p. 63.

conciliation in tax law existed previously and are still applied. For the resolution of legal conflicts via mediation under the scope of restorative justice, the 6325 numbered Mediation in Legal Conflicts law was accepted on 07.06.2012. As out topic is conciliation in the criminal justice system, explanations of conciliation in criminal procedure law and conciliation will be included in out study.

In this study, where we have also discussed the results brought by conciliation in the Turkish Criminal Justice System in practice, it can be seen that, upon the basis of the examination of Izmir Public Prosecutor' s Office applications, conciliation institutions yield successful results.

II. LEGAL CHARACTERISTICS OF CONCILIATION

The rule of lay is divided into two as public and private law. Criminal law fulfils the task of punishing the offender on behalf of the public for acts committed where the public peace has been disrupted, which are called crimes. Therefore, it is included in the field of public law. Criminal law is also divided into three within itself as material criminal law, form of criminal law and criminal execution law. Material criminal law regulates the terms for the punishment of the crime and the action which is subject to the crime. When form of criminal law is stated what must be understood is criminal procedure law. Criminal procedure lay regulates the rules for the proceedings for the application of the sanctions imposed by law in the event of an offence being committed. Enforcement law regulates the fulfilment of the convictions given as the final decision of criminal law[126].

There is no consensus in the doctrine regarding which section of criminal law conciliation institution is included. While some lawyers state that conciliation is an institution of criminal procedure law, others state that it is an institution related to material criminal law. A third opinion states that conciliation is an institution of mixed nature of both material criminal law and criminal procedure law.

With conciliation taking place, the right of the Public prosecutor to file an indictment is removed. In a system which recognizes the requirement of Public prosecution, conciliation is a cause which eliminates the state' s right to issue a

[126] Timur Demirbaş, **Ceza Hukuku Genel Hükümler**, 9. Edition, Seçkin Publishing, Ankara, 2013, **(Genel Hükümler)**, pp. 56 – 58.

punishment. Even though conciliation has only been regulated in CPP 253 and following articles, the material criminal law aspect should have been regulated in the TPC. In terms of substantive criminal law, conciliation must be accepted as a reason for withdrawing a complaint and must be considered as a cause of abatement. In terms of the criminal procedure law the function of conciliator is neither claim or defence. As the conciliator acts to resolve the conflict financial and monetary aspects of the conflict between the parties, it can be said to be performing a task similar to judgement. However, as the conciliator does not go into the merits of the conflict, the work carried out by the conciliator is not true judgement. As conciliation entails very detailed processes it is carried out in the investigation stage in the countries where it is applied. An indictment cannot be prepared by the Public prosecutor without attempting and failing to reach a result through conciliation. Not attempting conciliation for an offence subject to conciliation for the resolution of the conflict is a cause for the indictment to be rejected. For this reason, according to the CCP, attempting conciliation is a condition to judgement[127].

According to lawyers who state that conciliation is an institution of criminal procedure lay, conciliation is an obstacle to procedure. By conciliating with the victim, the suspect or the accused can prevent the progress of criminal procedure. As in the event of conciliation the punishment of the offender will no longer be in question, this institution can be considered as a situation dropping penal relationship. As the criminal procedure cannot continue due to a procedural process, the penal relation ends. For this reason, conciliation being a institution of criminal procedure is dominating[128]. Conciliation, in terms of our criminal justice system, is a criminal procedure institution which should be considered to have a different approach from the traditional approach to criminal justice. Because conciliation not only includes the elimination of victimization, but also beyond that, is a new approach to justice which incorporates its own sanctions[129].

In the event of a conflict being resolved through conciliation as the state no longer has the right to issue a punishment, in this aspect it is the subject of substantive criminal law. Conciliation is the subject of criminal procedure law in

[127] Kunter et al., pp. 1232, 1233.
[128] Centel and Zafer, pp. 428, 429.
[129] Çetintürk, pp. 396, 397.

terms of method and application conditions. For this reason it is suggested that the institution of conciliation has the characteristics of both substantive criminal lay and criminal procedure law, and in terms of legal nature is of a mixed nature[130]. When considering the legal nature of conciliation and whether it is a rule of law placed only in favour of the defendant; in nature it is an institution of criminal justice, but in results it is related to substantive criminal law. Conciliation in the Turkish criminal justice system, aims to not only serve the defendant but also correct the injury to the victim as a priority, and aims to remedy the peace of the community by resolving the conflict between the parties[131].

A restorative justice practice, input part of the criminal justice system, an integral part, or addition? Restorative justice logic on the one hand and the needs of the criminal justice system, including achievements and constraints in a side impact on society is evident. The key elements of restorative justice have a tendency to challenge the criminal justice system. In Europe the implemented restorative justice is mostly of the type of guiding outside of the system. Out of the system routing model to affiliates of the criminal justice system "guard" position remains. However, restorative justice processes, need their own space for them to reveal their full potential. For the process to succeed the criminal justice system institutions should take a step back. Restorative justice, in the criminal justice system tends to a constant challenge is a part of. However, the settlement of the criminal justice system should not be a simple piece of criminal procedure and the secondary or second-class institution should not be reduced to be[132].

Rules and application form containing the terms of the settlement is an institution in our opinion, the mixed nature. Because the prosecutor in the case of an offense within the scope of compromise litigation settlement before the parties is obligated to offer. When the offer of conciliation is accepted by the parties, a case cannot be brought without an attempt at conciliation. In this aspect it is related to procedural law. Be agreed to by the parties to the dispute and reconciliation act of

---

[130] Ayşe Nuhoğlu, "Uzlaşma Bakımından Şikâyete Bağlı Suçlar", **Uzlaşma**, Bahçeşehir University Law Faculty Refereed Law Journal, İstanbul, 2010 Special: 1, p. 87.

[131] Supreme Court General Assembly for Criminal Matters 06.11.2007 date, 2007/6-212 E., 2007/229 K., https://www.corpus.com.tr/, (10.03.2014).

[132] Christa Pelikan, "Onarıcı Adalet Üzerine", **Onarıcı Adalet Mağdur – Fail Arabuluculuğu ve Reconciliation Applications: Türkiye ve Avrupa Bakışı**, (Ed. Galma Jahic and Burcu Yeşiladalı), İstanbul Bilgi University Publications, İstanbul, 2008, pp. 25, 26, 28.

dissolving the fulfilment of the right to state criminal case is eliminated and the crime that ended with all the consequences arising from the dispute settlement relates to the substantive criminal law is. For these reasons, the mixed nature of the settlement stated that we thought it was an institution, but in the settlement TPA and CCP independent regulation would be more accurate. As noted above, the process of restorative justice in the criminal justice system should not be a simple piece of reconciliation, institution, just as the Law on Mediation in Civil Disputes should be regulated by a separate law. However, our meaning here is not the separation of conciliation from the criminal justice system. Practice by many lawyers that dealt with the consequences of compromise and, to be weathered regarded as a procedural rule that we see. However, a separate law and in more detail had been arranged, lawyers may be more interested and restorative justice could contribute to a better understanding of the process.

Crime victimization arising from the elimination of its place in the criminal law can be very various discussions. Whether you're traditional or contemporary approach to evaluation, the most important issue in this regard is the compensation of the victim' s losses.

In our opinion, as a victim of crime suspects or persons of the incident side, often only part of a compromise deal with the substantive criminal law is related to. In the event the parties to the agreement will, of course, did not want to deal with the criminal justice process, there is the idea. However, the issue which is kept at the forefront for than participation in the process is the atonement for the consequences of the offence. Izmir Public Prosecutor Nazan Pekcan has stated on a TV show explaining conciliation in a VTR study that participants when asked "If someone commits a crime against you would you prefer they are punished or do something that you want?", they answered "Do something I want"[133]. These responses also support our opinion that the victims of crime are more interested in the outcome than the process.

As a final note of the legal characteristics of conciliation; "*What gives live to criminal law, is the criminal procedure law which brings it to practice. It is not*

[133] UNDP and Ministry of Justice, **International Workshop fort he Victim– Offender Conciliation in the Criminal Justice System**, İstanbul, 2012, http://www.cigm.adalet.gov.tr/duyurular/2012/uzlasmacalistaykitabi.pdf, (06.03.2014), p. 24.

possible to separate criminal law from this. Substantive criminal law and criminal procedure law functionally related to each other, but two separate branches of law are independent of each other. There can be no punishment without law. Criminal sanctions of criminal law as a criminal or security measures envisaged to apply to the first detection of the certainty and truth should win. In the preceding stage there is uncertainty and doubt. Contrary to the norms of criminal law when there is a suspicion, that it carries the certainty of doubt and norms confirming the validity of the contact referenced to decide whether a sanction is required. In this respect, the subject of criminal procedure, substantive criminal law is a dispute concerning. Briefly ... criminal, criminal law relating to the elimination of the dispute is a tool for[134]*."*

III. TERMS OF CONCILIATION

A. Complaint Condition

Complaint, the victim, or the legal representative of victims of crime, criminal prosecution is to inform the competent authorities of the request.

The prosecution of some offences by the Public prosecutor can lead to unfavourable results. Therefore, for the prosecution it is expected for the victim of the offence to disclose their will or in other words, utilize their right to complain. Complaints of rights are closely linked to the person of a crime as a crime by law subject to complaint if regulation is in question[135].

Complaint has been arranged in article 73 of the Turkish Penal Code. The duration of complaint for offences whose investigation and prosecution are dependent on complaint is six months. The duration begins when the person with right to complain becomes aware of the action and the perpetrator. Complaints of one of the few people who have the right to exercise this right within six months, does not affect the rights of others complaints.

Complaint, the person injured by a crime, you want to punish the offender and report that see no harm in the criminal investigation is done. Is the subject of the

[134] Öztürk and Erdem, p. 26.
[135] Demirbaş, **Genel Hükümler**, pp. 206, 207.

complaint and the complainant damaging event, a person is complaining of his actions. Covers the request for punishment of all perpetrators as a result of the complained event. Even if a single person has been shown in the complaint, it is all the perpetrators participating in the offence. This is called in transmission or indivisibility of the complaint[136].

In offences whose investigation and prosecution are dependent on complaints, conciliation is attempted. However, even if the crime is subject to complaint, if the victim is a public law legal entity then conciliation cannot be applied. In addition, subject to complaint investigation and prosecution of crimes against sexual immunity, even though the place with the provisions of the active repentance in the crime can not go to conciliation. These exceptions to the start of the mediation process must first and foremost there is a complaint.

By the Public prosecutor or the judge attempted to reconcile the place with all the conditions required to study whether there is a complaint, subject to the settlement of the complaint is a result of the implementation of crimes. If the complaint is not valid for any reason, it is understood will not be referred to conciliation, because criminal proceedings must take place whether to prosecute or to dismiss the case will be decided[137].

Exercising the right of complaint is a prerequisite for conciliation. For example, a person, "I' m not complaining, but I want to compromise." He has lodged a statement of the complainant; due to the lack conciliation procedure will be applied. The right to use the complaint form duly notified of the proposed settlement prior to or after bid acceptance or rejection of the mediation process again if the complaint will be made to give up. In the forthcoming sections, institutions in the criminal justice system, while giving up complaining, why it is needed to reconcile the institutions, legal consequences and comparisons are explained.

The right of complaint for child victims can be used through their legal representative. The term "competent person" is used for the person with right of complaint in a. 73 of the TPC. Complaint of rights is closely linked to the person, but because of the legal representatives of small age, children can exercise the right of

[136] Centel and Zafer, p. 162.
[137] Ali Kemal Yıldız, "Uzlaşma – Şikayet İlişkisi" **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010 Special: 1, p. 114.

complaint on behalf of. Children' s complaints in the Supreme Court the right to use personally examiner makes a distinction based on whether or not they. Examiner minors, whether or not the consent of the legal representative directly in crimes against persons have the right to complain. Minors 15 years of age who have not completed the complaints to be valid must be determined with a report that they are examiner. Minors, where he finished 15 years of age or if examiner determined that the complaint will be considered valid[138]. In the case of a child victim of crime, victims of crime in his capacity as legal representative has the right to complain. However, people who do not have the title of legal representative, cannot complain on behalf of the child[139].

Does the settlement offer directly to the child or to be made to the legal representative, the legal representative of the will of the child in the settlement of the conflict in which case the rule is one of the issues discussed will be provided. Teachings suggest that in the event that the child has the ability of differentiation, the conciliation to be proposed as a result of conciliation should be accepted or rejected by the child themselves, or in the event that the child does not have the ability of differentiation, the process should be completed in accordance with the will of the legal representative[140]. According to another opinion; settlement offers, even if underage children having power should be simple and should be taken with the consent of the legal representative. However, in accordance with regulations in the law, the offer of conciliation must be made to the legal representative[141]. CCP a. 253/4 suspect, victim or victims of crime in the absence of a minor, provision will be made to the legal representative of the proposed settlement is located. Law book made a distinction for the presence of power, if not to be underage will be made to

---

[138] Supreme Court 5. CD., 09.11.2004, 2003/6183 E., 2004/7208 K.; Supreme Court CGK., 15.04.1942 date, 1940/14 E., 1942/9 K..*"Minors have the right to complain and file a case due to the crimes directly committed against the personal rights. The rights of the persons representating these minors are to protect the minors when they do not complain and file a case".,* https://www.corpus.com.tr/, (06.03.2014).

[139] "*A judgemenet must be rendered based on the complaint of the grandmother, although the minor or her father does not complain and the custody of the minor has been awarded to her father."* Yargıtay 5. CD., 28.01.2013 date, 2002/3142 E., 2003/277 K., https://www.corpus.com.tr/, (06.03.2014).

[140] Özen, Atilla, "Ceza Yargılamasında Uzlaşma" **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal,
İstanbul, 2010 Special: 1, p. 314.

[141] Seydi Kaymaz and Hasan Tahsin Gökcan, **Uzlaşma ve Önödeme**, 2. Edition, Seçkin Publishing, Ankara, 2007, p. 132.

the legal representative of the proposed settlement was arranged. Even if the child has the power to distinguish relevant settlement offer provision concerning the legal representative should be done is considered to be quite accurate. I stayed in the Turkish Civil Code (TMK) a. 339/3 in accordance mother and father, custody when using the child' s maturity allows you to edit the extent of life, and considers the key issues of his thoughts. Decisions of the Supreme Court of the settlement offer made to the children's legal representative stated that, instead of the legal representative of the compromise proposal under the age of eighteen people made a reason for reversal was counted[142].

B. A Crime Subject To Conciliation

1. In General

Whether or not an offence under the settlement, in which crimes should be attempted conciliation CCP' s are specified in article 253. Accordingly, subject to complaint investigation and prosecution of crimes and complaints regardless of whether the material is connected to the crimes mentioned in the text of the settlement is subject to the individual. Except that is connected to complaints of crimes contained in other laws with regard to offenses to go to conciliation, there is a provision in the law requiring open.

Settlement in case of an offense subject to mandatory mediation is attempted RICCP a. 6/6' is also specified. Without attempting to reconcile during investigation by the Public prosecutor for the postponement of the opening of a criminal case, the prosecution stage the verdict by the judge to postpone the decision can not be given.

In a. 11/2 of the "Crime committed by a citizen" and a. 12/2 "Crime committed by a foreigner" located in the TPC Book One Section Two regulation along with the requirement for complaint, as these provisions are related to the

[142] 2. CD., 25.09.2012 date, 2012/21744 E., 2012/41890 K., 4. CD., 03.06.2013 date, 2013/7727 E., 2013/17108 K., 6. CD., 17.11.2011 date, 2007/20384 E., 2011/45492 K., 6. CD., 03.11.2011date, 2008/19404 E., 2011/45054 K., https://www.corpus.com.tr/, (12.07.2014).

application area of the Law, they have not been included in the offences subject to conciliation.

Offenses within the scope of the settlement, the settlement also included examples encountered in practice, in order to types and scopes will be examined as separate headings.

2. Offences Subject to Conciliation in Turkish Penal Code

a. Offences Whose Investigation and Prosecution is Dependent on Complaint

(1) Offences Against Physical Integrity

i. Felonious Injury (excluding paragraph 3 TPC a. 86)

Article 86/1 the intentional painful to someone else' s body or health or cause deterioration of cognition has been stated that the person punished. In paragraph 2 of intentionally wounding the actual impact on the people that can be corrected with a simple medical intervention in case of considerably lighter punishment on the victim's complaint and stated that both CCP § Does the crime. 253 is part of the settlement in accordance.

Offenses under this article are subject to conciliation, mediation practices are among the most common crimes. Article 86 and 87 are the number of the crimes charged in accordance with the General Directorate of Judicial Records and Statistics (ASIGM), according to statistics published by the judicial year 2012 and 2013, according to statistics from the total 745.130 total 769.870 pieces[143].

Offenses enumerated in paragraph 3 to require a heavier penalty be processed if it is not part of the settlement[144]. In this case, a complaint is not required. Also

[143]General Directorate of Criminal Records and Statistics, http://www.adlisicil.adalet.gov.tr/istatistik_2012/12.pdf, (10.07.2014), http://www.adlisicil.adalet.gov.tr/istatistik_2013/19.pdf, (10.07.2014).

[144]*"... although it is stated that the conciliation provisions will be applied to the children driven to crime; it should be considered that the crime of intentional injury with weapon casted on the defendant at the age of 11-15 is not subject to conciliation in compliance with the Law No: 5270,*

CCP a. 253/1-B-1 is connected to the complaint shall apply regardless of whether the settlement is considered among crimes of intentional injury crime as stated in the third paragraph, except for the mediation applied. Launched cases cannot be withdrawn with the dropping of a complaint[145].

Intentional injury crime as defined in paragraph 3 ascendant, descendent, crimes are committed against a spouse or sibling is not covered by the settlement. The establishment of kinship does not change the situation, conciliation is not applied[146]. Spouse, sibling, lineal and altsoy whether there is relationship is based on the population register, the basic sentences before determining the National Judiciary Informatics System (UYAP) population of the records should be removed.

Referred to in paragraph 2 of the victim' s injuries that can be fixed with a simple medical interventions mild in nature, even though the crime of intentional injury would require more severe punishment referred to in paragraph 3 reasons to be processed if the agreement will not apply[147].

Mother and father' s custody when using the protection and education of children in case of necessity for the use of force, the right to remain within the scope tedip. For example, a specific measure in the form of ear pulling the finishing stages and actions to protect the crime of intentional injury should not be considered within the scope. However, having exceeded a certain level it must be accepted that an offence will occur[148]. If the right of parents disciplinary action is to be exceeded then it will be evaluated in terms of a. 86/3 and will not be covered by conciliation.

The influence of Public officials found to have the offense committed by the abuse does not apply in the event the settlement. The concept of Public official which

---

Article 253/1-b of Law. No 5560." Supreme Court 2. CD., 07.02.2008 date, 2007/16693 E., 2008/1917 K., https://www.corpus.com.tr/, (07.03.2014).

[145] Supreme Court 2. CD., 15.12.2005 date, 2004/22934 E., 2005/29474 K., https://www.corpus.com.tr/, (07.03.2014).

[146] "*It is necessitated that the public case is dropped due to the withdrawal from the complaint in writing, regardless of the fact that the investigation and prosecution of the crime is not subject to complaint since the Article 86/3-4 of TCL No. 5237 will be applied about the defendant intentionally injuring the victim (her father) in view of the Article 282/3 of Turkish Civil Code stating "lineage relation can be established trough adoption".* Supreme Court 3. CD., 05.06.2013 date, 2012/21450 E., 2013/23617 K., https://www.corpus.com.tr/, (07.03.2014).

[147] *"After breaking up the fight between the students, the act of injuring by slightly hitting to the hand of a student with a stick by the hall monitor should be considered as a crime of injury that is not subject to complaint and is committed by abusing the power of a public official" Supreme Court* 4. CD., 25.06.2008 date, 2008/7248 E., 2008/14702 K., https://www.corpus.com.tr/, (07.03.2014).

[148] İlhan Üzülmez, **Vücut Dokunulmazlığına Karşı Suçlar**, Adalet Publishing House, Ankara, 2013, p. 25.

is one of the reasons specified in paragraph 3, has been described in TPC a. 6/1-c. Article text of the statement by the public officer; public activities through the execution of the assignment or selected by or in any permanent, term or temporary participants to understand. We stated that the settlement is not covered by paragraph 3 of article 86 of the crime; item (c) in clause meant by public officials incriminated persons exposed to the action, that is the victim, (d) the perpetrator of a crime is meant by the public officials.

Injuries can not be resolved with simple medical intervention, TPA result referred to in article 87 did not cause aggravated the injury a. 86/1, under the conciliation should be tried.

In a. 86/3-e of the TPC, it has been stated that the requirement for complaint will not be applied when the offence is committed with a weapon. In this case, the provisions of the conciliation will not be applied. Tools used during the processing of the crime to whether the arms of the tool must be properly identified. According to a. 6 of the TPC a weapon;

- Firearms,
- Explosives,
- All kinds of cutting, piercing tools made to be used in attack and defence,
- Attack and defence, even if carried out to actually attack and defence suitable to be used among other things,
- Caustic, abrasive, hurtful, choking, poisoning, continuous disease path-breaking nuclear, radioactive, chemical and biological substances.

According to the Supreme Court decision; made offensive and defensive attack and defense, if not actually suitable for use as a weapon, provided that everything is counted[149]. In each instance, the judge making an assessment of the integrity of the event, if there are objects that are used in the nature of the weapons CPP a. 63/1 "under the general and legal knowledge required by the profession as a judge" should consider solutions expertise, in situations that require special or technical knowledge should refer to the expert opinion. In cases where the object can

[149] Supreme Court 3. CD., 22.11.2011 date, 2011/15913 E., 2011/18464 K., https://www.corpus.com.tr/, (07.03.2014).

not be seized assessment should be based on the result, "availability" factor should be observed[150].

Some examples accepted as weapons according to Supreme Court decisions are these[151]:

The water and tea in injury with spilling of hot water and tea from the teapot burning on the stove[152], according to the nature of the injury to the victim a stick, which is suitable to be used in an attach even in the case of defence[153], in the event of an injury as a result of a dog being set on and biting the victim, the dog as a tool in the crime[154], pepper spray used in a crime[155], in a injury in the form of a laceration a stone with "sharp, piercing, jabbing" characteristic suitable to cause injury[156], in an injury with throwing of a glass suited to actual attack and defence, the glass[157], the water pipe used in the crime resulting in the fracture in the skull of the victim even if not used in attack and defence[158].

The human body or parts of the body are not included in the concept of weapons. Fist of the crime of intentional injury, bare feet or knees hit the crimes committed by gunshot wounds in the event does not occur. In contrast, the arms taken offence if committed shoes or plaster depending on the nature of the case an assessment should be made[159].

Willful injury to the person who committed any object through the (eligibility criteria, including being in the condition) injure a person in the event, both in law description and both the Supreme Court' s settled case-law according to the gunshot wounds of the crime were seen. However, during the event in the hands of guns, knives and other objects of the perpetrators of the crime, if the use of these objects

[150] Supreme Court CGK., 12.02.2008 date, 2008/3-25 E., 2008/22 K. , Yargıtay 2. CD, 28.03.2011 date, 2009/38707 E., 2011/6171 K., https://www.corpus.com.tr/, (07.03.2014).
[151] Corpus Web Legislation and Case Law Program, https://www.corpus.com.tr/, (11.03.2014).
[152] 2. CD., 29.09.2010 date, 2010/3910 E., 2010/26923 K.
[153] 3. CD., 24.09.2012 date, 2011/3585 E., 2012/31058 K.
[154] 2. CD., 13.07.2011 date, 2009/49963 E., 2011/25398 K.
[155] 3. CD., 20.02.2013 date, 2011/38244 E., 2013/6627 K.
[156] 3. CD., 17.06.2013 date, 2012/20517 E., 2013/25209 K.
[157] 3. CD., 31.10.2011 date, 2011/13336 E., 2011/15523 K.
[158] 3. CD., 26.09.2007 date, 2006/9008 E., 2007/6596 K.
[159] Mustafa Ruhan Erdem, **Türk Ceza Kanununda Silah**, Gazi University Journal of Faculty of Law, Ankara, 2003, Volume: VII, Issue:1 – 2, http://webftp.gazi.edu.tr/hukuk/dergi/7_tam.pdf, (10.07.2014), pp. 193, 194.

during the processing of the object, not just in the hands of the crime does not occur because of gunshot wounds.

In the International Workshop on Victim-Offender Conciliation Applications in the Criminal Justice System, in the example given by Ankara Public Prosecutor Ekrem Bakır; he gave an opinion that, in a case of simple assault between a father and a son, even if they have made peace with each other the investigation and prosecution will continue, however with the grounds that the persons who have made peace in such grounds have been offended, they should be offences which should be included in the scope of conciliation under a. 86/3 of the TPC[160]. In our opinion, a. 86/3 could be brought into the scope of conciliation. However, the criminal complaint is not connected to the property can not be touched, CCP a. 253 specified in the catalog of crimes to take place, only to be covered by the settlement are needed. Mediation is a voluntary way for the parties, so that the will of the parties to the rule of consensus can be achieved.

ii. Felonious Injury as a Result of Negligence (TPC a. 88)

In the case of intentional injury committed through negligence, the injury can be corrected with simple medical intervention in case of considerably lighter in nature are subject to a complaint and settlement are covered. Injury, a. 86/1, a. 86/3, a. 87/1, and a. 87/2' if it is mentioned in the complaint, although not subject to the CPC' s dispute settlement procedure under article 253 of the implementation of the required numbers of crimes that are still part of the settlement.

iii. Reckless Injury (TPC a. 89)

Mentioned in this article reckless wounding All of the CCP' s crime of article 253 shall apply in the settlement is specified, regardless of whether the subject of the complaint is covered by the settlement. Article 89/5, according to; except within the scope of paragraph mutilation, crimes committed with conscious negligence is not

[160]General Directorate of Penal Affairs, http://www.cigm.adalet.gov.tr/duyurular/2012/uzlasmacalistaykitabi.pdf,, (20.07.2014), p. 10.; In the same direction Eser, p. 104.

required in case of complaints. The second, third and fourth paragraphs as specified in the said injury is not conscious negligence case is subject to a complaint. Crime does the CCP a. 253 as a result of keeping under settlement; if the existence of a reckless conscious are 89/2, 89/3 in the direction of giving up the complaint has no effect. The case is not abated with the withdrawal of the complaint; however it can be terminated by conciliation. As a result of the settlement in this case, the complaint said that without sacrificing a superior qualify.

Mediation in the reckless wounding of applications; traffic accidents, work accidents and malpractice for example, patients of physicians reckless injury while practicing his profession for complaints based on one of the most common crimes. Reckless wounding in relation to the number of predicate offenses of Criminal Records and Statistics Department (ASIGM) named in 2013, according to statistics published by the total 368.935 pieces[161].

Article 89/5 investigation and prosecution of the offense of reckless injury that is attached to the complaint, however, fall within the scope of paragraph except mutilation, crimes are committed deliberately reckless complaints are listed will not be compulsory. Want to crimes committed in conscious negligence if you want to get reckless, CCP' s because of the offenses specified in article 253, in both cases one of the offenses contemplated in the settlement.

In reckless wounding, which is one of the most important principles of modern criminal law is not perfect crime and punishment in accordance with the principle perpetrators are not punished[162]. Izmir Public Prosecutor' s Office applications, technical expert examination of the defect condition if the suspect is built. In the case that the offender was found to be without fault, a decision will be made that there is no cause to prosecute without the attempt of conciliation. However, these decisions; upon appeal, the appeal by the authority, especially if the injury was severe; given by the prosecution appeal against the decision of whether to prosecute is seen that the acceptable. Decision as a justification for the removal; defect of discretion of the court where the matter is reported to be done. In this case; appointed as mediator settlement can not be achieved in most of our files. When an

[161]General Directorate of Criminal Records and Statistics, http://www.adlisicil.adalet.gov.tr/istatistik_2013/19.pdf, (10.07.2014).
[162] Öztürk and Erdem, p. 43.

evaluation is made of the event in terms of the parties; on the one hand there is the decision by the prosecutor that there is no cause for prosecution due to lack of fault, on the other hand the decision to lift the decision not to prosecute made upon the appeal, as in practice it causes economic distress in the eyes of the party, ensuring legal consensus is important.

This is an issue that should be discussed in mediation within the scope of the crime referred to in paragraph 4, the relationship becomes more than one person is negligent injury. Multiple people were injured in an incident of some complainants to accept the settlement offer, the acceptance of a part in the event, who accept the offer of mediation in the settlement between the complainants and whether the application is that the suspect. CCP a. 253/7 at "more than one person suffering or damage giving rise to an offense for conciliation, go to the victims or crime victims all compromise to accept the need." Provision is located. In the teachings of one of the victims or crime victims to accept a settlement can not be made in the event the settlement is disclosed[163]. This material is interpreted as literal, reckless wounding all the complainants if it did not accept the offer of settlement will not go to conciliation. However, not just the victim of a settlement, the defendant is an organization which is in favor of the assumption that the complainants, who accept the offer of settlement in our opinion the settlement of the suspect should be applied, should be sued for not accepting the complainants[164]. For example, in a traffic accident in which three people have complained, two of the victims have accepted the settlement offer, if one accepts; According to the results of the settlement will open suspicious substance will change in the case law basis, the settlement should be made. Does not done settlement suspects. According to paragraph 89 quarters will be prosecuted and punished for the criminal defendant may be awarded shall be imprisonment from six months to three years. Two complainants who accept the settlement, the settlement has been established and fulfilled if I was to suspect me about. Article 89/1 and will be prosecuted according to criminal defendants be given three months to one year imprisonment or criminal fines will be[165].

[163] Bıçak, p. 306.
[164] In the same direction, Çetintürk, p. 515.
[165] See also, Metin Feyzioğlu, "Uzlaştırma Teklifi ve Taraflara Bildirilmesi", **Uğur Alacakaptan' a Armağan**, (Ed. Mehmet Murat İnceoğlu), Volume: 1, İstanbul Bilgi University Publications, İstanbul,

CCP a. 253/7, the embodiment, the harm caused by crime victims who wish to be resolved through the mediation of the will, in contrast to reconcile the result is not applicable. In this way, restorative justice objectives of the removal of the victim's losses, rather than a punitive approach to the defendants arises. Moreover, as a result of negligent acts of more than one person and wounded one injury in the absence of the complainant, the complainant is evaluated by the number of those[166].

In practice by prosecutors settlement who accept the complainants and suspects of conciliation is tested and the results compared to the case is opened, some prosecutors the complainants all settlement proposal fails to accept the settlement to start the process that can be seen. More than one complainant fails to accept the offer of settlement of a portion of conciliation of the indictment being applied by the court to those complainants who accept the offer on the grounds that the settlement should be applied as is shown in refund. Our vision is a part of the complainant did not accept the settlement offer, acceptance of others, and if the suspect is in the direction of initiation of the process, but the regulations in the law is clear, that our thoughts remain within the scope of criticism. To ensure the unity in practice, the legislation needs to be changed. Mentioned here who accept the settlement issue with is the part about whether the process should be initiated. Nevertheless, it is doubtful with complainants who accept the offer of settlement failure to achieve reconciliation between the parties in the case will be opened and the state change is a separate issue.

(2) Crimes Against Liberty

i. Menacing (TPC a. 106/1 – Second Sentence)

Article 106/1 or anybody else, he or his relative' s life, body or carried out an attack against sexual inviolability of the person threatening to bet that a complaint is not subject to criminal liability and therefore is not part of the settlement. However, paragraph 2 of article 106; As someone else assets will inflict great harm or other

---

2008, **(Uzlaştırma Teklifi)**, http://www.feyzioglu.av.tr/yayin/uzlastirma-teklifi-ve-taraflara-bildirilmesi.html, (11.03.2014), p. 338.

[166] Üzülmez, p. 116.

threat to bet that if evil is in criminal investigations and prosecutions can be made depends on the victim' s complaint and settlement are covered.

The threat is an element of another crime, or become more severe as causing compounds crime punishable pursuant to the provision does not constitute a crime in itself. In this case, as the sentence will not be judged, it cannot be subject to conciliation alone.

TPC in settlement procedures article 106/1-2. simple sentences within the scope of the threat of crime is one of the most common crimes. People with each other during the debate, almost every discourse and thinking of them as a threat to all the promises which have been made with a view to detect this threat because there are a number of complaints relating to the offense. At the investigation stage, the subject of complaints words are evaluated in terms of the elements of the crime and so many complaints on this issue in relation to proceedings before the decision to begin the process of reconciliation is provided. Despite this, the offence of simple threat is one of the most common in the application of conciliation.

The benefits of the legislator wanted to protect these offenses; the free will of people with decision-making and freedom of movement is protected from the dangers. For the formation of the threat of crime, the offender caused the victim to fear serious action must exist. The source of this fear is not important, no matter in what way the fear exists an offence will occur. Expressions which are not prone to create any serious fear in the victim will not be classified as a threat. The threat must be done verbally but also a crime if done by mail or by phone can be formed[167].

Justice Commission, according to the report threaten the subject of a person' s life or physical integrity at risk to be exposed, crimes constituting a particular act to be processed, force will be used, or any evil, injustice carried Notice, which is the. For the offence to occur, it does not matter whether the action which is subject to the threat has occurred or not. The threat must constitute a serious threat objectively and there must be a likelihood of the harm threatened taking place. Spoken words, fear and anxiety will create a serious interlocutor on the eligibility and qualification should be investigated whether. Research results objectively serious nature of the spoken word, although it includes the victim seriously threatening words and

[167] Article Justification.

behaviour that have not been realized, though threats. For the crime of threat to occur, it must not depend on whether it was effective on the party. However the threat of evil based on superstition does not constitute a criminal threat.

Each case to determine the nature of the crime of threats and promises which have been made by research and evaluation should be performed. For example, the defendant' s complaining to the mobile phone messages by pulling the *"Tokat is pots we bucket where we found will bury."* He committed the action, the person' s life and bodily integrity attacks to realize declare to have the characteristics to be recognized and a. 106/1-2. organized in a simple sentence as a threat due to renounce public trial evaluating the reduction of complaints should not be decided[168].

Threat of crime victims in the values of the personality is damaged, this crime as the act of mediation in the settlement applications often claimed non-pecuniary damages and an amount of non-pecuniary damage is observed that through the mediation. As stated in the decisions of the Supreme Court; personal rights, consist of the right of life, physical and mental existence, conscience, religion, thought and work freedom, honour, name, secrets and family integrity, social and emotional values which comprise the independent existence and integrity gained through birth and an attack on any one of them requires spiritual damages[169]. Threat of non-pecuniary damage as the act of conciliation to be agreed in crime, crime victims are also suitable protected interests.

ii. Violation Of The Immunity Of Residence (TPC a. 116)

The offence of the violation of the immunity of residence cited in article 253 of the CCP is within the scope of conciliation. Article 116 Constitution of the Republic of Turkey' s (CONST) regulated in article 21 of the sanctions constitute domicile. In accordance with a. 21 of the CONST, no one' s domicile can be violated.

[168] 4.CD., 25.11.2008 date, 2007/5513 E., 2008/21170 K., http://www.kararara.com/yargitay/4cd/k1195.htm, (03.04.2013).
[169] 4.HD., 10.04.2008 date, 2007/9966 E., 2008/5096 K., http://www.kararara.com/yargitay/YHDK/yrgtyk12348.htm, (03.04.2014).

The material element of the crime to a person' s housing, housing for the plug-ins with the consent or acquiescence was entered into in violation of the consent form is to go after disappeared. In the same way without the need for a clear consent to enter workplaces other than those which are customary and plug-ins of the property is the subject of crime. Person' s own unique peace and tranquillity of life in the housing and for peace and salvation to the draft should be a sense of security must be protected[170].

Everyone living in the house, or everyone with the right not to consent has the right to complain regarding the offence. For example, children living in residence can use their right to complain through their legal representatives. A tenant can be the victim of such an offence against a landlord entering the home without permission. Which are decided by the Court of separation of spouses living separately, in case of divorce, divorced parties consent to the contrary can not attend each other' s houses. The crime also occurs if having entered a location with consent, one remains after the lifting of the consent.

Violation of domicile specified in paragraph 4 of the act relating to the offense, by force or threat, or if night-time processing is not subject to the criminal complaint, the victim' s complaint does not give up the consequences. Due to renounce complaints at the investigation stage may not be given the decision not to prosecute the proceedings at the stage of a criminal case can not be decided to cut. However, all crimes in the Code of Criminal Procedure article 116 a. 253 is covered by the settlement, the settlement procedure operated litigation or investigation may be terminated by agreement of the parties. In this case, a complaint can not be terminated by giving up proceedings can be terminated with the settlement is concerned. Similarly, a. 142/4 according to; in order to process the crime of theft of a crime if committed a violation of domicile, to investigate and prosecute complaints shall not be required to perform. However, conciliation must also be implemented in this offence[171]. Crimes are committed in the manner specified legislator, according to the results of complaints abandon the settlement institution brought different legal consequences, the complaint can not be terminated by giving up that it can be terminated by way of conciliation proceedings.

[170] Article Justification.
[171] 2. CD., 19.09.2013 date, 2011/32554 E., 2013/21110 K., https://www.corpus.com.tr, (03.04.2014).

In practice it is seen that as a result of the victim complaining the action subject to offence takes place in the event of uncles, aunts coming to see the children of divorced spouses and entering the domicile, or entering a domicile without rights to sleep, rest or eat based on the friendliness with relative. It can be observed that these types of complaints are generally resolved with conciliation. The complainant, victim, suspect in the future to exposure to similar movements, often repeating the same behaviour would suspect a more promised for the future through reconciliation and dispute is resolved. In these types of events that result in conciliation, mediation after a complaint about the incident is not usually a new, re-offending against the same person does not constitute conviction.

iii. Violation of Freedom of Work and Labour (TPC a. 117/1)

Unlawful use of force or threat or another person' s work behavior and work of these crimes constitute a violation of freedom. CONST a. 48 wish everyone the freedom of contract to work in any field and are guaranteed to have. Highways in this article with the fundamental freedoms guaranteed by the Constitution of this sanction has been received.

In paragraph 1 acts within the scope of the settlement, work, art or trade liberalization is to eliminate and prevent. However, in this action, the use of violence or threat is essential[172].

With the occurrence of the violation the crime ends. It is important that the term violation has been included in the provision. Violation is the breakdown of the order of work and business activities of the persons. It is not required for this order to be completely disrupted and become unusable. Violation of people' s normal work and work organization represents at least temporarily removed. Situations such as preventing those who wish to be employed or open a business can be given as examples. The violation being permanent or temporary is also not of importance. Results for the adoption of the motion that occurs in violation of the size necessary to achieve the offense is criminal damage should be expressed[173].

[172] Article Justification.
[173] Veli Özer Özbek et al., **Türk Ceza Hukuku Özel Hükümler**, 5. Edition, Seçkin Publishing, Ankara, 2013, p. 423.

iv. Deterioration Of Peace And Order (TPC a. 123/1)

TPC crimes committed against the liberties of the crimes mentioned, is part of the settlement because it is subject to the complaint. Just in order to disrupt the peace and tranquillity to a person insists on the phone, or make noise for this purpose if there is an unlawful act, the perpetrators are punished.

For the formation of crime just to disrupt the peace and tranquillity of persons unlawfully made a behaviour is required. Therefore, due to the moral element of the crime it can be said that it has been committed with special intent. Article rationale for the formation of a criminal offence, a special condition that it is necessary to act with motives are clearly stated. The action must have been carried out for the purpose of disrupting the peace and tranquillity of the victim. The material elements of the offense to a person persistently day and night to phone or done against him persistently creates noise. Or are you just making noise, if it violates other rules, this is not sufficient for the formation of crime.

The legislator insisted on the offender to phone, besides making noise just to disrupt the peace and tranquillity of persons unlawfully present in the behaviour of another state is adequate for the crime to occur[174]. Although the victim was negatively affected by actions, peace and tranquillity may be intact, but in this case the direction of the legislator will be said that the offense occurred.

Every move is not in accordance with the rule of law is contrary to law, for the formation of the offenses set forth in article purposeful crime can occur with any kind of unlawful act. The accused forcefully and with different time zones attendee's camera to take images of the offences defined in article form[175]. In a decision, the Supreme Court ruled that, in an event developing with the defendant following the party, with their vehicle in the city centre following the vehicle under the control of the party, coming up beside the vehicle and, together with their friends, laughing at the party and his friend beside him, decreasing speed when the party decreased speed, and which ended with the party turning towards the police station, the offence

[174] Article Justification.
[175] 12. CD., 01.03.2012 date, 2011/20055 E., 2012/5809 K., https://www.corpus.com.tr, (03.04.2014).

of the defendant was not endangering traffic safety but of disturbing the peace and tranquillity of the persons[176].

In practice, claiming to be the victim of this crime, the person complained of victimization to prove their allegations and evidence are examined in detail. Understood that there was insufficient evidence to prove the allegations when the decision is made on whether to prosecute. Thus, the abuse of the right of complaint is also avoided.

(3) Crimes Against Honour

i. Defamation (TPC a. 125)

In practice, it is one of the most widely seen offences subject to conciliation. Cheers in the law under the heading of crimes against the dignity of persons involved in this crime, honor and dignity are protected. In the first sentence of paragraph 1 of article peace insults, insults are arranged in the second sentence in absentia. Person present in the environment to be insulted if the peace in the crime of insulting the presence in an environment where defamation case of the absence of an insult at fault will be processed, but the absence of an insult to be punished for at least three people by must be processed[177].

Following substances in this matter and the Law, the honor, dignity and their honor, was organized with the aim to protect their reputation in the community. Which attributed to damage the reputation and honor, and glory be infringing if that will be made by the judge. However, in the first paragraph may constitute defamation and attacks attributed to the nature of the description specified is made. The act of insulting or could appeal to a person apparently letter, picture, or via a post or telephone, telegraph, or the perpetrators of these crimes are committed with vehicles of similar nature shall be punished in accordance with paragraph 1 or 2 according to[178].

[176]12. CD., 25.10.2011 date, 2011/5602 E., 2011/3661 K., http://www.kararara.com/forum/viewtopic.php?f=46&t=10283, (03.04.2014).
[177]Ejder Yılmaz, **Hukuk Sözlüğü**, 3rd Edition, Seçkin Publishing House, Ankara, 1985, p. 316.
[178]Article Justification.

According to the Justice Commission Report, for the crime of defamation to occur a definite act or fact must be attributed to the person. The action alleged to the person not being actual is of no important in terms of the offence of defamation. However if the allegation is found to be true, in accordance with a. 127/1 the offender is not punished. An offence occurs when an event of an adduction of a person to an event without being attributed. Example of a bad nature or habit of expressing; "Bum", "low", "animal", "thief", "corrupt", "dishonest" and "prostitute" fabricated concrete actions as though they are not accused of such crimes constitute defamation. Refers to a person' s physical problems or illness attributable to poor is considered an insult. For example, "blind", "cross-eyed", "hump", "bald" or "psychopath", "has syphilis" and "Has AIDS" creates the offence of insult. Which is attributed to a person mentioned or current behavior, the person assessing whether the defamatory nature of the society with those considered the dominant traditions and customs should be considered[179].

He served as mediator in that file, the settlement of a crime is often related to the crime of insulting and among them complained again mostly from each other as both sides, it is seen that the mutual contempt action. Considering the nature of the case, if committed the crime of insulting a mutual. In response to the tort of defamation in accordance with a. 129 crimes are committed or mutually penalty to be imposed on one or both of the parties can be downloaded, as well dispensed from punishment. During conciliation negotiations, it has been observed that the parties are more favourable to conflict resolution through conciliation when they are aware that both parties may not be given sentences by the court in the event that proceedings are brought if a conciliation is not reached. Along with our opinion that the offences included in the scope of conciliation must be expanded, in order to reduce the workload of the judicial system, it is thought that in the event of mutual defamation, it would be suitable for the regulation to be made for the Public prosecutor to be able to decide that there are no grounds for prosecution during the investigation phase.

[179] Corpus Web Legislation and Case Law Program, https://www.corpus.com.tr, (18.05.2014).

ii. Defamation (TPC a. 130)

TPC' s Crimes Against Chapter Eight Cheers regulated under article 130 of the crime of insulting the memory of the person; In paragraph 1, the memory of a person after death insults, insulting to the dead in paragraph 2 are arranged in the form of two separate offenses. These offences are subject to complaint and are included in conciliation excluding against public officials due to their duties in accordance with TPC a. 131. No: 5816 in accordance with the Law on Crimes Against Atatürk' s memory crimes that are not covered by this article.

It is a duty to be respectful in terms of religion and social relations against the dead. Sanctions are applied to anyone to who violates this task. Thus, religious belief and conviction and in a way that is connected to emotions arising from it are protected. What is essentially in question here is the commitment to religion[180]. Justice Commission Report by the European Union; article insult the memory of the dead as a separate crime is organized crime. The honor and dignity of the person, but in terms of life is concerned, the insults against crime in general, but people living can be processed. However, defamation or disrespect to the memory of the deceased can be in question. Insult the memory of a deceased person can be punished for the crime of at least three persons must be processed by the intercourse. This offense is committed through the press and media in public or state, identified as elements of the crime of qualified and are designed to require more severe punishment[181]. With this offence freedom of religion is not protected, however the after effect of the personal rights of the deceased are protected. In terms of legal interests protected by crime, it is apt that it is regulated under the the title of "offences against honour[182]."

[180] Article Justification.
[181] Corpus Web Legislation and Case Law Program, https://www.corpus.com.tr, (18.05.2014).
[182] Durmuş Tezcan et al., **Teorik ve Pratik Ceza Özel Hukuku**, 10. Edition, Seçkin Publishing, Ankara, 2013, **(Ceza Özel Hukuku)**, p. 522.

(4) Offences Against Privacy and Secrecy of Life

i. Violating The Confidentiality Of Communications (TPC a. 132)

In accordance with a. 139 of the TPC, the investigation and prosecution of these crimes is subject to complaint and therefore is within the scope of conciliation. When a comparison with other offences within the scope conciliation is made, in practice it is encountered less.

With article 22 of the Constitution, it has been guaranteed that everyone has the right to freedom of communication and that confidentiality is essential in communication. In the article the violation of the privacy of communication between individuals, the recording of the communication between individuals, the unlawful disclosure of the content of the communication between individuals, and the public disclosure of the contents of the communication made with one party without the consent of the other party have been accepted as offences.

Tools providing communication may be; telephone, electronic mail, letters, telegraph, fax etc. For example, with the photograph of a letter being taken with the content of the communication being recorded an offence can occur.

Part of the settlement because of the crime, the crime of violating the secrecy of communications necessary conditions for the formation of well-studied and accordingly initiate the conciliation process will not be evaluated. In the Supreme Court decision it is stated that; *"For the offence of the violation of the secrecy of communication defined in sentence 1 of TPC a. 132/1 to occur, by way of reading or listening, the information, thought, feeling or attitudes shared through suitable means (internet, telephone, radio, fax, letter, telegram, paper etc.) and common symbols (words, text, signs etc.) between two or more people, determinable or non determinable, acting on the justified belief of privacy and taking care to ensure secrecy, must be found out by other person or persons, by making the required effort, directly or indirectly (like holding an unopened envelop to the light) must have occurred...*[183]*."*

[183]12. CD., 02.10.2012 date, 2012/19075 E., 2012/20402 K., https://www.corpus.com.tr, (23.04.2014).

ii. Tapping and Recording Of Conversations Between The Individuals (TPC a. 133)

In accordance with a. 139 of the TPC, offences organized under a. 133 are dependent on complaint. As it is dependent on complaint, it is within the scope of conciliation. The listening to or recording of non public conversations between persons, without the consent of any of the persons or the recording of a nonpublic interview without the consent of the other party with a voice recorder has been determined as a crime under a. 133.

In the contemporary criminal justice system is based on privacy and private life of conversations between people needs to be considered within the scope of this crime, privacy is protected. This crime is the subject of conversation between people and non-public, non-public as stated in the second paragraph is an interview.

The main condition for the occurrence of the offence is the conversation being private and not public. For example, a microphone monitoring and recording of a speech made in public in the event of receipt of this crime will occur. For a speech to be accepted as non-public, the location of the speech is not important. For example, in a park between two people of the conversation can not be heard by others if there is a special effort from the speech is not public. In the same way a conversation in a house between a limited number of people is also not public. Listening to a non-public conversation or a sound recording tool to record with the device consists of the offences described in the first paragraph[184]. This offence can be committed by a person not a party to the non-public speech. Lack of consent of any of the parties to the conversation is sufficient for the offence to occur. Not all non-public part of speech recognition, or in the event that the rest of the offence will occur in our opinion.

It is also possible for this crime to be committed between spouses. However, between spouses loyalty breach of the obligation in the case of her husband' s loyalty suspect and deceived who think that his wife, speaking listening and recording upon receipt, the illegality factor because there is no criminal legal elements will occur[185].

[184] Article Justification.
[185] Supreme Court 12. CD., 12.06.2012 date, 2012/13117 E, 2012/14791 K., http://kazanci.com.tr/gunluk/12cd-2012-13117.htm, (23.04.2014).

Tapping and recording of conversations between individuals is not one of the offences seen often in conciliation applications. Rarely, these crimes carried out in relation settlement negotiations, in person legality of reason, although not listen and registration action is a crime they did not know, the action is a crime conciliation process by initiating realize they are seen. Therefore it can be seen that they make efforts to resolve the conflict through conciliation.

iii. Violation of Privacy (TPC a. 134)

In accordance with a. 139 of the TPC, offences organized under a. 134 are dependent on complaint. Subject to investigation and prosecution of complaints due to the implementation of the provisions is mandatory settlement is one of the crimes.

The confidentiality and protection of privacy has been assured with a. 20 of the CONST. In a. 134 of the TPC, the sanctions applied to the violation of privacy protected by the Constitution has been arranged. Constitution, according to everyone, respect for private life and family life are entitled to family life and private life is inviolable.

European Convention on Human Rights (ECHR) 8/1 article everybody' s private and family life, his home and his correspondence is entitled to the respect is specified. However the article does not give the definition of the protected rights. In particular, the concept of private and family life, legal practice is having a significant content and must accept certain limits. The state' s "respect" is installed in accordance with the obligations positive obligation to comply with the duty to ensure that these rights are concerned "respect" it is difficult to identify the boundaries of the concept. For this reason, the Strasbourg organs, agents for the implementation of the unique circumstances in each case to assess, taking into account today' s realities and needs of developers and advanced ötürüc is to make a comment[186]. Given the private life of the Convention, to be known by another person' s life, as expressed was that we did not want.

"Private life" concept when assessing the victim' s personality, social, cultural and political identity if any should be taken into consideration. The scope of

[186] A. Şeref Gözübüyük and A. Feyyaz Gölcüklü, **Avrupa İnsan Hakları Sözleşmesi ve Uygulaması**, 4. Edition, Turhan Publishing House, Ankara, 2003, pp. 330, 331.

private lift of persons such as artists, politicians is narrower than other persons. However, these artists, politicians and the protection of private life that does not mean that remained outside. The judge will asses this according to the characteristics of each case[187]. It is difficult to define the concept of private life[188]. The boundary between private and public space, varies from one situation to another.

Violations of privacy, the right to perform under the terms of the exercise of the profession of journalism should be investigated. The profession of journalism, right to be informed of the right must be exercised within the framework of the appropriate law may make some elephants. Actions relating to private life, may be suitable to law in the event of a number of conditions. However, people carry any significance in terms of public love life case of the news will not benefit from the legal compliance reasons. Actions to be considered within the scope of the exercise of the profession of journalism of the following conditions must occur[189]:

- News must be current and accurate.
- Provision of the news must be in the public interest.
- There should be an intellectual connection between the news and the event.

As stated in the decision of the Supreme Court; in doctrine, privacy and the right to its protection is defined as *"one' s own personality, moral values, to provide assurance by others prefer to keep hidden the issues created by and therefore protected legally required areas of life on the basic personality right."* ECHR, CONST and privacy have been violated by the reason of the article and should be protected by law, people' s private living spaces. Wherein the private life, a person' s sexual life, family life, mental and physical health conditions related to the "secret" and "confidential" includes topics which may be considered[190].

All issues can be evaluated in the field of private life, in article 134, is the subject of organized crime. In terms of people' s private lives and private lives of people violating the confidentiality of image or sound related to unlawful disclosure

[187] V. Ö. Özbek et al., p. 523.
[188] Gilles Dutertre, **Avrupa İnsan Hakları Mahkemesi Kararlarından Örnekler**, European Council Publications, Şen Printing, Ankara, 2007, p. 287.
[189] V. Ö. Özbek et al., p. 524.
[190] Supreme Court 12. CD., 11.04.2012 date, 2011/20872 E., 2012/9834 K. https://www.corpus.com.tr/, (23.04.2014).

is organized into two separate acts. In both cases, proceedings cannot be carried out without attempting conciliation.

In recent years, the widespread use of social media and a number of photographs and images in the website owner' s consent because it allows to be shared in contravention of privacy complaints regarding violations are increasing. Accordingly, it has become one of the offences more frequently encountered in conciliation. It has been observed that victims within the scope of the conciliation request that the photographs and images of them are removed from the social sharing sites and that an apology is published to be shared on the same site and that conciliations generally result positively.

(5) Offences Against Property

i. Use of Threats or Violence for the Collection of Receivables (TPC a. 150/1)

Of the crime of plunder becomes less organized criminal a. 150/1' based on the person' s legal relations in order to collect receivables in case of threat or use of algebra, but the threat or intentional injury has been stated that the implementation of the provisions relating to the offense. During the execution of the actions set out in article threaten the a. 106/1-Within the scope of the first sentence or intentionally wounding. Within the scope of the settlement will be subject to a. 86/3. For cases other than these, the offence regulated by a. 150/1 is within the scope of conciliation.

"TPC primarily in terms of the evaluation of the right claimed by the perpetrators of the claim and whether it based on these receivables as to whether a legal relationship will be[191]." The concept will be based on legal relations, Turkish Code of Obligations (TCO) in terms of receivables - liabilities must be considered within the scope of the relationship. For the implementation of this article, the perpetrator and the victims of crime creditor - debtor should be. If the parties are not party to the legal relationship mentioned in the article, this article will not be applied.

[191] Mehmet Nihat Kanbur, **Kendiliğinden Hak Alma Fiillerinin Yeni Türk Ceza Kanunu Bakımından Değerlendirilmesi**, Journal of Criminal Law, Ankara, 2006, Issue: 2, p. 86.

This substance alleged right of a person, rather than getting through the competent authorities, by exerting power over things personally attempt to obtain the right are punished. Aspects that distinguish it from similar crimes, alleged perpetrator in order to get the right moves so special is that intent[192].

In practice, in order to receive uncollectible receivables, people threaten debtors by telephone or send a message to complain about that is common. In the process of conciliation, the person legally in debt is the complainant and the creditor is the suspect. This crime, as encountered in practice reconcile the complainant' s request for the provision of the suspect is one of the rare crime. At the end of the settlement negotiations, the suspect will fall from the amount or maturity of the debt owed to the complainant binding, and in this way the debt settlement is observed that in return for payment. Of course, in this case, the settlement will be paid by the complainant to report the regulation and in case of non-payment of debts specified what will be the fate of the investigation is an important issue. In a settlement, because in this way, the fulfillment of the agreement will be bound by the complainant and the fulfillment of the agreement, if not consensus, despite the suspect' s exposure to the risk of prosecution may arise. Therefore, when editing reconciliation reports, settlement terditl organized as a result of the agreement reached is useful. Complainant settlement negotiation process agreed in debt payments for a period of determination, this time upon payment to compromise have been met will be, fails to pay the suspect to be met by possible a second conciliation act or of virtual reconcile agreed would be appropriate.

ii. Damage to Places of Worship and Cemeteries (TPC a. 153/1, 2)

Any offence arranged for the punishment of persons damaging or polluting places of worship or their annexes, the furniture, graves, the structures on these, the facilities at the cemetery, by way of demolishing, breaking or disrupting the structures built to protect the cemetery, is not subject to complaint. Therefore, it is not part conciliation. However, the investigation and prosecution of some of these offences carried out to the detriment of relations are subject to complaint in

[192] Article Justification.

accordance with a. 167/2 of the TPC. Therefore, provided that harm is not caused to others, if carried out to the detriment of relations it is within the scope of conciliation.

In a. 167 of the TPC, causes for personal impunity and personal reasons requiring the reduction of sentence are stated. In paragraph 2 it has been described that in the event that these offences are carried out to the detriment of one of the spouses given an order of separation, one of the siblings not living under the same roof, uncle, aunt, niece/nephew or second degree in laws living under the same roof then it will be subject to complaint and the sentence given will be reduced by half. This relationship must be in existence at the time of the actual action being carried out.

In lexical meaning; place of worship "worship site", grave "place where the deceased is buried", tombstone "the stone placed at the head and foot of the grave and covering the grave, tombstone inscription "the text on the stone at the head of the grave including the identifying information of the deceased and some other prayers", cemetery "area near to residential areas reserved for the burial of the dead[193]."

A place of worship, is the location where members of a religion worship. According to the grounds specified in the article offences of damage to movable and immovable property bearing religious value will be punished. These actions being carried out as a religious insult is an aggravating circumstance. Fouling of the places stated in the article have also been defined as offences in paragraph 2. For example, leading waste at cemeteries, writing on the walls of places of worship, placing banners or ads or drawing can be given as examples of the act of pollution.

In practice, complaints regarding this offence and conciliation is not seen often.

iii. Trespass (TPC a. 154/1, 3)

In a. 154/1 of the TPC, it is put forward that anyone who occupies, an immovable property belonging to someone else without any rights or totally or partially invades the property or distorts or even partially prevents the rightful owner

[193] Yılmaz, p. 299, 477.

from benefiting from the property, will be punished upon the complaint of the injured party. As there is a crime subject to complaint it is within the scope of conciliation.

Nature of the crime of rape is not the right place as fullname continue as long as the crime of rape complaints from the right is used[194]. Complaints related crime complaints in the six-month period must be complied with, for the period that does not exceed the rape continued. In practice, an earlier date rape started in six months or after a complaint has expired, even if unjust rape conciliation procedure is initiated.

In the third paragraph the public or privately owned water channel alters stated that no one is punished, it is not part of the settlement is not subject to complaint. However a. 167/2 and others are committed to the detriment of the persons referred to in this offence when the damage is covered by the settlement.

Special intent is required in the offender for this offence to occur. Acts referred to in article 154 of property rights must be processed for use[195]. In practice, a person' s home will buy the way with the proprietor of an agreement as a result, property owners selling without paying and against the will, or even the owner of the news, even without the use of the apartment starts and sales agreement dissolves the house to evacuate because of the complaints are possible. In this offence where we manage the conciliation process, if the trespass is short term then the vacation of the property is requested by the victim, if the trespass continues for a long period of time then together with the vacation of the property a claim for compensation of the value of the rent is requested. As requested by the victim of acts of settlement, if accepted by the suspect also disputes are resolved by settlement. Victims of litigation opening and wait for the end of the trial period and the economic results that may be obtained through the settlement institution is reached in a very short time.

[194] Supreme Court 8. CD., 03.06.2013 date, 2012/37176 E., 2013/16797 K. https://www.corpus.com.tr, (18.05.2014).
[195] Article Justification.

iv. Use of Blank Bill (TPC a. 156/1)

Bonus up to one year will be punished on the complaint of a person using the provision of a. 156/1 were also organized. As it is a crime subject to complaint it is within the scope of conciliation.

Bonus shares of the offense occurs, the borrower by the entire cost or a portion being paid shares defendant be in the hands and it partially or wholly unpaid as charged to put or someone else to be alienated is required. A portion of the debt and the remaining amount paid in whole or in shares held for more than the rest put or disabled defendants charged for the actual transfer of shares will constitute the offense[196].

The without charge arranged in Supreme Court article 15 is used as content. The securities may not be seen as uncertain. In fact, an event where the bond has been paid or is no longer required to be paid may have occurred. Provision of this crime and having apparently legally, but in essence, is the subject of criminal law outdated in a year[197].

Frequently encountered in practice about complaints concerning this crime, often in dispute that the legal dispute, the solution requires the judge to be in the nature and grounds of the need for a court decision on whether to prosecute is decided. In conflicts where there is sufficient evidence to launch a case and where the parties accept conciliation proposal, complainants often request the closure of execution files that have been opened and the return of the payments made with pressure of execution. If the suspect to accept this request, law enforcement offices to be collected by the official charged dispute arises regarding fees to be paid and by whom. However, the settlement of the dispute between the parties report no hesitation in eliminating the problem needs to be arranged so as to leave room for the parties to reach an agreement on this issue and report the disclosure of fees must be paid by whom. Otherwise, dispute settlement, although the result may be said to be born a new conflict.

In settlement negotiations carried out in relation to these crimes, incidents examined by the parties as a result of expression, people actually pay the amounts

[196] CD., 20.06.2013 date, 2012/29 E., 2013/11611 K., https://www.corpus.com.tr, (18.05.2014).
[197] V. Ö. Özbek et al., p. 651.

owed in order to avoid that the complainant is also seen. However, both parties mutually descriptions and any documents in its possession to each other to present the result of the legal and factual arise, the parties actually debtor or creditor convinced that and these conflicts often reconcile with the results.

v. Disposition Upon the Property that has been Lost or Obtained wrongfully (TPC a. 160/1)

In the article 160/1 of the Turkish Criminal Code, it has been arranged that the person who dispose on the property that has come out of the possession of the owner due to the fact that it has been lost, or that has been obtained wrongfully as if he is the owner will be punished upon complaint, and it is in the scope of conciliation because of the fact that it is a crime dependent on complaint.

The person who takes the possession of a property owing to the fact that it has been lost or as a result of mistake has to inform the competent authorities, or return it to the owner. Due to the amendment in the article 160/1, penal enforcement will be practiced with respect to the person who does not act pursuant to the obligation of informing or returning.

In order to be able to state that a property has been lost, it is both required to belong to someone else, and not to be abandoned by its owner. A property that has been obtained wrongfully or due to an unjust reason might not be lost. In the events that a cashier' s giving too much money wrongfully while giving change during the transaction he makes, or as a result of the fact that the money that drops on the floor because it flies due to draught from an open window, there is also property obtained accidentally, and taking possession of this property will be unjust. In that case, also, the condition of the property belonging to someone else is sought[198].

In practice, within the scope of this crime, it is observed that the persons who have lost their mobile phones mostly make a complaint. In fact, the complaints with respect to this have increased so much that the bill of complaint has even become a printed document arranged by filling in the blanks and passing from hand to hand. In the event that the victim adds his telephone bill to his petition of complaint, action is

[198] Article Justification.

taken by the prosecution office over UYAP with his International Mobile Equipment Identity (IMEI) number present in the bill. In such a case, the telephone is closed to calls and an SMS is sent to the telephone over the Ministry of Telecommunication and Communication of Turkey (TIB) system. In the content of the SMS, there is the information that the telephone is lost or stolen, and that it is required to be delivered to the nearest security unit. The person who actually uses the telephone goes to the judicial police or the prosecution office and delivers the telephone on his own accord when this SMS reaches him. In the subsequent process, the telephone is delivered to the owner of the bill. It is observed that the victims who take the delivery of the telephone mostly have made a complaint in order to reach the telephone, and either withdrew their complaints after they took delivery of the telephone or preferred the method of conciliation and made a compromise in return for a moral performance.

When action is taken by the Public Prosecution Office over UYAP with the IMEI number of the mobile phone, if the telephone is not used by someone else, the SMS sent by TIB to the lost telephone is not received, either. In such a case, the delivery of the telephone to the owner is not possible, either. However, the Public Prosecution Office reaches the offender or offenders by writing to TIB and requesting the information of with which sim card numbers the telephone was used between the date when the telephone was notified to be lost by the victim and the date of complaint and the identity information of the card owners and their open addresses. In the files which are the issue of this crime, it is observed that the victims reconcile by means of the conciliation means such as return of the telephone which is the subject of the crime to themselves, likewise, if its return is not possible, purchasing a new telephone in the same quality by the suspected person and its delivery to their party, or payment of its value to themselves. In the disputes with respect to the complaints related to the disposition on the lost or obtained wrongfully, conciliation negotiations generally result positively.

Inquiry of the complaints related to losing the Subscriber Identity Module (SIM) cards used in the mobile phone are also made within the scope of this offense. As well as using their right and authority to close the telephone to communication at the moment they realize the fact that they have lost their SIM cards, the offense victims make a complaint because a debt payable for the bill arises due to the fact

that the line has been used by someone else as if he is the owner up to that period. In the conciliation process, it is seen that the victims mostly accept the offer of conciliation, and as an action of conciliation, a compensation as much as the bill amount is offered by the suspect so as to be paid to them.

Inquiry in the event that sending money more than required to be paid by the Bank or PTT paymaster to the acceptor upon the direction of the client or sent by money order is also made within the scope of this crime.

In one of its decisions, the supreme court announced that the act of the defendant constituted the crime of "disposition upon the property obtained wrongfully[199]" when the accused made a transaction by the atm card as if he deposited money in an envelope into the automated teller machine, and as a result of the fact that the bank clerks recorded in the computer records wrongfully as if there was money in spite of the fact that they determined there was no money in the envelope, and that the accused withdrew this money accidentally.

vi. Wrong Information Related to Companies or Cooperatives (TPC a. 164/1)

Pursuant to this article, in the public statements of a founder, partner, administrator, or manager of a company or a cooperative, or persons authorized to represent them, members of the board of management or the supervisory board, or the insolvency practitioner, in their reports or proposals they submit to the general assembly, if they give or cause to be given important information contrary to facts in a way that might give harm the related persons, penalty will be adjudged. Due to the fact that the crime is not subject to compliant, it is not within the scope of conciliation.

In the event that this crime is committed to the detriment of some relatives, due to the fact that it is dependent on complaint pursuant to article 167/2, it is included among the crimes for which the method of conciliation is required to be applied provided that no damage is given to anybody else.

[199] 11. CD., 16.10.2009 date, 2007/3773 E., 2009/12167 K., https://www.corpus.com.tr/, (02.05.2014).

In the event that this crime is committed to the detriment of some relatives, due to the fact that it is in the scope of conciliation, it is considered that the discrepancies of the persons among whom there is the line of descent generally tend to settle their discrepancies in the descending line, and hence, it is not among the crimes frequently encountered in the conciliation practices.

vii. Purchase or Acceptance of the Property which is the Subject of Crime (TPC a. 165/1)

In this crime which is called "abetting", it has been arranged that the person who sells, transfers, buys or accepts the property or another value of an asset obtained as a result of a crime being committed will be punished. For the crime to be generated, two conditions are required to exist together. It is required that the offender of this crime has not participated in the execution of the act, and that the property that has been bought, concealed or accepted was obtained through an offense[200].

Due to the fact that the crime is not subject to complaint, it is not within the scope of conciliation. However, it is subject to complaint and conciliation in the event that it was committed to the detriment of the persons stated in article 167/2, and no other persons were given damage.

The property or the value which is the subject of the crime is the value of the assets. It is required that value of the property or the assets has been obtained because of the fact that a crime was committed. The property could be movable or immovable, for example, purchasing a flat by a government official as bribery constitutes this crime[201].

Due to its quality, there might be an opinion with respect to the fact that it is a crime by which the public administration will also be deemed to be a victim, and that the method of conciliation cannot be applied. However, due to the fact that this crime is included in the section of crimes against property ownership in the TCC, Turkish Criminal Code, and that it is maintained as subject to compliant without any discrimination being at issue in article 167/2 with respect to the crimes committed

[200] Article Justification.
[201] Tezcan et al., **Ceza Özel Hukuku**, pp. 667, 668.

against the relatives, the method of conciliation should be applied[202]. In order that the crime is subject to complaint, and hence, the process of conciliation is started, it is required that the line of descent is present during the period when the crime is committed[203].

viii. Not Giving Information (TPC a. 166/1)

In the event that this crime is not informed to the lawful authorities in spite of the fact that the property obtained in connection with a legal relationship was, in fact, obtained by committing a crime or because of a crime being committed, it has been arranged in article 166/1 that the person who does not report this will be punished. Due to the fact that this crime is not subject to compliant, it is not within the scope of conciliation.

A section stated in TCC, Turkish Criminal Code, article 167/2 is within the scope of conciliation in the event that it is committed to the detriment of some kinsmen. However, in order that it can be accepted that it is committed to the detriment of some kinsmen, it is required that the others are not given damage.

After money or a property is obtained lawfully through crime, an obligation is imposed on the person who found out that the source of this is against the law. In the event that contradiction to law is found out, the police, Public prosecutor or the administrative authorities should be informed immediately[204]. According to the Report of the Justice Commission, "Based on a legal relationship, for example, in the event that a property that is purchased or accepted as a contribution is afterwards found out that it had been obtained through a crime, purchasing or accepting the property which is the subject of the crime does not constitute the crime. Because, the wrongful intention must be present during the time when the act is committed. However, in the event that it is found out that the property has been obtained by means of a crime being committed or due to its being committed, for example, after it is purchased or accepted as contribution, there is an obligation of notification with

[202] Kaymaz and Gökcan, p. 302.
[203] Mustafa Albayrak, **Bilimsel Görüşler, Yargıtay CGK ve Ceza Daireleri Kararları Işığında Notlu – Atıflı – Uygulamalı Türk Ceza Kanunu Öz Kitap,** 10. Edition, Adalet Publishing House, Ankara, 2012, p. 650.
[204] Article Justification.

respect to the person who purchased it or accepted as contribution. An action in contradiction to this obligation has been defined in the text of the article as an independent crime."

As a reason why this crime is not encountered in the Conciliation applications, it is considered that its being subject to complaint in the event that it is committed against the relatives is effective.

(6) Crimes Against the Public Security

i. Misuse of the Blank Signature (TPC a. 209/1)

In the TCC, Turkish Criminal Code, article 209/1, it has been arranged that the person who fills in a piece of paper which is signed and partly or wholly empty in order that it will be filled in and used in a specific manner in contrary to its reason of being given will be punished upon complaint. It is within the scope of conciliation due to the fact that it is a crime dependent on complaint. In the ground for article, too, it has been explained that a signed and empty piece of paper will be an issue only in the event of a certain relationship between the parties, hence, its being maintained as dependent on complaint is appropriate, and thanks to this, the settlement of the dispute by means of the conciliation method has become possible.

For a crime to be constituted, there must be a signed, but empty piece of paper given so as to be used in a specific manner, this piece of paper must be filled in as contrary to its reason of being given, the person who fills it in must attain unjust benefit for himself or for someone else, or give damage to the signatory or his legal successors. It is not requisite that a statement that gives rise to debt or removes debt is written on the signed piece of paper; confession of any crime, or the fact that a similar statement is written also constitutes the crime. It is conditional that the signature is real for the crime to be constituted[205]. "A partly or wholly empty piece of paper must be signed before it is delivered to the offender. Therefore, in the event

[205] Article Justification.

that the offender has the piece of paper which he fills in personally signed, this crime is not constituted[206].”

In the crime of misuse of the blank signature, there is no case of using force or threat during obtaining the signed empty piece of paper which is the subject of the crime[207].

The fact that this crime, which is frequently encountered in the application, is dependent on complaint and within the scope of conciliation is an appropriate arrangement in our opinion, as well.

(7) Crimes Against the Family Order

i. Breach of the Obligation Arising From the Law of Domestic Relations (TPC a. 233/1)

In the 1st paragraph of the 233rd article of TPA, Turkish Criminal Act, due to the fact that the person who does not fulfill his liability of maintenance, education or support arising from the law of domestic relations will be punished in connection with complaint, this offense is within the scope of conciliation.

The scope of the liability of maintenance, education or support should be evaluated in compliance with the provisions of the Turkish Civil Code[208]. In the Turkish Civil Code, the liabilities of both the spouses to one another and also to parents, brothers and sisters and their children for the protection of the family have been arranged. The situation that is encountered most in the conciliation applications is related to the parents’ not fulfilling their liabilities with respect to their children. Pursuant to the article 185 of the Turkish Civil Code stated in the section of the general provisions, the spouses are obliged to be jointly attentive for the maintenance, education or support of the children. Pursuant to the article 322 stated in the section of the provisions of paternity, the mother, the mother and the child are liable to help one another, Show respect and understanding and take heed of the family honor in the manner that the peace and unity of the family requires . In

[206] Tezcan at al., **Ceza Özel Hukuku**, p. 755.
[207] V. Ö. Özbek at al., p. 619.
[208] Albayrak, p. 759.

accordance with the article 324, each of the parents is obliged to avoid damaging the personal relationship of the other with the child preventing the child' s being educated and raised. Pursuant to the article 328, the maintenance duty of the mother and father continues until the child becomes an adult. In spite of the fact that the child has become an adult, if his/her education is continuing, the mother and the father are liable to support the child until his/her education finishes to the extent that can be expected from them in accordance with the situation and conditions. In the article 339 arranged in the section of guardianship of the law, it has been arranged that the mother and the father will take the necessary decisions and apply them by taking his advantage into consideration in terms of his maintenance and education. In the TCC, Turkish Criminal Code, article 233/1, due to the fact that not fulfilling the liability arising from the Law of Domestic Relations, offense is at issue in its negligence. Furthermore, the fact that the child was born inside or outside marriage has no importance, as well[209].

In the application, together with the complaint related to this offense, the complaint made pursuant to the article 234/1 of the Criminal Code is generally made, and the process of conciliation is carried out together for each offense. It is observed that every mother and father wants the maintenance and education of the child to be made in the best way in accordance with the ordinary course of life, and with this consideration, they participate in the conciliation negotiations. In the event that the negotiation process is administered well, and that the parties provide that the best solution that could be for the benefit of the child is found by their party, it is observed that the conciliation is mostly concluded positively.

ii. Kidnapping and Retaining the Child (TPC a. 234)

In the first paragraph of the article 234 of TCC, Turkish Criminal Code, in the event that the mother or the father, or the relative by blood including the third degree who has been disqualified for guardianship kidnaps a child who has not completed his/her sixteen years of age from the custodian, guardian or the person under whose custody he/she without using force or threat, he/she will be punished. In the 2nd

[209] Tezcan at al., **Ceza Özel Hukuku**, p. 807.

paragraph, the situation that increases the penalty has been arranged, and if the act has been committed by using force or threat, or if the child has not completed his twelve years of age, the fact that the penalty will be increased has been ensured. In the 3rd paragraph, however, it has been arranged that the person who retains the child who leaves home without the knowledge or consent of his/her legal representative without informing his/her family or the competent authorities, even with his/her consent, will be punished upon complaint. From the text of the article, it is concluded that only the offense in the third paragraph is dependent on complaint, therefore, it is within the scope of conciliation. However, due to the fact that kidnapping and retaining the child is also stated among the offenses for which conciliation will be applied without considering CCP article 253/1-b is dependent on complaint or not, all of the offenses in the article are within the scope of conciliation.

The crime stated in TCC, Turkish Criminal Code, article 234/1 can be committed by the person who has been disqualified for his/her guardianship. The prerequisite for the crime to be able to be constituted is that the guardianship of the suspected is disqualified by the decision of the court[210]. The assignment of the legal status of the mother or the father who has been disqualified for guardianship must be determined pursuant to the provisions of the Turkish Civil Code. Pursuant to the Turkish Civil Code, article 336, the mother and the father use the parental power together as long as the marriage continues. If common life has been terminated or if the status of divorce has been realized, the judge may give the guardianship to one of the spouses. In the event of divorce, the guardianship belongs to the party to whom the child has been given.

In the event that the person who has been disqualified for guardianship divorce decision files a lawsuit and the child is given to the plaintiff by the court as a precaution, is the offense in the article 234/1 constituted via kidnapping or retaining the child by the defendant? Giving the child to the plaintiff by the court as a precaution does not mean that the parental power has also been given to him. The parental power of the person who is claimed to have kidnapped the child continues in accordance with the provisions of the Turkish Civil Code, and the parental power is not deemed to be terminated with the decision in the quality of precaution by the

[210] Supreme Court 14. CD., 02.10.2013 date, 2011/15364 E., 2013/10036 K. https://www.corpus.com.tr, (13.07.2014).

court. For this reason, the offense in the article 234/1 is not constituted in our estimation in terms of the defendant who still has the parental power, and become an issue of conciliation.

One of the issues that should be discussed with respect to this offence is to whom the parental power of the child who was born outside marriage belongs to, and in the event that the father kidnaps and retains the child, whether the offense in the article 234/1 is constituted or not. Pursuant to the article 337 of the Turkish Civil Code, the parental power belongs to the mother if the mother and the father are not married. The process of recognition of the child by the father also does not change the situation, and the custody relationship does not arise by means of this process. Due to the fact that the father of the child who was born outside marriage is not considered as the person who has been disqualified for guardianship, the offense in the first paragraph of the article 234 is not constituted[211]. If its conditions have been constituted, the act of the suspected should be examined within the scope of the offense of deprivation of liberty stated in the article 109 of TCC, Turkish Criminal Code[212].

In the application, complaints with respect to this article and the conciliation applications in connection with this are frequently encountered. The complaints of the spouses who have newly divorced within the scope of the article 234/1 and the complaints of the legal representatives because of the children younger than 18 going to someone they know by leaving home on their own will, however, without the consent of their legal representative are generally in question. In our opinion, as well, the fact that these offenses are within the scope of conciliation has been an arrangement which is quite appropriate[213]. It is thought that committing the crime and its results affect the child, as well. Therefore, in the event that conciliation is provided, it is observed that the results of conciliation have also positive effects on children.

[211] Supreme Court 2. CD., 04.12.2008 date, 2008/11344 E., 2008/21174 K. https://www.corpus.com.tr, (13.07.2014).
[212] Supreme Court 14. CD., 14. CD., 02.10.2013 date, 2011/15364 E., 2013/10036 K. https://www.corpus.com.tr, (13.07.2014).
[213] In the same direction, Çetintürk, p. 478.

(8) Crimes in the Informatics World

i. Disclosing the Information and Documents in the Quality of the Trade Secrets, Banking Secrets or Customer Secrets (Except the fourth paragraph, TPC a. 239)

It has been arranged that the person who gives or discloses the information or documents in the quality of the trade secrets, banking secrets or customer secrets that he has acquainted as a requirement of his title or duty, profession or occupation to unauthorized persons will be punished upon complaint in the article 239/1 of the TCC, Turkish Criminal Code. It has been stated that the provisions in the first paragraph will also be applied with respect to the information related to scientific inventions and discoveries or industrial practice. In the third paragraph, it has been stated that disclosing these secrets to a foreigner who does not reside in Turkey or to his officers is a situation that increases penalty without searching for the condition of complaint. In the article 235/1-b of CCP, Code of Criminal Procedure, due to the fact that it has been arranged that the crimes stated in the article 239 except the 4th paragraph are dependent on conciliation irregardless of whether it is dependent on complaint or not, all the crimes arranged in the article except the 4th paragraph are within the scope of conciliation.

The secrets constituting the subject of the crime are secrets in the quality of trade apart from those belonging to the state and official duty. By taking the scientific and industrial secrets under protection with the arrangement, it has been aimed to keep confidence in the professional fields sturdy. With the crime, the offender' s disclosing the information as a requirement of his title or duty, profession or occupation is prohibited, and these persons are obliged to keep the secret. Crime is constituted with the breach of the liability of keeping secret[214].

Regardless of whether it is subject to complaint or not, due to the fact that there is no conciliation negotiation carried out by our party within the scope of this crime which is in the scope of conciliation, it has not been experienced.

[214] Article Justification.

(9) Crimes Against the Relationships with the Foreign Countries

i. Crime Against the Representatives of the Foreign Countries (TPC a. 342/2)

In the TCC, Turkish Criminal Code, with this arrangement included among the "crimes against the relationships with the foreign countries", it has been stated that the crimes committed against the representatives of the foreign countries will be punished. In the first paragraph of the article, stating that the representatives of the foreign countries delegated in the Republic of Turkey permanently or temporarily and their diplomacy officials or the representatives of the international institutions and their officials to whom diplomatic privilege and immunity has been assigned are accepted as public officials in terms of the crimes committed against them because of their duties, punishment of the persons who commit crimes against them has not been subject to the complaint of the victim. In the second paragraph, however, it has been explained that if the crime committed against these persons is insult, its inquiry and prosecution is subject to complaint. In the second paragraph, due to the fact that the inquiry and prosecution of the crime is subject to complaint. The crime of insult against these persons is within the scope of conciliation.

The condition of mutualness is searched for in terms of the crime in the second paragraph within the scope of conciliation, and this condition is a provision of punishability. With respect to this crime, if adjudication has not been made in the foreign country, adjudication is made in Turkey[215]. If adjudication has been made in the foreign country, the fact that adjudication is not made in Turkey is a requirement of the principle "non bis in idem". This principle is the principle of "adjudication is not made twice for the same action[216]."

[215] Albayrak, p. 954.

[216] Mustafa Özen, **Non Bis In Idem, (Aynı Fiilden Dolayı İki Kez Yargılama Olmaz) İlkesi**, Gazi University, Journal of the faculty of Law, Volume: XIV Number: 1, Ankara, 2010, http://webftp.gazi.edu.tr/hukuk/dergi/14_1_14.pdf ,(09.03.2014), p. 390.

b. Catalogue Crimes within the Scope of Conciliation included in the Turkish Criminal Code Regardless of Whether or not it is Subject to Complaint

In the article 253/1-b of the CCP, Code of Criminal Procedure, the crimes within the scope of conciliation included in the TCC, Turkish Criminal Code regardless of whether or not it is subject to complaint have been listed. In spite of the fact that it has been arranged in the law that the inquiry and prosecution of these crimes is subject to complaint, in the event that the suspect, the victim or the one that is damaged by the crime is a real or natural legal person, attempt is made for conciliation. Due to the fact that these crimes are discussed one by one above, they have not been discussed again in this section.

- Wilful Injury (Except the third paragraph, article 86; article 88).
- Reckless Injury (article 89).
- Violation of the Immunity of Residence (article 116).
- Child Kidnapping and Retaining (article 234).
- Disclosing the trade secrets, banking secrets, or the information or documents in the quality of customer secret (except fourth paragraph, article 239).

3. Crimes Subject to Conciliation Included in Other Laws

In the article 253/2 of the CCP except those whose inquiry and prosecution is subject to complaint, in order that conciliation can be made with respect to the crimes included in the other laws apart from TCC, Turkish Criminal Code, it has been arranged that it is required that there is an explicit provision in the law.

The fact that a crime whose inquiry and prosecution is subject to complaint is included in the general or private criminal laws does not have any importance. In order that conciliation method can be applied in the crimes included in the laws other than TCC, Turkish Criminal Code, it is sufficient that its follow-up is subject to complaint[217]. In the article 253/1-a of CCP, due to the fact that the crimes whose inquiry and prosecution is subject to complaint are subject to conciliation without discriminating as the crimes in TCC, Turkish Criminal Code, if the crimes included

[217] Centel and Zafer, p. 430.

in the other laws are subject to complaint, they will be within the scope of conciliation[218]:

- Decree With Power of Law Related to Protection of the Patent Rights Numbered 551 (DPL):

In the first paragraph of the article 73/A of DPL, Decree With Power of Law, the crimes stated in the subparagraphs a, b and c are subject to complaint and within the scope of conciliation pursuant to the 2nd paragraph. Due to the fact that the institutions which have the right for complaint stated in the 3rd paragraph are public corporate entities, they are not within the scope of conciliation even if they are subject to complaint.

- DPL Numbered 554 With Respect to Protection of the Industrial Designs :

The crimes stated in the subparagraphs a, b and c of the first paragraph of the article 48/A of DPL with respect to Protection of the Industrial Designs are subject to complaint and within the scope of conciliation pursuant to the 2nd paragraph. Due to the fact that the institutions that have complaint right and stated in the 3rd paragraph are public entities, they are not within the scope of conciliation.

- DPL Numbered 555 With Respect to Protection of the Geographical Signs:

The crimes stated in the subparagraphs a, b and c of the first paragraph of the article 24/A of DPL with respect to Protection of the Geographical Signs are subject to complaint and within the scope of conciliation pursuant to the 2nd paragraph. Due to the fact that the institutions that have complaint right and stated in the 3rd paragraph are public entities, they are not within the scope of conciliation.

- DPL Numbered 556 With Respect to Protection of the Brands:

Due to the fact that the crimes in the 1st, 2nd and 3rd paragraphs of the article 61/A of DPL are subject to complaint, they are within the scope of conciliation

- Pledge of Commercial Enterprise Law Numbered 1447:

The crime arranged in the article 12 of the law is subject to the complaint of the claimant, and is within the scope of conciliation.

- The Law Numbered 3573 With Respect to Rehabilitation of Olive Cultivation and Grafting the Weeds:

[218] Kunter at al, p. 1236.

The crime arranged in the article 14 of the law is subject to the complaint of the sufferer pursuant to the 3rd paragraph, and is within the scope of conciliation

- The Law Numbered 5042 With Respect to the Protection of the Plant Breeder' s Rights Related to New Plant Species:

The follow-up of the crimes written in the other sub-paragraphs of the law except the sub-paragraph (c) of the 66th article is subject to the complaint, they are within the scope of conciliation

- Turkish Trade Act (TTA) Numbered 6102:

The offense of unfair competition in the 62nd article of the TTA is subject to the compliant of those who have the right to file a lawsuit pursuant to the 56th article of the same law, and is within the scope of conciliation. Pursuant to the 3rd paragraph of the article 56, in the event that the sufferer is a public corporate entity, it is not within the scope of conciliation.

4. Crimes that are not within the Scope of Conciliation in Turkish Criminal Law, Even If It is Subject to Complaint

In accordance with CCP a. 253/1, it is attempted for conciliation of real or private law legal person damaged by crime. The whole of crimes prosecuted subject to complaint are within the scope of conciliation provisions. The exemption of this was regulated in the third paragraph of the same article. Accordingly; even if the prosecution is subject to complaint, the crimes given place to effective repentance provisions, and the crimes committed against sexual immunity are not in the scope of conciliation. Even if it is subject to complaint, it is not attempted to conciliate in the crimes that the person damaged from the crime is public corporate entity.

a. Crimes Including Effective Repentance Provisions

The perpetrator' s prevention of occurrence of the result before completing the executive action is repentance before the crime and voluntarily renouncement regulated in article 36 of TPC. Repentance after crime was separately regulated under each type of crime. In TPC, the perpetrator' s turning back from the crime before the result occurs has been accepted as "renouncement" the circumstances after

the crime such as property restitution have been accepted as "effective repentance"[219].

Since the suspect or the defendant can benefit from the repentance provisions in consequence of repentance consideringly after committing the crimes including effective repentance provisions is not in the scope of conciliation. It is not important if investigation or prosecution of these crimes is up to complaint or not. They are not in the scope of conciliation in any case. The crimes regulated by effective repentance provisions are[220]:

- Theft crime (TPC a. 141, 168),
- Qualified theft crime (TPC a. 142, 168),
- Theft crime committed for the purpose of collection of receivable based on a legal relationship or on property owned hand in hand or jointly (TPC a. 144, 168),
- Usage theft crime (TPC a. 146, 168),
- Crime of damaging to property (TPC a. 151, 152, 168),
- Breach of faith crime (TPC a. 155, 168),
- Fraud crime (TPC a. 157, 168),
- Qualified fraud crime (TPC a. 158, 168),
- Fraudulent bankruptcy crime (TPC a. 161, 168),
- Reckless bankruptcy crime (TPC a. 162, 168),
- Complimentary utilization crime (TPC a. 163, 168),
- Robbery crime (TPC a. 148, 168),
- Qualified robbery crime (TPC a. 149, 168),
- Trade of organs and tissues crime (TPC a. 91, 93),
- Crimes related to drugs and stimulant materials (TPC a. 188-192),
- Crimes of forgery on money and valuable stamps (TPC a. 197-201),
- Crime of forming organization for the purpose of committing (TPC a. 220, 221),
- Embezzlement crime (TPC a. 247, 248),
- Corruption crime (TPC a. 252, 254),

[219] V. Ö. Özbek et al., p. 584.
[220] Sezer, pp. 79,80.

- Libel crime (TPC a. 267-269),
- Perjury crime (TPC a. 272-274),
- Crime of escaping of sentenced or arrested (TPC a. 292, 293).

b. Crimes Against Sexual Immunity

Without considering that the prosecution of crimes against sexual immunity taking place in TPC is subject to complaint or not; these crimes are not in the scope of conciliation in accordance with CCP a. 253/3. These crimes;

- Sexual assault (TPC a. 102),
- Sexual abuse of children (TPC a. 103),
- Sexual relation with infant (TPC a. 104),
- Sexual harassment (TPC a. 105).

Abuse means generally treating badly, giving damage, exploitation and using disagreeably. In human relationships, abuse contains behavior and actions making consciously or unconsciously for the purpose that a person gives damage, hurts and makes sad to another person. Abusing a person means that the person is subjected to inappropriate and unadmitted behaviors causing to damage that person. Sexual abuse is also a kind of abuse; and there are deviant and selfish behaviors stimulated by erotic desires and the purpose of reaching to sexual satisfaction, in this kind of abuse[221].

We think it is quite right that the sexual crimes are not in the scope of conciliation. It is thought that it is not possible to provide to recover the sufferer child' s damage in the crimes arising especially from abusing the children and sex with infants. "About sexual abuse, the child' s consent cannot be discussed. By definition, child cannot understand and apprehend the meaning and results of the action and cannot be a part of it[222]."

Abusing a child should not be seen only as using a child for sexual purposes. Encouraging or remaining insensitive to to such a relation, allowing to it or profiting

[221] Sedat Topçu, **Çocuk ve Gençlerin Cinsel İstismarı Ensest ve Pedofili**, 2. Edition, Doruk Publishing, Ankara, 1997, p. 1.
[222] Aslı Ataş Mitrani, "Adli Psikoloji", **Psikolojiye Giriş**, Anadolu University Publication, Publication No: 2686, Eskişehir, 2012, p. 239.

from it are also abuse. Condoning to sexual abuse, has the same meaning with attending to the action and one of the most important duties of the society is to protect the children from these damages[223].

Non-execution of conciliation, which has occurred as a result of reparative justice notion, on sexual crimes reinforces also belief to advantages of reparative justice. In the event that the sexual crimes in TPC directed to adults or children become subject to conciliation, both the victim' s trust to the justice and his public conscious will take a knock. It should be accepted that even offering conciliation to the victim about sexual crimes will tarnish his honor[224].

c. Offenses Committed Against the Statutory Bodies

Although prosecution and prosecution of the offenses in which the statutory bodies are injured are dependent on complaint, they are not within the scope of reconciliation according to the Code of Criminal Procedure, article 253/1. "Even though the crime committed is dependent on complaint as a rule, in case that the statutory bodies are injured, the reconciliation rules cannot be applied[225]." Some of the crimes issued in Turkish Penal Code and in which the the statutory bodies are injured are as written below:

- Offenses against the President of a foreign country (Turkish Penal Code, article 340),
- Aspersion against the flag of a foreign country (Turkish Penal Code, article 341).

The petition right for these offenses are dependent on the foreign country; and, they are not within the scope of reconciliation since the statutory bodies are injured.

[223] Topçu, p. 2.
[224] Ayşe Nuhoğlu, "Uzlaşma Bakımından Şikayete Bağlı Suçlar", **Ceza Muhakemesi Hukukunda Uzlaşma** (ed. Feridun Yenisey), Arıkan Publishing House, İstanbul, 2005, p. 284.
[225] Kaymaz and Gökcan, p. 102.

5. Commiting a Crime within the Scope of Reconciliation in Order to Commit Another Crime or to Commit Both in Combination

According to the Code of Criminal Procedure, the second sentence of article 253/3, in case a crime within the scope of reconciliation is committed together with a crime out of reconciliation, reconciliation rules are not applied. It is stated in the Code of Procedure, article 7/4 that in case a crime within the scope of reconciliation is committed in order to commit another offense, the reconciliation rules cannot applied.

The notion of compound offense is important to recognize if a crime being in the scope of conciliation was committed with another crime or not. Compound offense has been explained in article 42 of TPC. Compound offense is an offense regarded as a single action because one of them constitutes another one' s factor and reason. In these offenses, aggregation provisions are not applied.

The concept of "compound offense" is important for deciding if the offense within the scope of reconciliation is committed with another crime. In other words; crimes in nascent field owns a part in a crime type. For a compound offense to occur, a crime has to be the element or aggravation of another crime. Otherwise, it is not possible to talk about the compound offense[226]. According to the regulation on compound offenses; for instance, if the compound larceny is committed in a house and goods are damaged, it should not be punished separately as violation of dwelling immunity and causing damage to property. However, according to the Turkish Penal Code, article 142/4, *"In case violation of dwelling immunity and causing damage to property offenses are committed in order to commit compound larceny, complaint is not needed for investigation and prosecution."* The purpose of this regulation is to remove these act, on from being compound instead of being dependent on complaint. Due to this regulation, in the event of a compound larceny in a building, the offender will be punished separately both for violation of dwelling immunity and causing damage to property[227]. Since the violation of dwelling immunity for larceny shall be

[226] Demirbaş, **Genel Hükümler**, pp. 510, 511.
[227] V. Ö. Özbek et al., pp. 588, 589.

evaluated severally from larceny[228], the reconciliation rules will be applied for this offense. The reconciliation rules should be applied for the violation of dwelling immunity offense regardless of complaint; because, it is among the offenses which are within th scope of reconciliation according to the Code of Criminal Procedure, article 253/3. Since this offense is not dependent of complaint according to the article 124/4, the pursuance of the offense does not end with the withdrawal from complaint. If the conditions of punishment occur, it is possible for suspected or defendant not to be punished only with the reconciliation.

Turkish Penal Code, article 142/4 is a specific regulation about larceny. For example, if violation of dwelling immunity offense is committed in order to commit sexual abuse of children which is not within the scope of reconciliation, the reconciliation rule cannot be applied for the violation of dwelling immunity[229].

It is regulated in Code of Criminal Procedure, article 7/4 that if an offense within the scope of reconciliation is committed to commit another crime, the reconciliation rule will not be applied, not in the law. There is not such a delimitation in the law. According to the Constitution, article 124; "The Prime Ministry, the ministries, and public corporate bodies may issue by-laws in order to ensure the implementation of laws and regulations relating to their jurisdiction, as long as they are not contrary to these laws and regulations." It is not lawful to bring a delimitation about reconciliation which is not existing in the law, with a regulation[230]. Even though the purpose of this provision can be explained to be solve the problems in practice, it is inadmissible that a delimiting provision which does not exist in the law, is in the regulation. Reconciliation is a right for parties in terms of some offenses; however, the exceptional cases in which reconciliation cannot be applied must be determined by the law, not by a regulation[231].

Considering the benefits and purpose of the reconciliation on the injured, offender and society, it is under consideration that there is no need for a regulation stating that the reconciliation will not be applied in case an offense within the scope

[228] 6. CD., 03.06.2008 date, 2007/13930 E., 2008/12165 K., 6. CD., 17.04.2008 date, 2008/1604 E., 2008/9010, K., https://www.corpus.com.tr, (18.05.2014).
[229] Supreme Court 5. CD., 16.09.2008 date, 2008/11460 E., 2008/7795 K., https://www.corpus.com.tr, (19.05.2014).
[230] Çetintürk, p. 484.
[231] Aytekin İnceoğlu and Karan, p. 53.

of reconciliation is committed simultaneously with another crime which is not in the scope of reconciliation. This regulation means to give up on the benefits of reconciliation and that the perception of retributive justice is preferred instead of restorative justice[232]. According to our opinion, regulation should be applicable without such a delimiting provision in case an offense within the scope of reconciliation is committed simultaneously with another crime which is not in this scope.

C. Determination of the Suspect

In order for reconciliation to be applied, not only the injured or victim should accept the offer, but also the suspect. If an offense which is the subject of reconciliation is committed for the benefit of a legal entity, the addressee of the offer should be determined. Only a natural entity can be a suspect or defendant. Legal entities cannot be a suspect or defendant. In case an offense is committed by a person on behalf of a legal entity in favor of the legal entity, the suspect is still a natural person[233]. According to the Turkish Penal Code, a penal case can be filed only against natural persons since only natural persons can be suspect or defendant. In cases where the legal entities are supposed to be punished, the natural person representing the legal entity should be judge[234].

It has been discussed if the injured party can be a legal entity. However, also legal entities can be the victim[235]. According to Bıçak, "As the injured party of the offense can be a natural person, the legal entities can also be the victim of a crime committed against a legal entity[236]." For Şahin, "There is no offense without a victim and the victim for every offense is a natural person. That' s why, even though the legal entities cannot be the victim, they can be damaged by the offense[237]." From our

[232] Çetintürk, p. 485.
[233] Öztürk et al., p. 244.
[234] Nevzat Toroslu and Metin Feyzioğlu, **Ceza Muhakemesi Hukuku**, Savaş Publications, Ankara, 2012, p. 125.
[235] Tuğrul Katoğlu, **Ceza Hukukunda Suç Mağduru Kavramının Sınırları**, Ankara University law Faculty Journal, 2012, Volume: 61, Issue: 2, http://dergiler.ankara.edu.tr/dergiler/38/1679/17897.pdf, (13.07.2014), p. 657.
[236] Bıçak, p. 130.
[237] Cumhur Şahin, **Ceza Muhakemesi Hukuku**, Volume: 1, 4. Edition, Seçkin Publishng, Ankara, 2013, p. 144.

pint of view, legal entities are damaged by the offense. The acceptance of rejection of the reconciliation offer of a crime within the scope of reconciliation depends on the representative of the legal entity; because, the victim can be a private entity[238].

The determination of suspect is important for some proceedings to be started at the stage of investigation. The determination of suspect means that the suspect is not obscure. It is not important to know the identity of suspect. The person known as private individual during the investigation, whose identity is not know can be incriminated. For example, if a person is incriminated among many people, it means that the offender is know as an individual. Each of those people can be the suspect; yet, it has to be know who the offender is for sentence[239].

It is not a must for the injured to state the name of offender(s) during complaint, the important thing is the actual complaint relevant to the offense. Therefore, the person stated by the victim in complaint may not be he person committing the offense[240]. It can be seen that the victims used the right to complain as "I file a complaint against whoever committed an offense against me" in their statements to the police.

The determination of the suspect' s identity at the stage of investigation has importance about who to offer the reconciliation. According to the Code of Criminal Procedure, article 253/4, upon the direction of the Public prosecutor, the judicial police will offer the suspect reconciliation at the stage of investigation. In case the identity of the suspect cannot be determined, it will not be possible for Public prosecutor to apply the reconciliation procedure[241]; therefore the reconciliation procedure will not start until the suspect is determined. Since the identity of the suspect has to be in the criminal charge[242], the determination of the suspect is one of the proceeding to be completed during the investigation.

[238] Yurtcan, p. 81
[239] Centel and Zafer, p. 85
[240] Demirbaş, **Genel Hükümler**, p. 208.
[241] Yıldız, p. 102.
[242] Ünver and Hakeri, p. 218.

D. Existance of Competent Evidence for Reconciliation Offer

Evidence is a proof providing the interpretation of the subjected event in the court[243], and it is used for throwing a light on the case, in other words for finding the material fact[244].

Evidence is an instrument to achieve the personal conviction. The actors of the trial should put in essential effort to reach all of the evidences relating to the case. This is an obligation according to the responsibility to search the material fact and formalize the trial[245].

In order for an instrument to be an evidence, it has to have two basic characteristics. This instrument should represent the act and be conceiving and lawful[246]. The importance of evidence is explained by Supreme Court of Appeals' General Assembly for Criminal Matters' decision as: "The purpose of the criminal procedure is to ascertain the material fact straight away. The logical way should be followed in this search. The fach must be revealed from the wholly evaluation of conceiving and realist evidences representing the whole or a part of the act. Otherwise, it is against the purpose of the criminal procedure[247]."

According to the Code of Criminal Procedure, article 160, Public prosecutor starts to search the facts about the act to make a decision if it is needed to initiate a criminal case as soon as being informed about a situation like a crime is committed. The Public prosecutor is obliged to search the material fact, collect evidences for and against the suspect for a fair trial, and protect the rights of the suspect.

Searching and achieving the things which can be an evidence in prosecution, in order words finding the evidences are the proceedings done during the investigation stage. Investigation does not mean that the case will go on with the prosecution. It can be understood that there is no need for prosecution after investigation. In this case, the prosecution stage will be renounced and the trial will end at the stage of investigation[248].

---

[243] Centel and Zafer, p. 222.
[244] Ünver and Hakeri, p. 623
[245] Bıçak, p. 368
[246] Öztürk et al., p. 297.
[247] YCGK 19.04.1993 date, 1993/6-79 E., 1993/108 K., https://www.corpus.com.tr/, (22.05.2014).
[248] Kunter et al., pp. 711, 712.

In case the Public prosecutor cannot gather sufficient evidences which can create suspect to initiate a criminal case or the prosecution is not possible, the decision of non-prosecution will be taken according to the Code of Criminal, article 172/1. This decision is named as "nolle prosequi[249]" in practical terms. In this case, the Public prosecutor does not offer reconciliation to the victim of offender. It is explained that in case sufficient evidences can be gathered, the Public prosecutor will offer reconciliation in Code of Criminal Procedure, article 8 Paragraph 1.

The regulation for the reconciliation offer by the Public prosecutor is important for the decisions of the parties. According to us, it has positive results. If we evaluate the situation from the victim' s point of view, it relieves the mind of the victim to know that ifthey cannot reach an agreement, the case will end up with the trial. And this causes for the victim to try this way. When the situation is considered from the point of offender, we see that the offender accepts the offer with the thought of acceptance of reconciliation since she/he knows that if she/he does not accept the offer immediately, the case can go to the court. Moreover, the offender gains insight about the decision of the Public prosecutor on evidences and brings a positive approach to the offer, thinking that what she/he has done is not an offense.

In case the reconciliation is offered without enough evidence proving that the offense is committed, this can cause an abuse of the situation and unlawful profit from accusing someone else[250]. From our point of view, it is the right decision not to offer reconciliation without sufficient evidence.

E. Conciliation Proposal

1. Persons who can propose reconcliation

In case the offense is within the scope of reconciliation, according to Code of Criminal Procefure, article 253/4, the Public prosecutor or policeman-upon the prosecutor' s order-proposes reconciliation. It is stated in Code of Criminal Procedure that policemen can also propose reconciliation upon the written or oral order of the Public prosecutor. It is not a proper regulation for policemen to be able

[249] Ünver and Hakeri, p. 561.
[250] Centel and Zafer, p. 431

to propose reconciliation. There is an obligation to tell about the legal results and the nature of the reconciliation to the party proposed for regulation. That' s why, the Public prosecutor should estimate if this proposal is accepted with their own wills[251].

Upon the criminal case is initiated, when the offense is considered to be within the reconciliation, the proposal is to be made by the court according to the basis and procedures stated in the article 253 (Code of Criminal Procedure, article 254).

It is not proper to name this as "reconciliation proposal". Because the person proposing is not a party in reconciliation. Therefore, the person tries to reconcile the parties. As a matter of fact, the title in Code of Criminal Procedure refers to "appliance of the conciliation" instead of "reconciliation"[252]. According to us, the terms "reconciliation proposal" used in Law and Regulation Articles should be changed as "conciliation proposal" since the one claiming conciliation is not the prosecutor, judge or police.

It is not regulated in our Criminal Court Law that parties can propose conciliation by arbitrating to the Public prosecutor; moreover there is no need for such a regulation. Because, if there is an offense within the scope of reconciliation, the Public prosecutor has to inform parties about the conciliation proposal.

According to the Code of Criminal Procedure, article 253/18, if the conciliation is not accepted, the proposal will not repeat. Conciliation is not proposed by the prosecutor to parties again. However, although the proposal is rejected, the victim and the suspect should make a statement to the Public prosecutor with a document showing the reconciliation in accordance with the Paragraph 16 of the same article. It is thought that the parties can propose reconciliation upon the rejection of the proposal in this provision. In this sense, it is not a "conciliation proposal" as in the Law; yet, it is a "reconciliation proposal" by parties. Therefore, according to the Code of Criminal Procedure, article 253, the conciliation will not be applied or the Public prosecutor will not charge someone for conciliation; yet, the parties will reach the reconciliation by themselves, negotiating. If the Public prosecutor agrees that this reconciliation is reached with the own wills of the parties,

[251] Kunter et al., p. 1234.
[252] Feyzioğlu, p. 331.

this reconciliation document will be signed and sealed. The reconciliation document is in the same nature as conciliation report according to article 253/19.

2. The Procedure of Conciliation Proposal

a. The Content of Proposal

There is an obligation to tell about the legal results and the nature of the reconciliation to the party proposed for regulation in accordance with the Code of Criminal Procedure, article 253/5. What is referred by the "nature of reconciliation" is the meaning of the reconciliation. It has to be told to the parties what is aimed by the conciliation. In this context, the offense has to be described and stated that it is within the scope of reconciliation. What is referred by the legal results of the acceptance or rejection of the conciliation is to explain the results of conciliation or non-conciliation with the legal results of the acceptance or rejection of the conciliation[253].

It is stated in the Code of Criminal Procedure article 5 Paragraph 5 that before starting the conciliation procedure, the parties are informed about the nature of conciliation, their rights and the legal results of their decisions. It is also stated in the contents of the proposal form that a debate with the other party by acceping the proposal does not mean to accept the offense or waiver and this situation does not cause the parties to lose their rights. Moreover, even if the parties accept the conciliation proposal, they do not have to reconcile at the end of the negotiations and they can give up on the reconciliation until it is reached, and even if they give up, they will not lose any right.

"An informed will is the free will[254]." That' s why, the person proposing conciliation should use a plain language, let them ask questions about the content of the proposal and be sure that the parties understand the process and its results. Since the jargon of law is complicated and the language used is incomprehensible

[253] Feyzioğlu, p. 331
[254] Feridun Yenisey, "Ceza Muhakemesinde Uzlaşma", **Ceza Muhakemesi Hukukunda Uzlaşma**, (ed. Feridun Yenisey), Arıkan Publishing, İstanbul, 2005, **(Uzlaşma)**, p. 251.

especially for uneducated groups, the knowledge of law should be not only achievable, but also comprehensible[255].

Because the conciliation proposals are made in a comprehensible way for everyone, free from the jargon of law by the Conciliation Commission of Chief Public Prosecutor' s Office of İzmir, it is seen that the conciliation proposal is generally accepted. In the cases submitted to us by the Chief Public Prosecutor' s Office of İzmir, it is seen that the parties are well informed about the identity of conciliator and his/her scope of task, objectivity, the confidentiality of negotiations and statements and their rights during the reconciliation process. Moreover, even the victims having no information about law reconsider the amount of material and moral indemnities which they claimed for reconciliation, within the frame of unjust enrichment rules. This situation demonstrates that the parties proposed conciliation are well informed anput the conciliation process and its results in detail.

b. Proposal Notice

It is stated in Code of Criminal Procedure, article 253/4 that The Public prosecutor or policeman upon prosecutor' s order will propose conciliation to the victim and suspect, and the Public prosecutor can propose the conciliation via a written notice or rogatory[256]. When the statement of the article is considered, the Public prosecutor should propose orally[257]. As a rule, conciliation proposal is to be notified orally. It is stated that the Conciliation Proposal Forms no. Annex 1/a and Annex 1/b in Code of Criminal Procedure, article 8/3 will be signed by an authority and the information in the form will be explained. From our point of view, what is referred by information will be explained is the oral explanation.

In the first paragraph of article no 9, titled "Proposal via Descriptive Notice or Rogatory" in Code of Criminal Procedure, it is indicated "the Public prosecutor can propose the conciliation via a written notice or rogatory if necessary." Because of the expression "if necessary", it is thought that if it is not possible to propose orally, this way will be used.

[255] Seda Kalem Berk, **Türkiye' de "Adalete Erişim" Göstergeler ve Öneriler**, Tesev Publications, İstanbul, 2011, p. 55.
[256] Soysal, p. 227.
[257] Feyzioğlu, p. 332.

The summon for conciliation proposal can be made via telephone, telegram, telefax, or e-mail, yet this summon will not mean an official conciliation proposal according to the Code of Criminal Procedure, article 8, paragraph 4. In the application of Chief Public Prosecutor' s Office of İzmir, an SMS is sent via UYAP system to cell phones for conciliation proposal. In the content of message, there is an explanation as "Dear …., please attend the conciliation meeting for the file no. 2014/.... in which you are a party on February 7, Friday at 10.00 am in Building C, Court of İzmir. 4112000-1844." The parties attending this meeting are informed and proposed by the Public prosecutor directly without an intermediary.

In the conciliation application in İzmir, the prosecution office gives instruction to the police not to propose conciliation. The conciliation proposal is notified directly by the Rublic Prosecutor. "According to us, the conciliation proposal should not be made by policemen, like the example in Court of İzmir the Public prosecutor should make the conciliation proposal by himself after informing the parties about the details[258]." It is thought that one of the most important factors for the success of the Conciliation Commission of Chief Public Prosecutor' s Office of İzmir is this application. People going to the police station for a complaint considers the conciliation proposal as a waiver of the complaint and mostly they do not accept the proposal. In an example given by Dr. Uğurcan Sevinç Kızıloğlu, Deputy Chief Public Prosecutor, it is stated that conciliation[259] was proposed at the police station "*before the rush at the cheek of the victim from the slap".* Since the concilation proposal is made after the calming stage, in orther words when the parties are not in the effect of the event anymore[260], the Commission of Conciliation is working actively and effectively in The Court of İzmir.

c. Failure in Notification of the Proposal

According to Code of Criminal Procedure, article 253/6, if the suspect, victim or injured party cannot be found at the addresses stated in the files for conciliation

[258] Feridun Yenisey and Ayşe Nuhoğlu, **Ceza Muhakemesinde Uzlaşma Rehberi ve Arabuluculuk Mevzuatı**, Bahçeşehir University Publications No:78, Uğur Publishing, İstanbul, 2013, pp. 52, 53.
[259] Eser, p. 67.
[260] Mecit and Ademoğlu, p. 387.

proposal or if they are abroad, the case will be concluded without conciliation. Since one of the benefits of the conciliation is to conclude fast, the case should not be delayed for the reason that the parties cannot be reached for conciliation offer. The reasons for not reaching the parties are not limited in the law. The conciliation will not be applied if the parties are not reached for any reason.

Since it is stated in the Code of Criminal Procedure, article 11 "If the suspect, victim or injured party cannot be found at the addresses stated in the files for conciliation proposal or if they are abroad, the case will be concluded without conciliation.", the conciliation proposal cannot be acknowledged to the parties.

Since the Public prosecutor is not authorized to bring one or both of the parties by force or claim their presence from the judge for conciliation proposal[261], the conciliation proposal cannot be acknowledged unless the parties are reached. However, if the suspect is brought by force for testimony, she/he can be proposed for conciliation during the testimony stage.

3. The Person Proposed Conciliation

The conciliation proposalis acknowledged to the suspect, victim and injured party accoding to the Code of Criminal Procedure, article 253/4. In case one of them does not attain maturity, the conciliation proposal is acknowledged to the legal representative according to the Code of Criminal Procedure, article 8/2. After it was investigated by the Public prosecutor if those persons have ability to distinguish, the addressee of the proposal will be settled.

The ability to distinguish[262], or in other words mental capacity is stated as one of the conditions to use the civil rights, to behave rationally and distinguish the right from wrong. Even though the age of consent is stated[263] and the mental capacity is not stated in the article 253, paragraph 4, since the reconciliation can build a liability relation, also for the parties having no mental capacity and evaluation should be made within the frame of Turkish Civil Code and conciliation proposal should be

[261] Kaymaz and Gökcan, p. 164.
[262] Demirbaş, **Genel Hükümler**, p. 332.
[263] E. Yılmaz, p. 720.

made to the legal representatives[264]. It is explained in Code of Criminal Procedure, article 8/2 that the proposal will be made to the legal representatives of the parties having no mental capacity.

In discipline, there is a split in the opinion about proposing conciliation to the representatives of the parties who are under the age of consent. For some legal experts, this provision is against the article 12 of UN Convention on the Rights of the Children in the context of article 12 of the Convention. It is stated that children should have the opportunity to express their thoughts on legal proceedings, be able to gain the information about the procedures of the judicial system to use their rights, and be included in the procedures of the judicial system affecting themselves. That' s why, it is a deficiency that the conciliation proposal is not made to the children who are mature enough[265].

Also, there are some legal experts in the opinion that it is proper to make the proposal to the representative of the children. In case the conciliation occurs, the indemnity accepted by the suspect or offender is mostly payed by the legal representative. Therefore, it is a suitable regulation that the acceptance of the children under the age of consent depends on the legal representative[266]. It is not limited onlt by the age of consent. For example, also for the people having guardianship because of a mental disorder, the conciliation proposal is made to the representative[267].

In the situations in which there is a conflict between the advantages of the legal representative and the suspected or injured children, the legal representative cannot use his right to complain on behalf of the children who are not appellor. In such cases, a guardian is appointed to the children according to the provisions of Turkish Civil Code. If the father has the custody of the child after divorce, Court of Appeal will firstly appoint a guardian to the child. Then, the appointed guardian can use the right to complain after taking the permission from Civil Court of Peace[268].

---

[264] Kaymaz and Gökcan, p. 165.
[265] İnceoğlu Aytekin and Karan, p. 56.; Çetintürk, p. 516.
[266] Sezer, p. 112.
[267] İpek and Parlak, p. 105.; Kaymaz and Gökcan, p. 165.
[268]UNDP and Ministry of Justice, Status Analysis Group Actions for the Project of Developing the Conciliation Implementations in Criminal Justice System, 3. Group Report**, Suça Sürüklenen Çocuk ve Suç Mağduru Çocuklarda Uzlaşma,** Yargıtay 2. CD., 16.11.2006 date, 2006/2716 E.,

It is consulted that if the suspect is under the age of consent at the time of the event and she/he reaches the lawful age at the time of the conciliation proposal, she/he will be proposed for conciliation. It is stated in Turkish Civil Code article 11 that the maturity starts at the age of 18 and marriage makes a person mature. Moreover, according to the article 12, a child at the age of 15 can be considered mature with his/her own and parents' will. In the event that the child reached maturity at latest the day when the conciliation is notified, the proposal will not be made to the representative. The Court of Appeals considers that the proposal is made to the offender under the age of 18 although the conciliation is to be proposed to the representative, as a breach; however, it is stated that conciliation should be proposed to the offender when she/he reached the age of maturity[269].

In case the suspect, offender or the victim cannot speak Turkish or one of them is handicapped according to the Code of Criminal Procedure article 5/4, the article no 202 of the Law will be applied. If the suspect or the victim cannot speak Turkish enough to explain his/her will, she/he will be translated by an interpreter. If one of the parties is handicapped, the main point will be explained them in a comprehensible way.

During the debates in Justice Commission about the article 202 titled "Situations demanding interpreter" and article 324 "Court Expenses" in Code of Criminal Procedure, the phrases "deaf and mute" has been changed as "handicapped". This change can cause misunderstandings. For example, a handicapped person who can speak Turkish and live dependent on a wheelchair does not need a translator. On the other hand a deaf or mute person may need a translator. Therefore, it should be know that handicapped person refers to a mute and deaf person[270].

It is stated in the Code of Criminal Procedure, article 253 that conciliation is to be proposed to the suspect, victim or the injured party. There are some legal experts in the opinion that the proposal can be proposed to the representative because of this provision. However, according to us, it is possible to notify the specially

---

2006/18388 K., http://www.uzlasma.adalet.gov.tr/doc/ihtiyac/grprplr/3grupkitap.pdf, (31.05.2014), p. 16.

[269] Supreme Court 2. CD., 25.09.2012 date, 2012/21744 E., 2012/41890 K., https://www.corpus.com.tr/,(31.05.2014).

[270] Şahin, p. 933.

authorized lawyer about the conciliation proposal. In case of the statement of acceptance or rejection by the trustee, the statement of the trustee is considered enough.

4. The Evaluation of the Conciliation Proposal for Victim

In the discipline of classical penal law, there is an approach neglecting the victim. While the focus was on the crime in 18th Century, it was the offender and the penal law in which the offender is prior became dominant in 19th Century. The policy penal law policy with to purpose to prevent the crimes has been the reason for the victim to be the secondary importance[271]. In criminal procedure, the offender has always been considered as an individual and even the phrase "sate of law" was formed in terms of offender. It has been forgotten that the victim is in the root of the crime. The reason for this misunderstanding is the thoughts like that the crime disarranges the social order and the real victim is the state. Yet, this opinion is not common anymore[272].

An offense has a characteristic which can damage the society, state and individuals. The injured parties is classified in two classes; society and the state[273]. Since the purpose of the reconciliation is to recover the damage of the individual and in this was prevent the welfare of the society, it is very important for the reconciliation proposal to be accepted[274]. It is thought that the rights and interests of the victim is prevented if the conciliation is arranged; because, the victim is the subject of the trial whose rights and interest are violated. Yet, for the reconciliation to be reached, the conciliation proposal needs to be accepted by the victim.

While it is thought that victims generally do not accept the proposal according to a priori observations, when it is analyzed by the Chief Public Prosecutor' s Office of İzmir, it is observed that the proposal is mostly accepted by

[271] Zekeriya Yılmaz, **Ceza Muhakemesinde Mağdur Hakları - Davaya Katılma – Yargılama Giderleri** Seçkin Publishing, Ankara, 2007, pp. 19, 20.
[272] V.Ö. Özbek, **Mağduriyetin Giderilmesi**, p. 42.
[273] Kunter et al., p. 156.
[274] Kunter et al., p. 156.

the victims and moreover victims are very pleased with this practice. From our point of view, the reason for this is the existence of "informed will[275]".

According to the Code of Criminal Law, article 253, Paragraph 7, to practice the conciliation for an offense causing more than one person to be injured, all of the victims and injured parties have to accept the conciliation. When the benefits of conciliation for the victim, offender and society, this regulation[276] limiting the opportunity of conciliation is against the purpose of conciliation. The self determination provided for the right of complaint in Turkish Penal Law, should also be provided for conciliation.

5. The Evaluation of the Conciliation Proposal for the Offender or the Suspect

The relief increases the efficiency of not only the victim, but also the offender in penal code, and it makes the parties more active. Thus, the offender gains the opportunity to designate his/her own future within the scope of penal code without being only a judged subject of penal code[277]. The subject in penal code is the person who can use procedure individually, has right to demand and his own status[278]. The offender or suspect being a subject has some obligations in penal code. These are[279]:

- The offender or suspect has to abide by the decision. Otherwise, the decision can be fulfilled by force.
- To be present in the process of trial is both a right and obligation for the offender or suspect.
- The offender or suspect has to give the right information about his/her identity.

During the process of conciliation, some obligations of the offender or suspect are eliminated. For example, the offender or suspect does not have to attend the conciliation negotiation individually. She/he can manage the negotiation process

[275] Elif Kısmet Kekeç, **Arabuluculuk Yoluyla Uyuşmazlık Çözümünde Temel Aşamalar ve Taktikler**, Adalet Publishing House, Ankara, 2011, p. 70.
[276] Çetintürk, p. 515.
[277] V.Ö. Özbek, **Mağduriyetin Giderilmesi**, pp. 28, 29.
[278] Centel and Zafer, p. 48.
[279] Toroslu and Feyzioğlu, p. 127.

via his/her representative. The offender or suspect accepting the conciliation proposal can renounce this will; moreover, she/he can decide the time and place of the negotiation according to himself. In other words, he makes decisions for himself. In fact, the offender has to be present at the hearing room on the date of trial and at the exact time. It is seen that this matter is also important for the offender or suspect while considering the conciliation.

In the Code of Criminal Law, article 5 "Fundamental Principles", the right related to the offender or suspect and victim are regulated. The fundamental principles are like:

- *The conciliation can be reached with the free will of the offender or suspect and the victim or injured party. Until the agreement is reached, they can renounce their wills.*
- *The conciliation is processed in accordance with the basic rights and liberties of the offender or suspect and the victim or injured party. And the protection of the benefits is the basis.*
- *The offender or suspect and the victim or injured party taking a part in the conciliation have the basic assurances provided by Law.*
- *If the offender or suspect or the victim or injured party does not speak Turkish, the article no 202 in Law will be enforced.*
- *The offender or suspect and the victim or injured party will be informed about the nature of the conciliation and the legal results of their decision before the conciliation process starts.*
- *During the conciliation period, the age, maturity, education, social and economic conditions of the offender or suspect and the victim or injured party will be considered.*
- *The provisions of the Law and Regulation is also practiced for victim children and children who are offender. The conciliation relating to the children is practiced according to the Children Protection Act no. 5395, dated 3/7/2005 and the Regulation on the Procedures and Principles Regarding the Practice of Children Protection Law published in the Official Gazette no. 26386 on 24/12/2006 and Regulation Regarding to the Protecting and Supporting Injunction Practice*

According To the Children Protection Law published in the Official Gazette no. 26386 on 24/12/2006.

The acceptance of the conciliation proposal by the offender or suspect does not men that she/he acknowledges the offense[280]. Since the obligation for the offender to acknowledge the crime is against the presumption of innocence[281], the criminal procedure protects the right against self-incrimination if the offender or suspect accepts the proposal[282] .

The offender or suspect accepting the proposal takes a part in the relief procedure. But, will the relief be against the presumption of innocence? At first sight, the relief without a trial and with conciliation can be seen against the presumption of innocence, but it is not. Because, the offender recovers the damages with his/her own will in the conciliation. She/he also has the right to reject the conciliation proposal. In this case, a criminal case can be filed and trial process can start. The offender has right to make a choise between the trial and relief. Even if the relief is reached by the offender, this does not mean that she/he is guilty, the presumption of innocence still exists[283].

It is stated in Code of Criminal Procedure, article 255 that in offenses committed by more than one people in privity or not, the offender(s) have right for conciliation. The reconciliation has a reformatory characteristic for the suspect learning the feelings of the victim. That' s why, it is suitable for the purpose of the conciliation for the willing offender to benefit from conciliation. While the provision stated in Code of Criminal Procedure, article 253/7 constrains all of the victims to act in concert, this regulation is thought to be in favor of the offender. While the proposal is considered by the offender or suspect, this regulation is important and it accepts that each of the offenders can accept the proposal on their own wills independently.

In practice, when one or more than one of the offenders accept the proposal, the conciliation is generally reached. At the end of the conciliation process, it is seen that the victim renounces the complaint against the offender(s) and does not want to

[280] Yenisey and Nuhoğlu, p. 59.
[281] Veli Özer Özbek and Koray Doğan, **Ceza Muhakemesi Kanunu' nda 5560 Sayılı Kanun' la Yapılan Değişikliklerin Değerlendirilmesi**, Journal of Criminal Law, Ankara, 2006, Issue: 2, p. 247.
[282] Centel and Zafer, p. 31.
[283] V. Ö. Özbek et al., **Ceza Muhakemesi,** pp. 903, 904.

deal with the prosecution process since the pecuniary loss and intangible damages are recovered by the offenders. This situation can mean that the offender accepting the conciliation may pay the indemnity on his/her own. But, it is observed that sometimes other offenders share the indemnity cost and benefits from the conciliation indirectly in practice. In another situation, since the expectation of the victim from conciliation which is a small amount of indemnity or an apology or a donation is not known by the offender, when she/he learns about this, she/he changes the opinion and accepts the proposal.

According to the Code of Criminal Procedure, article 253/8, the acceptance of conciliation does not mean to interpose gathering evidences and prevent practice of protection measure. Therefore, this situation prevented the acceptance of the conciliation by the offender in bad faith such as delaying the gathering evidences or not to reach the conciliation at the end of the process.

6. Decision-Making Period

According to the Code of Criminal Procedure, article 253/4, unless the parties state their decisions in 3 days after the proposal, the conciliation proposal is considered to be rejected[284]. For the acceptance of the conciliation proposal, the positive reply has to be stated. The rule is to explain the nature of the conciliation and the legal results of the decision, and then they can state their decisions. But in some cases, the parties may need more tme to decide. The law is to state the decision in 3 day for the parties. However, it does not mean an obligation to state an acceptance or rejection. The periods decided by the Code of Criminal Procedure, article 29, Paragraph 1 starts on the next day after the notice. And, it is stated in the Paragraph 4 that if the last day is on nonbusiness day, the period will end on the next day after the noonbusiness day.

In the Conciliation Proposal Form, there are three different parts for the proposed party to sign. These are; “I will consider and reply in three days”, “I accept” or “I do not accept”. The party who does not want to state the decision right now can have three days to state; however, if she/he does not state in 3 days, the

[284] Yenisey and Nuhoğlu, p. 57.

proposal will be considered to be rejected. According to us, this period is the essential time for the prosecution office to wait in order for the prosecution not to be delayed. The party who did not state the decision can change his/her opinion until the indictment is drawn up. The provision "In case the conciliation is not reached, the conciliation process will not repeat" stated in Code of Criminal Procedure a. 253/18 is related to the result of the conciliation negotiations and is considered that it does not refer to the proposal.

7. Acceptance of Conciliation Proposal

If the proposal is accepted by the offender or suspect and the victim or injured party, the conciliation process will be initiated by the prosecutor at the stage of prosecution and by the judge at the stage of trial.

Since it is proper to propose to both parties at the same time, the parties can state their acceptance at the same time and the process can immediately be initiated. Before the article no 253 of Code of Criminal Procedure was changed in 2006, the proposal[285] was to be made to the offender and if the offender acknowledges the crime, to indemnify the loss and conciliation, then the victim was proposed for the conciliation. Unless the offender accepted the proposal, there was no lawful value to propose to the victim. Yet, with the change in the article 253, since the offender does not have to acknowledge the crime, it is proper to propose both of the parties simultaneously. If one of the parties does not accept the conciliation proposal, the process will not start; however, for us, the priority obligation is abolished. "The Law does not call for an order[286]." Furthermore, in case the victim is priorly proped for conciliation, it is seen that the offender has a more positive approach to the proposal and mostly the conciliation is reached.

According to the Code of Criminal Procedure, article 10 "Decision-Making Period", if one of the parties doe not state the decision in 3 days, the proposal will be considered to be rejected and in this case, it is stated that the other parties will not be

[285] Yavuz Öztürk, "Uygulayıcı Gözüyle Uzlaşma", **Ceza Muhakemesi Hukukunda Uzlaşma**, (ed. Feridun Yenisey), Arıkan Publishing House, İstanbul, 2005, p. 174.
[286] Yenisey and Nuhoğlu, p. 59.

proposed. It is thought that there is no priority for the proposal since there is the phra "one of the parties".

The most important matter in the acceptance of the proposal is for the parties to accept the proposal with their free will by knowing the nature of the conciliation, conditions and results of their decision. There should not be any oppression to the parties regarding to the acceptance or rejection. In the practices of the Chief Public Prosecutor' s Office of İzmir, it is highlighted that the parties have 3 days period to make a decision. Thus, the parties can make a decision about the conciliation proposal independently.

It is seen that people proposed for conciliation use this 3 days period for consulting their lawyers. That' s why, it is thought that the people proposed their decision related to the conciliation can state their decisions via their specially authorized lawyers.

8. Rejection of Conciliation Proposal

Upon the statement of rejection by the person proposed for conciliation, the conciliation process does not start. The statement of the rejection to the prosecutor or the authorized policeman and signing the conciliation proposal form is an essential and sufficient statement of decision. However, the record of statement will be enough if the party states the rejection at the stage of testimony after the nature of the conciliation and the legal results of the decision are explained

The rejection of the proposal can be directly or indirectly[287]. The negative statement of the part proposed is an obvious rejection of the proposal. If the person proposed does not make a statement of acceptance or rejection, or if she/he does not attend the negotiations, this situation is considered to be an indirect rejection. The direct or indirect rejectin of the proposal means that the criminal procedure will go on[288].

[287] Feyzioğlu, p. 336.
[288] Bıçak, p. 306.

SECTION THREE
CONCILIATOR, CONCLIATION NEGOTIATIONS AND RESULTS

I. CONCLIATOR

A. Overall

According to the Code of Criminal Procedure, article 9, upon the acceptance of conciliation proposal, the Public prosecutor can start the process on his own or she/he can demand the bar to appoint a lawyer or a person who has education on law can be appointed as a conciliator.

The procedure of appointing a conciliator or who can be a conciliator is stated in the Code of Criminal Procedure, article 13, 14 and 15. A person who has the education of law or a lawyer on whom the parties agree can be appointed. Since the conciliation is an alternative solution which is accepted voluntarily, it is proper for the purpose of the conciliation to give the right to choose the conciliator to the parties. But, for the adversary parties, it can be difficult for them to be like-minded. Therefore, the parties leave the choice of the conciliator up to the discretion of the Public prosecutor or judge except for exceptional cases.

The number of the conciliators to be appointed is determined by the Public prosecutor or judge[289]. The qualification of the conflict and the number of the parties are consider while determining. For example, on a "rice day" event organized in a school, many people can suffer from intoxication. In this case, it takes much time for conciliators to contact with parties and start proceedings. In such a suce, more than one conciliator can be appointed. However, in a society where the conciliation culture exists, reaching the conciliation is independent from the number of the conciliators.

[289] "Upon the request of Public Prosecution or Courts, one or more attorneys can be assigned from the conciliation list of the related division in the bar." Yenisey and Nuhoğlu, p. 69.

B. Conciliators in the List of Chief Public Prosecutor' s Office Heavy Penalty Office

People having education of law can apply with a petition to the Chief Public Prosecutor' s Office until the end of November every year to take charge in Criminal Procedure as a conciliator or to register to the list from which the Public prosecutor appoints[290] conciliators according to the Code of Criminal Procedure, article 15/3. Application can be made individually or via a chamber with a membership or the institution.

The qualifications for the conciliators having the education of law is stated in Code of Criminal Procedure, article 15/1. According to this;

- *Graduate from Faculty of Law,*
- *Bachelor' s degree from the departments where law is thaught such as political sciences, administrative sciences, economics or finance.*
- *Master' s or Phd degree in Law,*
- *Not to be a lawyer registered in the bar*
- *Not to be dismissal of the profession or public service because of a disciplinary punishment.*

With this regulation, anyone having Bachelor' s degree from one of the departments giving sufficient law education can be a conciliator. In fact, it is stated in Code of Criminal Procedure, article 253/9 that the Public prosecutor can demand the bar to appoint a lawyer or a person who has education on law can be appointed as a conciliator. The phrase "law or a department giving sufficient law education" in Code of Criminal Procedure is abeyant. How can the sufficiency of the legal knowledge be determined? From our point of view, when all of the provisions regarding he provisions in Code of Criminal Procedure is considered, the person having education of law is either a person graduated from faculty of law, or a person having Master' s degree in the departments of public law the content of which contains the whole of the principles and rules of Turkish Criminal Justice System should be appointed as a conciliator. However, the phrase "person having education of law" in the Law is expended by a regulation and this made it possible that people

[290] Yenisey and Nuhoğlu, p. 69.

without a degree on law or without knowledge on Turkish Criminal Justice System. For us, this regulation is not proper.

From our point of view a person without the knowledge of public law should not be a conciliator, because reconciliation is related with both penal procedure law and general and specific provisions of the penal law. Even if the model of conciliator in the Code of Criminal Procedure is not a evaluator but a facilitator conciliator and the conciliator does not judge and is not a decision maker; according to us, the conciliator is the person managing the negotiation process between the offender and victim. The conciliation negotiations has to be in accordance with the provisions of law. When it is considered that the performance decided at the end of the conciliations should not be against the law, morality, human rights or public order; the process should be managed by the people having the notion of law and who arrogate the law from the start till the end. According to the statement of *Kunter / Yenisey / Nuhoğlu*, the conciliator, "has a similar task like a trial since she/he conciliates the monetary and materialistic sides of the conciliation. However, since it is not possible for the conciliator to investigate the basis of the conflict, this is not a real trial task[291]."

According to the condition, not to be a lawyer registered at the bar, stated in the regulation, there are mostly lawyers working at the public enterprises or civil servants graduated from university in the lists of the Chief Public Prosecutor' s Office. Considering the workload of lawyers and civil servants, it is seen that they mostly carry out the conciliation activity in short times. This situation shows that these people cannot carry out this task which is supposed to be with patience and this causes a decrease in the benefits expected from the conciliation.

It must be provided that also lawyers registered at the bar can apply to the lists of the Chief Public Prosecutor' s Office Heavy Penalty Office by making the necessary regulations. Moreover, it is reflected that only the person having education of law is either a person graduated from faculty of law, or a person having Master' s degree in the departments of public law the content of which contains the whole of the principles and rules of Turkish Criminal Justice System should be in the list.

[291] Kunter et al., p. 1232.

It is not possible for Public prosecutor to appoint a lawyer registered at the bar as a conciliator. According to the Code of Criminal Procedure, she/he can demand a conciliator to be appointed from the bar. However, it is possible for the prosecutor to appoint a conciliator from the list. It is seen that every conciliator in the list is appointed according to the order, and this order loses its effect by time and working process. The increase in the number of appointment brings along the specialization of the conciliators. According to the comparative law, for example as in England, the conciliator has to view at least 10 files in a year.

According to the Code of Criminal Procedure, article 15/2, the conciliators registered in the list of the Chief Public Prosecutor' s Office Heavy Penalty Office can be appointed for files not only in the city that they live in, but also in the other cities. The parties accepting the conciliation proposal do not have to be in the same cities. Although it is possible to use the audio and video communication techniques, it is also possible for the conciliator to go to the cities where parties live according to this regulation.

It is stated in Code of Criminal Procedure a. 15/2 that under which circumstances the conciliators in the list is delisted. According to this, if the conciliator loses the desired qualifications by time, if it is understood that she/he does not have one of the contions in the provision, if she/he wants to be delisted and if she/he has an attitude incompatible with conciliation and if she/he does not attend the workshops, the conciliator will be delisted.

C. Conciliators in the Conciliators List of the Bars

In the Code of Criminal Procedure, article 14/1, it is stated by the bar that a conciliator having the conciliation education will be appointed. And in the second paragaph, it is stated that the lawyer agreed upon does not have to be registered at the bar where the prosecution is carried on, yet, this appointment will be made by the bar at which the conciliator is registered.

To specify the rules of appointing conciliator for the bars, Code of Criminal Procedure prepares Instructions for Conciliations. For example, the Administrative Board of the Bar of İzmir accepted "the Code of Criminal Procedure Instructions for

Conciliations with the aim of specifying the procedure in appointing a conciliator, operation of the services effectively, distribution of work between the lawyers in the bar according to the criteria, form essential rules and for conciliation to be practiced in accordance with the law and provisions[292].”

There are mostly lawyer who attended conciliatory education and wants to be appointed as conciliator in the list of the bar. In parallel with the increase in the number of lawyers, there are many names of lawyers in the conciliator list of the bar. So, the number of appointments for each of them in the list is low. Conciliator is a task totally different from lawyer, it is in a multidisciplinary field. No matter how many of the lawyers are wanted by the prosecution office from the bar, a lawyer is mostly appointed once or twice in a year, because of the number of the lawyers in the bar. That’ s why it takes time for lawyers to be specialized on conciliation.

According to us, the prosecutor of judge practicing the conciliation should be able to appoint lawyers from the list of bars. Yet, the “Directive on the Practice of Conciliation[293]” accepted by Union of Turkish Bar Associations with the number 294-2 on 04.09.2005 and Code of Criminal Procedure article 253/9 is an obstacle for this. According to the article 3 in the Directive, the power of appointment belongs to the bars. It is complicated to understand why the Union of Turkish Bar Associations and legal regulations brought such a rule on the appointment of the conciliators, while there is not such a limitation on the appointment of expert witnesses. It is stated in Code of Criminal Procedure article 30/5 that the choice of lawyers appointed as conciliator will be considered by the Union of Turkish Bar Associations. Thus, the content of the directive of the Union of Turkish Bar Associations should be rearranged.

It is stated with a regulation in Code of Criminal Procedure a. 5/8, the conciliator lawyer cannot be the representative or defender in a case in which she/he is the conciliator.

[292] İzmir Bar, http://www.izmirbarosu.org.tr, (14.07.2014).

[293] The Directive on the Implementation of the Conciliaiton regulated in the Articles 253, 254 and 255 of Code of Criminal Procedure and the Article 73 of Union of Turkish Bar Association Turkish Criminal Code.
http://www.istanbulbarosu.org.tr/documents/UZLASMA_YONERGESI20050929.doc,, (13.07.2014).

D. Education of Conciliators

The content of the education of conciliator registered in the list and the institutions which are authorized to give this education are stated; and the education of the lawyers appointed as conciliators, the rules they should obey, principles and the rules and standarts are explained to be evaluated by the Union of Turkish Bar Associations in Code of Criminal Procedure, article 30 "education of conciliators".

It is remarked in the Directory of Conciliation by Union of Turkish Bar Associations that the education of conciliatory lawyers will be given by the bars. The bars will educate the lawyers on psychology, negotiation techniques, body language, penal law and penal procedure law[294]. Since 2009, the Bar of İzmir has been organizing workshops for conciliatory education and the lawyers are given a participation document. The names of lawyers who attends the workshop and deserves the participation document are written in the list[295]. The content of the workshop is in accordance with the principles in Code of Criminal Procedure.

The conciliators who applied to register in the list, has to provide a petition stating that she/he will attend the workshops. According to the article 30, the principles on the education of conciliators are like:

- The conciliators has to attend a workshop before taking office and as long as they work, they are subjucted to education.
- The workshop aims to improve the conflict resolution and negotiation skills, and proficiency trainings on the special conditions to work with the victim and offender and criminal justice system.
- The subject of the workshop is composed of the qualification that conciliator should have, the education level of the conciliator and improvement of his/her skills. The people to be appointed as a conciliator are given education on these subjects:

- The qualifications and legal results of reconciliation,
- The practice fields of reconciliation,

[294] Yenisey, **Uzlaşma**, p. 252.
[295] İzmir Bar CMK Conciliation Directive, http://www.izmirbarosu.org.tr, (14.07.2014).

- Contact rules, question and negotiation techniques, negotiation mehtod, conciliation report,

- Conflict analysis,

- Offenses subjected to conciliation,

- Codes of conduct.

• The workshop is carried on in cooperation with the Academy of Justice, Ministry of Justice Directorate General of Education, Union of Turkish Bar Associations, related bars and universities in this field.

In conflict resolution management, theoretical knowledge is essential the the basic knowledge. But, at the stage of practice, the analysis of the conflict models and the usage of communication tools may require professional help. The conciliators who cannot identify the appropriate models to the type of the conflict and has no skills to use the tools efficiently, do not have a big chance to help the parties[296].

The conciliators in the list are generally informed about the characteristics and rules of the conciliation institution, how and where to hold the negotiations, the conciliation performances, communicate with the parties and codes of conduct before they take office.

In the practices of the Chief Public Prosecutor' s Office of İzmir, the conciliators in the list are informed and administer an oath with reference to the expert' s opinion. The form of oath is "Regarding to the duty imposed to me, I swear on my honor and I swear on my life that I will act independently and objectively, I will look after the parties' common interest, I will pay attention that the parties will have equal opportunities in negotiations, I will not be prejudiced against the suspect or offender because of the presumption of innocence, I will encourage for the conflict resolution, but I will not put pressure and I will try to provide that the parties will decide with their own will, independently." The rules that a conciliator should obey are highlighted with this oath.

A workshop on "Communication Techniques and Body Language" was held by the Chief Public Prosecutor' s Office of İzmir and the conciliator in the list and prosecutors attended at this workshop.

---

[296]Gary T. Furlong, **The Conflict Resolution Toolbox: Models and Maps For Analyzing, Diagnosing, and Resolving, Conflict**, Wiley, Canada, 2005, p. 6.

From our point of view, one of the reasons why Chief Public Prosecutor' s Office of İzmir is successful at conciliation is that the conciliator can ask question at anytime to the prosecutor about the stages of conciliation or if the performances are legal; thus, they can take one-to-one education from prosecutors. Since the lawyers in the list of the bar in İzmir take the conciliatory education, it is seen that there are successful conciliations by the lawyers demanded from the bar.

Conciliation is not ordinary task, on the contrary they are very important and difficult. The conciliators must be trained about conflict resolution, thesis, antithesis and to reach conclusions, ask questions, perceive, psychological evaluation and the usage of communication techniques and body language. They should learn o be patient, to use a comprehensible, clear language, respect the parties, be equal and most importantly they should learn listening[297]. For us, listening is the most important matter to be taught. Silence is one of the most important conditions to be a good listener. The silentness of the listener gives the opportunity to the speaker to think about what she/he is telling, to explain more and to be more careful. Therefore, the speaker gets the chance to think more carefully while telling the matter to someone else. People telling the problems to good listeners can find the solution on their own. Even though they reached the resolution, they will feel relaxed and thus see the problems in a calm manner[298].

E. Conciliation by Public Prosecutor or Judge

According to the Code of Criminal Procedure, article 253/9, the Public prosecutor can manage the conciliation by himself/herself if the parties accept the conciliation proposal. Upon the understanding that the offense subjected to the prosecution after the criminal case is initiated, it is stated that the conciliation process will be managed by the court in accordance with the rules and principles stated in article 253. That' s why, the judge can made the conciliation. With the regulation, the judge and prosecutor are free to choose to conciliate individually or appoint someone.

[297] Yenisey and Nuhoğlu, pp. 71, 72
[298] Leyla Navaro, **Beni Duyuyor Musun?**, 3. Edition, Ya-Pa Publications, Ankara, 1990, p. 97.

The conciliation by prosecutor at the stage of prosecution and by judge at the stage of trial means a situation like "accusation bargain" which is not used by traditional conciliation. The suspect acknowledges the offense with the thought of getting less punishment. Because of this acknowledgement, the prosecutor withdraws some of the claims and suggests a punishment which also the suspect can accept. In fact the bargain is made[299] between the prosecutor and defender. On the other hand, the method accepted in Code of Criminal Procedure, article 253 is the conciliation of the victim and offender, not a bargain between the prosecutor and defender. If the offender comes clean during the negotiations, the Public prosecutor or judge may act according to this[300].

The acceptance of conciliation proposal does not mean to accept the offense. Moreover, it may be dangerous to talk about the acceptance of the offense in front of the prosecutor or judge. Because if the conciliation is not reached, the prosecution or trial will go on[301].

It is thought that there are other disadvantages if the conciliation is made by prosecutor or judge. Conciliation need time and effort. However, it is nor possible to expect the prosecutors and judges to make time for conciliation negotiations. The conciliation can be reached both in one meeting or more than one negotiation.

If the Public prosecutor starts the process as conciliator, his/her legal position should be analysed. According to the Code of Criminal Procedure, reasons of the circumstances in which the judge cannot hear the case or rejects, will be considered regarding to the appointment of the conciliator[302]. Thus, if the prosecutor is the conciliator, she/he cannot be the prosecutor of the same case. If the prosecutor is the conciliator during the investigation stage, the prosecutor cannot attend the trial as a prosecutor at the prosecution stage. The provision in Code of Criminal Procedure, a. 253/10 involves the prosecutor in case the Public prosecutor conciliates individually[303].

The Public prosecutor can give instructions to the conciliator according to Code of Criminal Procedure, a. 253/14. The conciliator can consult the Public

[299] Bacaksız, p. 163.
[300] Mecit and Ademoğlu, pp. 377, 378.
[301] Kaymaz and Gökcan, pp. 173, 174.
[302] Çetintürk, p. 488.
[303] Kunter et al., p. 1237.

prosecutor about the negotiations. In case if the conciliator is a lawyer, this situation is in conflict with the principle regarding to the protection of the lawyer' s independency[304].

During the conciliation negotiations, the performance to recover pecuniary loss and intangible damages caused by the offense and the failure of the conciliation can gamage the objectivity of the judge or prosecutor. Prejudice can occur against the party accepting the proposal but not attending the negotiations. At least the suspect can think like this[305]. In case of the failure of the conciliation, the legal connection between the judge or prosecutor with the parties will go on. But, after the report is submitted by conciliator, she/he will not have any connections with the parties in the future.

It is seen that the prosecutors and judges in the Court of İzmir do not take a part in conciliation processes, instead they appoint someone from the list or demand a lawyer from the bar. For us, this practice is proper.

F. Rejection of the Conciliator

The reasons for rejection and circumstances in which the judge cannot hear the case is also considered for the appointment of conciliator. In the article 22 in the Section "The Judge' s not hearing the case and rejection" in Code of Criminal Procedure, the circumstances in which the judge will not hear the case; and in article 24, it is stated that the rejection of the case may be demanded if the judge does not hear the case, and the objectivity is in doubt.

The circumstances causing suspicion about the objectivity of the judge, are the reasons requiring the rejection of the judge. It is impossible to list them[306]. The objectivity of the judge means to be equal to both of the parties[307].This objectivity must result as whoever is a party in the trial, the verdict must be the same. As stated in the Constitution, "Everyone is equal before the law"[308].

[304] Özen, p. 322.
[305] Yenisey and Nuhoğlu, p. 80.
[306] Bıçak, p. 154.
[307] Ünver and Hakeri, p. 186.
[308] Kunter et al. p. 549.

In case the conditions in law occurs, the rejection of the judge can be demanded and the judge can want the abstention because of the reasons[309]. The abstention of the judge means that the judge initiates the refusal case which makes the trial objective. The judicial authorities will hear the case[310]. The circumstances in which the conciliator cannot perform his/her duties or the rejection of the conciliator are done according to these rules. There is no process considered for the abstention or the rejection of the conciliator. The opinions and worries of the conciliator and parties on this subject must be considered[311].

The rejection of the conciliator or the demand of the judge for abstention is not seen very often.

II. CONCILIATION NEGOTIATIONS

A. Overall

Negotiation is a process in which the parties find out the reasons of the conflicts and solve them. Conciliation of victim and offender is a process in which there is a third party, but the conflicts are still solved by the parties[312].

Negotiation gives opportunity to express one' s own arguments and listen the other side and learn; thus, it has very important functions. The main purpose of negotiation is to reach the common interest which can be accepted by both parties[313]. Negotiation is one of the best ways for conflict resolutions. There are workshops organized by institutions to improve the skills of negotiation and conflict resolution. The most extensive study on this in Turkey is made by Dokuz Eylül Univesity Conflict Resolution Research and Performance Center (ACMER)[314]. Since the conflicts between people are solved in conciliation method, the conflicts will be resolve much easier when people have the negotiation skills.

---

[309] Toroslu and Feyzioğlu, p. 113.
[310] Kunter et al., p. 561.
[311] Şahin and Göktürk, p. 192.
[312] Hugh Miall et al., **Contemporary Conflict Resolution: The Prevention Management and Transformation of Deadly Conflicts**, Polity Press, Cambridge, 2000, p. 21.
[313] Owen Hargie ve David Dickson, **Skilled Interpersonal Communication Research, Theory and Practice**, 4. Edition, Routledge, New York, 2005, p. 373.
[314] See also, Dokuz Eylül University ACMER, http://web.deu.edu.tr/acmer/TR/index.html, (03.08.2014).

The best result of the negotiation during the conciliation process is based on the principle that both parties will benefit. The equality nd objectivity during the trial serves to the two-winner result[315]. If necessary for the benefits, "no" should be told. The hardest part of sayin "no" is the stress between showing the power and keeping the relation[316].

What effects the negotiations are the feelings of the parties. Feelings are always there, strong and it is difficult to deal with them. However, ignoring them can damage the negotiation process. Even if the feelings are not expressed, it afects the body and behaviors[317]. That' s why, feelings must be considered in conciliation process.

B. The Liabilities of the Conciliator and the Effect on the Relations with the Parties

The title and assignment of the conciliator start upon the appointment by the Public prosecutor or judge. However, the execution of duty by the conciliator starts upon the delivery of information and documents in the file[318]. The conciliator is provided with the documents approved by the Public prosecutor or the judge. The notification about the confidentiality of investigation and issuing date of the documents related to the crime or crimes that are the subject of the conciliation is determined with a minute bearing the signatures of the Public prosecutor and the conciliator.

The conciliation activities must be carried out by the conciliator in person, and there are rules that the person appointed as the conciliator has to obey while performing his/her duties. The liabilities of conciliator are specified in the article 28 of the RICCP. These are as follows:

- The conciliator acts independently and neutrally.
- The conciliator protects the common benefits of the parties.

---

[315] Peter Economy, **Uzlaşma İlkeleri**, translated by E. Sabri Yarmalı, Hayat Publishing, İstanbul, 1999, p. 17.
[316] William Ury, **Pozitif Hayır' ın Gücü**, translated by Aylin Yengin, İnkılap Publishing House, İstanbul, 2007, p. 27.
[317] Roger Fisher and Daniel Shapiro, **Duygularla "Mantık Ötesi" İkna Teknikleri**, translated by Özlem Gültekin, Sistem Publishing, İstanbul, 2008, pp. 18, 20, 21.
[318] Kaymaz and Gökcan, p. 179.

- The conciliator pays attention for the parties to have adequate and equal opportunities in the negotiations.
- The conciliator is not prejudiced about the suspect or the guiltiness of defendant and does not assume an attitude towards the suspect or defendant in accordance with the presumption of innocence.
- The conciliator explains the fundamental principles of the conciliation, his/her neutrality, the conciliation process and results, the functions of the conciliator and parties in the conciliation process and confidentiality obligations to the parties prior to the negotiations.
- The conciliator informs the parties to behave respectfully towards each other, to participate in the negotiations with good intentions and to explain the issues.
- The conciliator takes measures for the parties to compromise with free will and by knowing the provision and results.

If the conciliator acts in compliance with these liabilities during the negotiation process, the success in the conciliatory activities is an expected result. In our opinion, the success of the conciliator is not the agreement between the parties as a result of the conciliation negotiations. The reason is that the conciliator is responsible for the process management not for the result; thus the liabilities have to be evaluated in this regard.

The justice is the correct and just resolution of a conflict and the object of all laws is to sustain the justice[319]. To administer the justice is the duty of jurisdiction. The conciliator is the person striving to satisfy the parties' sense of justice during the negotiation process. The jurisdiction is justice-oriented, whereas the conciliation is benefit-oriented. The conciliator is the person saying "stop, think and act" for the parties to reach their benefits. The conciliator should eliminate the prejudice of the parties, albeit partial, and overcome the absence of dialogue. The conciliator should enable the brain storming and support the creative thinking. The conciliator should master the crisis analysis and crisis management, and have the skill of takin precautions for outburst of anger. During the negotiations, the conciliator has to

[319] Rona Aybay, **An Introduction to Law**, 2. Edition, İstanbul Bilgi University Press, İstanbul, 2009, p. 15.

strengthen the sense of trust in justice, to treat both parties equally, but to stand against tyranny by reminding that there will be a trial if the conciliation is not reached. Regardless of identity, ethnic origin and communion, the conciliator does not exclude any party and prevents the impairment of the restorative justice concept. It should not be forgotten that the object of the restorative justice is for the parties of the conflict to express themselves in the processes of conflict resolution and decision-making, and to eliminate the resolutions[320] that may cause them more pain. If the sense of justice of the parties participating in the conciliation is damaged and they think that here is unjust behavior, they turn to meet the basic needs; hence this causes fear and concern. The senses of equality and trust coexist with the sense of justice. The conciliator should make a psychological analysis and reduce the fear. The fear causes alienation[321]. If the fear and concern decrease, the sense of trust[322] underlying the motivation increases.

The selfish persons serving only for their own benefit may seem to be self-sacrificing when there is another beneficiary of their actions[323]. During the negotiations, the parties can use tricky tactics such as deliberate deception, psychological war or positional pressure tactics. The oldest negotiation trick is to misinform or misbehave knowingly and wilfully[324]. The conciliator should encourage the parties to be honest and fair during the negotiations so that they do not misguide each other and abuse their feelings. If one of the parties thinks to be cheated at the end of the conciliation process, the trust in the conciliation process decreases. Thus, it is the conciliator' s duty to make character analysis and enable the parties to express the best resolution for themselves during the negotiations. At the end of the negotiations, it should be enabled that each party should reach his/her result and make his/her choice[325].

As the facts and perceptions are different, it is important that the conciliator should conduct perception management. The parties should not think that they are

---

[320] Coronas, p. 110.
[321] Oğuz Atay, **Günlük ve Eylembilim**, 3. Edition, İletişim Publications, İstanbul, 1992, p. 96.
[322] Özcan Köknel, **Akıl ile Düşünce Gücü**, Altın Kitaplar Publishing House, İstanbul, 2003, p. 380.
[323] Dipak K. Gupta, **Understanding Terrorism And Political Violence : The Life Cycle Of Birth, Growth, Transformation, And Demise**, Routledge, New York, 2008, p. 38.
[324] Roger Fisher et al., **"Evet" Boyun Eğmeden Anlaşmaya Varmak**, translated by Fatma Güven Burakreis, İstanbul Bilgi University Publications, İstanbul, 2008, p. 153.
[325] William Ury, **Zor İnsanla Diyalog**, translated by Murat Özkul, Öteki Printing House, Ankara, 1999, p. 173.

excluded from the jurisdiction with the conciliation method and should not lose the sense of belonging. We think that conciliation as an alternative conflict resolution method should not be separated from the criminal justice system and excluded from the system. The reason for this is that not losing the sense of belonging to society during the criminal procedure process means the sense of trust in the performance of the law is not shattered. This can be achieved with the professional conciliators acting in accordance with the legal and psychological rules of the conciliation.

C. Conciliation Process

The conciliation process should be completed within a certain period of time[326]. It is stated in the article 253/12 of CCP that the conciliator finalizes the conciliation procedures within thirty days and the Public prosecutor can extend this period by twenty days at most. The period begins with the delivery of a copy of documents in the file to the conciliator.

If conciliation cannot be reached within thirty days, this period can be extended by twenty days at most and the total conciliation period cannot exceed fifty days. If conciliation cannot be reached within fifty days with the prolonged period, the investigation and prosecution will be maintained[327]. If conciliation cannot be reached at the end of the requested period or ex officio by the Public prosecutor, the conciliation method will no longer be performed.

In the event of unmediated conciliation by the Public prosecutor, although there is no time period specified in the law, the time period for the conciliator is also applied for the Public prosecutor or the judge in accordance with the 17/3 article of RICCP[328]. The same time periods are applied in the cases where the conciliation is performed by the Public prosecutor or the judge.

It is not right that there is no certain time period for finalizing the conciliation. For example, the conciliation period is 24 days in Norway, whereas it is six months in France. The number of victims and perpetrators and the type of crimes are important in the conciliation process. To specify a time period for the conciliation

[326] Bıçak, p. 307.
[327] Sezer, p. 123.
[328] Kaymaz and Gökcan, p. 187.

may cause pressure on the conciliator in terms conciliation process requiring a longer period and may reduce the quality of the conciliation. Therefore, it would be more appropriate that the time period for the conciliator is determined by the Public prosecutor according to the characteristics in the file[329].

It is possible that the suspect and victim or the parties suffering from the crime can declare that they have reached the conciliation by applying to the Public prosecutor with a document indicating the conciliation until the issuing date of the indictment, although the conciliation proposal is rejected. However in this case, based on the definition of conciliation in the RICCP, it can be said that there is no conciliation, but an agreement. The thirty-day time period specified in the law is not for the agreement, but for the conciliation.

Although it is considered that the time period to be determined by the Public prosecutor is more appropriate, it is observed that the thirty-day time period is enough for the conciliators in practice. When the fact that the conciliation negotiations can be performed with the audio and video communication techniques is considered, the conciliators generally finalize the conciliation process without demanding any additional time. However, the time period may not be enough in the cases that the parties do not participate in the pre-determined conciliation meetings. In this case, it is considered that the conciliator send an invitation letter for the conciliation meeting to the parties without waiting, thus he/she will not need any additional time period.

The sanction to be applied is not clearly specified in the law in the cases that the conciliator does not submit the report in due time. This sanction should be assessed separately in terms of the conciliators in the list of Criminal Court Public Prosecution and the conciliators in the list of conciliatory attorneys of the bars. The conditions that cause the removal of the conciliators registered in the list of Prosecution from the list are specified in the RICCP. In article 15/9-ç of RICCP, it is stated that the conciliator will be removed from the list in the case of "attitude and behaviors incompatible with the conciliators". It is considered that the Public prosecutor should conduct an examination and make a decision about the conciliator that do not submit the conciliation report in due time. In our opinion, the Public

[329] Çetintürk, p. 545.

prosecutor or the judges conducting the conciliation process should inform the bar in the cases that the conciliator attorneys registered in the conciliator list of the bars do not submit the report in due time. The bar should conduct an examination to decide whether any sanctions will be imposed on the conciliators due to the failure of submitting the report in due time. It should be decided whether a sanction will be imposed on the conciliator.

D. The Places of Conciliation Negotiations

In the article 29 of RICCP "The Places of Conciliation Negotiations", the places of conciliation negotiations are stated as examples. According to this, the places of conciliations negotiations are as follows;

- The designated places of the public institutions and organizations,
- The offices of the conciliator provided that the parties approve,
- A peaceful and secure environment or a place deemed appropriate for this activity by the parties according to the interests of the parties,
- The meeting halls allocated in the court houses to conduct the conciliation negotiations.

As there are no restrictive regulations about the places for conciliation negotiations, the negotiations can be conducted in the places approved by the parties. If the conciliation negotiations are conducted separately with the parties, the conciliator can go to the places of parties[330]. For example, the conciliation negotiations can be conducted in the personal areas[331] such as the victim' s house.

As the confidentiality is the basis of the conciliation negotiations, the conciliations meetings should be held in a secure place. Therefore, there should be rooms in the court houses that the conciliators hold meetings[332]. It will be a major contribution for an effective result of the conciliation if an appropriate space in the court houses is allocated in the court houses for the conciliation negotiations, a sign

[330] Kaymaz and Gökcan, p. 181.
[331] Çetintürk, p. 140.
[332] M. Özbek, **CMK' da Uzlaştırma**, p. 312.

is placed there to indicate the conciliation room and the room has two divisions[333]. A solution is offered by the TBB, Union of Turkish Bar Associations, as "*the rooms used by the units of Public prosecution are allocated for the conciliation meetings in the cases that there are no rooms allocated by the Public prosecution for constant use during the conciliation*[334]*."* However, the court houses in our country are insufficient in terms of physical spaces. When this is examined in terms of comparative law, the conciliation meeting can be held in all places to be determined by the parties in USA. This could be hall in a hotel[335].

The absence of obligation indicating that the meeting must be held in a certain place provides convenience both for the parties and conciliator. Although the parties prefer to meet in an appropriate environment[336] to be determined by the conciliator in practice, in some cases the victim may demand to hold the conciliation meetings in a place and at a time to be determined by himself/herself, and may not accept the alternative places. The absence of restrictive regulation about the place of conciliation negotiations meets the demands of the victim and enables the active participation of the victim in the process.

E. The Persons That Can Participate In The Conciliation Negotiations

The persons that can participate in the conciliation negotiations are specified in the article 253/13 of CCP. According to this, the suspect, victim, persons suffering from the crime, legal representative, counsel and deputy can participate in the conciliation meetings. The conciliations can be conducted either together or separately with the persons specified in the law. While the conciliation can be reached in the first meeting, there can be more than one meeting with the persons that can participate in the conciliations.

As the persons that can participate in the conciliation meetings are individually specified in the law, the persons other than the ones specified in the law

[333] Yavuz Öztürk, "Uygulayıcı Bakışı ile Uzlaşma", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010 Special: 1, p. 221.
[334] Article 10 of the Directive on the Implementation of Conciliation Regulated in the Articles 253, 254 and 255 of Code of Criminal Procedure and Artivle 73 of Unioun of Turkish Bar Assocaitions Turkish Criminal.
[335] Çulha, p. 198.
[336] İpek and Parlak, p. 127.

cannot participate in the negotiations in our opinion. The perpetrator or victim may request the participation of a relative or friend in the negotiations. We frequently experience this request in practice. Moreover, it is also observed that if the request for the participation of another person in the negotiations is rejected by the other party or conciliator, they may be persistent and may refuse to participate in the negotiations. However, it is considered that the persons that are not specified in the law cannot participate in the negotiations since the conciliator has to carry out the process in compliance with the law[337]. It is forbidden for the third parties to participate in the negotiations, and the conciliator shall be attentive and not allow the participation of the persons other than the parties, legal representatives and deputies in the conciliation negotiations[338]. If the Public prosecutor or the judge does not carry out the conciliation in person and appoints a conciliator, the prosecutor or judge also cannot participate in the negotiations[339].

If the suspect, defendant, victim or person suffering from the crime does not speak Turkish or is disabled, an interpreter can participate in the conciliation negotiations according to the article 202 of Law.

There is no obligation indicating that the persons specified in the law shall participate in the negotiations all at once. If it is not possible for the parties to participate in the meetings due to workload, the representatives or attorneys[340] of the parties can participate in the conciliation meeting and the negotiations are conducted accordingly. However, the ideal is the participation of the suspect and victim in the negotiations in person[341].

The negotiations can be carried out with the meetings held together with the parties or separately. The meeting to be held together with the parties or separately is about the method to be followed. The conciliator may meet the parties separately where necessary since bringing persons, which are parties of a recent conflict, together in the same room may cause new conflicts[342].

---

[337] For opposing view, please refer to Çetintürk, p. 140.
[338] Kaymaz and Gökcan, p. 186.
[339] Y.Öztürk, p. 221.
[340] Centel and Zafer, p. 434.
[341] Yenisey and Nuhoğlu, p. 78.
[342] Kunter et al, p. 1242.

The parties have the right to accept or reject face-to-face meeting with each other during the conciliation process. In our opinion, the absence of relevant obligation in the Law increases the expected benefits of the conciliation and the success of conciliation, and the parties are pleased with the process. "Formal rules of procedure require one party to reply to the other' s statement. An essential feature of the hearing is the process of tesitng and exposing the flaws and weakness of the opponent' s case by a process of skilful cross examination[343]." In practice, it is observed that some victims accept the conciliation offers in order not to meet with the defendant in the trials. Thanks to the conciliation instrument, the victim is not obliged to withdraw the complaint in order not to meet with the defendant, and ensures the indemnification of the loss due to the crime by expressing the demands through the conciliator without face-to-face meeting with the suspect. The conciliation method, which is an optional and alternative method, ensures the indemnification of the victim' s losses and the participation of the victim in the conciliation process at his pleasure.

F. Communication Instruments used in the Conciliation Negotiations

The negotiations can be conducted by using the audio and video communication technique in compliance with the article 18/4 of RICCP. In parallel with the technological developments, it is predicted that the types and number of the audio and video communication instruments will increase.

It causes a problem to bring the parties together for the conciliation negotiations if the parties of conciliation are in different geographical places. The conciliator should utilize the technical facilities such as video computer and teleconference for the resolution of this problem[344].

It is possible to conduct the negotiations with the audio and video communication techniques[345].

---

[343] John Platt, "In Court Conciliation: A Discussion Paper", **Liverpool Law Review**, Volume: 18, Issue: 2, Springer Publishing, 1996, http://nj8bs2kt8z.search.serialssolutions.com, (04.09.2014), p. 186.
[344] A. Özen, p. 322.
[345] Sezer, p. 124.

In our opinion, it is not necessary to have the audio and video at the same time while conducting the conciliation negotiations with the communication techniques. The ideal is naturally to have both at the same time; however, once the victim agrees, the suspect must be conducted in any way. The will and agreement of the victim are necessary and sufficient to determine the method for communicating with the suspect. It is considered that the regulation sets an example. The conciliation meetings can be conducted through video-conference and teleconference as well as electronic mail, telephone, fax, even SMS. There are no provisions to restrain this. It is considered that the parties having a say in determining the place and time of the conciliation negotiations and whether the negotiations are held together with the parties or separately also have say in determining the method and communication instruments to be used in the negotiations.

The Legislation about the Use of Audio and Video Information System in the Criminal Courts were published on the Official Gazette on September 20th, 2011 and entered into force. The Audio and Video Information System (SEGBIS) is "multimedia system that the sounds and videos in the UYAP Information System are electronically transferred, recorded and kept[346]". The persons that the Public prosecutor, judge or court deems necessary to wiretap the phones during the investigation and prosecution are wiretapped and these are recorded with the SEGBIS. While the technical infrastructure studies still continue, this system is used in many court houses. If the suspect or the victim of the crime is in the department of corrections, upon the demand of Public prosecutor or court, the audio and video communication can be established, conciliation negotiations can be conducted within the court house without the obligation for the other party of conciliation and the conciliator to go to the department of corrections. The system for the persons that the Public prosecutor, judge or court deems necessary to wiretap is specified in the Legislation and it is considered that these can be used in the conciliation negotiations by expanding the scope.

[346] Sami Acar and Hülya Gürsoy, **Türkiye Mahkemelerinde Sesli Görüntülü Kayıt ve Video Konferans Sistemi Uygulamasına Geçiş: Ceza Mahkemeleri Örneği",** Journal of Ankara Bar, Volume: 2012/4, http://www.ankarabarosu.org.tr/siteler/ankarabarosu/tekmakale/2012-4/5.pdf, (14.07.2014), p. 130.

G. Confidentiality of Conciliation Negotiations

It is stated in the article 253/13 of CCP that the conciliation negotiations are conducted in confidentiality. It is regulated in the Paragraph 20 that the statements made during the conciliation negotiations cannot be cited as evidence in any investigation, prosecution and trials. According to the "Confidentiality of Conciliation Negotiations" title article 19 of RICCP, the conciliator is obliged to maintain the confidentiality of the statements during the conciliation process, and the facts that are told him/her or that are learnt in any other way. The persons participating in the conciliation negotiations cannot be forced to testify about the information obtained during the conciliation process.

It is stated in the article 19/2 of RICCP that the persons participating in the conciliation negotiations cannot be forced to testify about the information obtained. The regulation does not forbid the testimony in terms of the persons participating in the negotiations; it provides freedom in this respect. In our opinion, it is not a regulation complying with the evidence ban to provide freedom whether to testify or not. Therefore, it is considered that it would be more appropriate to impose testimony ban along with the evidence ban.

The confidentiality of the conciliation negotiations is a result of the benefit intended and expected with the conciliation. The regulation means that the negotiations are confidential and cannot be conducted publicly. However, due to the incoherence in the Law in this respect, it does not cover the explanation of the information, documents and statements obtained in the negotiations by the parties. This obligation is specified only for the conciliator and the parties are not put under such an obligation[347].

It is necessary to specify the starting of the rule about the confidentiality of the negotiations. The confidentiality of the conciliation negotiations starts with the meetings between the parties and the conciliator and ends with the submittal of the conciliation report to the judge or Public prosecutor. In the case of failure to reach

[347] Çetintürk, p. 530.

the conciliation, the report is included in the confidentiality rule and cannot be cited as evidence[348].

In the case of failure to reach the conciliation, the evidences obtained during the conciliation negotiations will not be considered in terms of the crime being subject of the conciliation. The crime alleged according to the article 38 of Constitution and the article 217/2 of CCP can only be proved by the legally obtained evidences. Therefore, the evidences emerged from the conciliation are illegal[349].

The scope of the evidence ban should also be examined. How can it be determined whether to use the document or fact emerged during the conciliation negotiations in the investigation and prosecution? It is stated in the article 19/4 of RICCP that *"the fact that a document or fact, which exists prior to the conciliation negotiations, is presented during the conciliation negotiations does not constitute an impediment for using it as evidence during the investigation and prosecution or in a trial."* The documents and facts that exist or are obtained can be used as evidence, even if they are not presented in the conciliation negotiations. It is considered that it cannot be considered as evidence ban based on the fact that the documents and statements are presented only during the conciliation negotiation process. In our opinion, the document and facts that emerge due to presentation during the conciliation negotiations for the first time and that do not emerge without the conciliation negotiations are the basis of confidentiality.

The minutes and notes taken upon the request of the conciliation are submitted to the Public prosecutor in a sealed envelope according to the article 19/3 of RICCP. The Public prosecutor signs and seals the enclosed envelope and the envelope is maintained in the file. This envelop can be opened to cite as evidence in order to resolve the conflict that emerges due to claim of forgery for the report prepared by the conciliator and approved by the Public prosecutor. This regulation constitutes an exemption for the confidentiality rule in case of the claim of forgery for the report.

In our opinion, there should be also another exemption of the confidentiality rule in case of a crime emerging during the negotiations. In such case, it should not be considered as the contradiction to the confidentiality rule when the conciliator

[348] Y. Öztürk, pp. 219, 220.
[349] Centel and Zafer, **CMH**, p. 484.

reports the crime. There is incoherence in the regulations about the conciliation in this regard. The Uniform Mediation Act (UMA) in the USA includes a sample regulation in terms of determining the limits of obligations for the conciliator to abide by confidentiality rule. "It is stated in the Uniform Mediation Act that the conciliator is not obliged to keep quiet if there is an attack against the physical integrity or a criminal action or a plan for criminal action is expressed, or the negotiations are used to plan a crime, there is a criminal attempt or a crime or criminal act is concealed during the negotiations[350]". It is considered that the conciliator reports the crime in this case and similar cases except for the crimes being the subject of conciliation and this cannot be considered as the breach of confidentiality rule.

The rule of "confidentiality being the main feature of the conciliation[351]" is explained by the Public prosecutor or judge while proposing conciliation. However, the fact that the statements made in the negotiations are subject to evidence ban[352] is an important rule that should be reminded by the conciliator prior to the negotiations.

Finally, the conciliator must pay attention to the confidentiality rule. However, the sanctions for the breaches of confidentiality obligations are not specified in the provisions about the conciliation. The conciliator attorney is a public servant during the conciliation activities and is put on trial as a public servant for the crimes committed due to conciliator' s activities[353].

III. RESULTS OF THE CONCILIATION

A. General

The conciliation process may result in three different ways. There are as follows[354]:

[350] Çiğdem Yazıcı Tıktık, **Arabuluculukta Gizliliğin Korunması**, On iki Levha Publishing, İstanbul, 2013, p. 67.
[351] Yenisey and Nuhoğlu, p. 80.
[352] Kaymaz and Gökcan, p. 186.
[353] İpek and Parlak, p. 124.
[354] Bıçak, p. 308.

- The parties or the legal representative or deputy of the parties do no participate in the conciliation negotiations,
- One of the parties notify the withdrawal from the conciliation process orally or in writing,
- The conciliator prepares a report at the end of the conciliation process.

The conciliator prepares a report at the end of the conciliation negotiations and submits to the Public prosecutor or judge with the document samples given to him/her. The signatures of the persons-parties, legal representative or deputies-participating in the conciliation process are included in the report. In case of reaching the conciliation, the means of conciliation are explained in the report. However, the statement[355] made by the parties about the commitment of the crime is not included in the report. The Public prosecutor or judge approves the report and keeps it in the file by signing the report after determining that the conciliation is based on the free will of the parties and the act complies with the law.

At the end of the conciliation process, the parties can be conciliated with or without a certain conciliation act or there may be no agreement between the parties at the end of conciliation process. If the conciliation remains inconclusive, the conciliation process will not be renewed.

B. Completion of the Conciliation

1. Positive Completion of the Conciliation

The positive completion of conciliation means that the parties agree or are conciliated at the end of the negotiations. The agreement between the parties is necessary and sufficient for the positive completion of the conciliation.

At the end of the conciliation negotiations, the parties may conciliate with a certain act or without any acts. On both circumstances, the conciliation is positively completed.

At the end of the conciliation negotiations, the parties agree on the method of act. While they may agree on immediate implementation of the act by the suspect,

[355] Sezer, p. 125.

they may also agree on later or partial implementation of the act. The postponement of the conciliation act does not mean the negative completion of the conciliation, because the parties are conciliated at the end of the negotiations.

When the decisions made about the suspects in the Public Prosecution of 10 provinces selected according to the data of General Directorate of the Forensic Registers and Statistics[356] are examined, the decision of non-prosecution is made for 6.611 files in 2013 due to conciliation. İzmir Public Prosecution made 4.947 decisions. In 2012, the decision of non-prosecution due to conciliation was made by İzmir Public Prosecution in the 3.242 out of 3.946 files. When this ratio is examined, it will not be exaggeration to state that İzmir Public Prosecution makes major contribution to the Turkish Criminal Justice System in terms of implementing conciliation instrument and the conciliation will be positive if the conciliation instrument is implemented.

2. Negative Completion of the Conciliation

Not all conciliation processes that are tried out and the conciliation proposal is accepted by the parties are completed with agreement. The conciliation is negatively completed if the parties, legal representatives or deputies do not participate in the conciliation negotiations or one of the parties notify the withdrawal from the conciliation process orally or in writing. If the parties cannot reach an agreement about the indemnification of the losses emerging from the crime of conciliation despite participating in the conciliation negotiations, the conciliation cannot be reached. It is also considered that the conciliation is negatively completed if the parties refuse sign the report prepared by the conciliator despite participating the conciliation negotiations.

At the end of the conciliation negotiations, a report including the signatures of the parties is prepared by the conciliator. The conciliation method is explicitly stated in the report. The Public prosecutor or judge approves the report by signing the report after determining that the conciliation is based on the free will of the parties and the act complies with the law according to the article 253/17 of CCP. However,

[356] General Directorate of Criminal Records and Statistics, http://www.adlisicil.adalet.gov.tr, (15.07.2014).

Public prosecutor or judge does not approve the report if Public prosecutor or judge considers that the conciliation is not based on the free will of the parties and the act does not comply with the law. In this case, the conciliation is negatively completed[357].

In the implementations of İzmir Public Prosecution; the number of files that the conciliation was completed negatively despite the acceptance of conciliation proposal is as follows[358]: in 2008 9 files out of 53, in 2009 77 files out of 232, in 2010 90 files out of 530, in 2011 359 files out of 3.865, in 2012 399 files out of 3.780. When this data is considered, the negative completion of the conciliation is an exemption at least for Izmir. When the fact that conciliation was reached in 3.755 files and conciliation was not reached in only 352 files in İzmir Public Prosecution Conciliation Offices in 2013 is considered, it is observed that there are still exceptions of failure to conciliate.

C. Act of Conciliation

1. General

It is stated in the article 20 of RICCP that the parties can agree on the implementation of certain act at the end of conciliation and also can agree on one or more acts provided that they are legal. Moreover, it is possible to determine an alternative act.

The parties can freely determine the act of conciliation provided that both parties accept this at the end of conciliation. However, there are some limitations. This limitation is stated in the article 20 of RICCP with the "legal" statement.

The act agreed shall not be illegal. The execution or goal of act[359] should be legal. If the act of conciliation is contrary to law, morality, public order and personal rights or the subject of act is impossible, there will be no legal acts.

It is considered that the conciliator should carry out an evaluation about the legality of the act and inform the parties about this subject. The conciliator can

[357] In the same direction, Sezer, p. 126.
[358] Eser, p. 62.
[359] Sarısözen, p. 255.

consult with the Public prosecutor or judge that has appointed him/her for the issues that he/she waver. However, the legality control of the act is the duty of Public prosecutor or judge according to the article 253/17 of CCP.

2. Subject of the Conciliation Act

The parties can agree on one or more acts at the end of conciliation according to the article 20 of RICCP. If there is more than one victim, it is necessary to indemnify the loss of each victim[360], thus a different act can be determined for each victim. The following acts are the examples of this article;

- *Full or partial indemnification or restitution of the financial and emotional damages emerged from the act,*
- *Full or partial indemnification or restitution of the financial and emotional damages of the third person succeeding the victim or the person suffering from the crime,*
- *The acts such as granting compensation to the helpless with a public institution or a quasi-public institution,*
- *To lay the victim, person suffering from the crime or third party to be determined by these under soma obligations such as participating in a program to do good for the society or temporarily to execute certain services of a public institution or a quasi-public institution,*
- *To apologize to victim or the person suffering from the crime.*

As the parties can freely determine the act of conciliation on the condition of legality, there are various examples in the implementations of İzmir Public Prosecutions in addition to the acts specified in the RICCP. These are;

- Distributing yeast fritters in thick syrup for 200 persons on the pavement across the school of the victim' s child,
- Hanging a sign saying "we apologize to our customers and all women due to violent behaviors towards female customers during shopping" for 1 day in front of the workbench,
- Reading books in the nursing home for 1 day,

[360] Yenisey and Nuhoğlu, p. 89.

- Collecting 3000 blue caps to deliver to the Konak Municipality,
- Issuing an apology in a country-wide newspaper,
- Apologizing before other artisans who witness the subject of conciliation,
- Repairing the woods in the nursing home for 1 day by the suspect who is a carpenter,
- Buying a new dress to the person whose dress was torn due to dog bite,
- Buying apartment house for the complainant who was severely injured in a work accident,
- Paying the fees for training center and tutoring of the victim that missed the university entrance exam due to a road accident,
- Buying a television for the nursery,
- Distributing flat bread and buttermilk in the nursing home,
- Buying a new eyeglass or cell phone for the complainant to replace the broken ones,
- Buying teenager groups and bicycle for a child to be determined by the complainant,
- Buying an air bearing bed for the complainant injured in the road accident.

It is observed that the acts of conciliation are determined with the free will of the parties within the limits of legality in the conciliation implementations of İzmir Public Prosecution, therefore the conciliation is reached with various acts. "*The fact that these acts are up-to-date in terms of social policies, social support activities and social awareness has gained great importance in the implementation of the conciliation*[361]*."*

3. Execution of the Conciliation Act

The act determined at the end of conciliation can be executed at once or can be postponed. In case of the outright execution of the act by the suspect in accordance with the article 253/19 of CCP, the decision of non-prosecution is made. If the execution of the act is postponed, split into installments or continuous, the decision is made to postpone the initiation of criminal case regardless of the

[361] Eser, p. 76.

conditions in the article 171. In case of the execution of act after this decision, the decision of non-prosecution is made. In case of the outright execution of the conciliation act in the conciliation by court, the decision is made for the discontinuance of action. "There are no decisions made about the conflict resolution in the decision for discontinuance of action; the court withdraws from the conflict due to the absence of trial conditions[362]." If the execution of the act is postponed, split into installments or continuous, the decision of deferment of the announcement of the verdict is made for the defendant regardless of the conditions in the article 231.

There may be cases that the perpetrator does not intentionally execute the act determined at the end of conciliation. This case means that the benefit expected from the conciliation does not apply to the perpetrator who does not take the responsibility of the action or does not regret. In the case of postponement of the execution of act, the legal regulation is correct, since it will not be right[363] to make the decisions of non-prosecution or discontinuance of action for the perpetrator without the execution of act. Therefore, the suffering of the victim, who was conciliated but not indemnified, is prevented.

"The decision of postponing the initiation of criminal law is the alternative of initiation of criminal case, namely the drafting the indictment[364]." The Public prosecutor may not draft the indictment and postpone drafting the indictment in case of the requirements in the article 171 of CCP is met. The provisions related to the conciliation in the article 171/3 of CCP are reserved. Therefore, decision of initiating the criminal case does not affect the conciliation[365].

In the case of the execution of conciliation act the suspect, the Public prosecutor makes the decision of non-prosecution. There are no records kept about the decision for the perpetrator of non-prosecution due to conciliation and of being the subject of a crime within the scope of conciliation. The subject of the investigation, which is completed with conciliation, cannot be repeated. It is set forth

[362] Koray Doğan, **Ceza Muhakemesinde Hüküm**, Journal of Criminal Law, Ankara, 2008, Volume: 7, p. 192.
[363] Çetintürk, p. 538.
[364] Kaymaz and Gökcan, p. 190.
[365] Centel and Zafer, p. 422.

that the perpetrator should not benefit[366] from the conciliation if once again he/she commits a crime within the scope of conciliation in a certain time period as of the completion with the conciliation of investigation and prosecution due to the crimes within the scope of conciliation. However, it is not necessary that the perpetrator accepts the crime to execute the conciliation method. Therefore, it is considered that whether the crime within the scope of conciliation is repeated or not should be determined according to the completion of conciliation and in a way not to breach the presumption of innocence.

In case of the execution of conciliation act according to the article 253/19 of CCP, a claim for compensation cannot be filed due to crime of investigation; a claim already filed is waived.

In practice it is common that the conciliation is reached in consideration of compensation to the victim by the perpetrator to indemnify the losses. However, the amount of compensation determined by the parties and signed in the conciliation report may be more or less than the ideal according to the general principles of the law. In the case that the conciliator anticipates such case, a short period should be determined for the execution even if the perpetrator wants to pay the amount of compensation determined with the other party in cash, and the act is executed after the Public prosecutor or judge approves the act of conciliation in terms of legality. In the contrary case, the conciliation act is executed without the inspection of legality. This case may cause the victim participating in the negotiations by accepting the conciliation proposal to lose a right; and this may cause damage to the perpetrator due to the execution of conciliation instrument.

How will the Public prosecutor or judge be aware whether an act, which is postponed, split into instalments or continuous, is executed or not? There is incoherence in the legal legislation in this regard. In our opinion, the perpetrator that the decision of no-prosecution or discountenance of action is made when the act is executed should make a notice and a document related to the execution of act should be submitted. However, the victim can also make a notice in person. In this case, it is not necessary to submit a document, the statement of the victim is considered to be sufficient.

[366] Eser, p. 106.

If the act of conciliation is the condemnation to the victim or pecuniary, the notice about the execution of the act by the perpetrator to the relevant authority and the presentation of a document do not constitute a problem. However, if the act is a moral act such as apology or the execution of the act cannot be documented, how will the perpetrator prove the execution of the act? In this case, it is considered that a document signed by the victim should be prepared to prove the execution of the act and this document should be submitted to the relevant authority. However, it is not always possible for the parties to prepare such document for various reasons. It is observed in practice that the act debtor appeals for the help of conciliator serving in the conciliation process and the conciliator goes to the place where the act will be executed and help the parties. While the conciliator does not have such an obligation, it is observed that they carry out this voluntarily.

4. No-Execution of the Conciliation Act

No-execution of the act at the moment of submitting the conciliation report occurs in the cases that the execution of the act is postponed, split into installments or continuous. After the decision of postponing the initiation of criminal case is made by the Public prosecutor during the investigation process, in the case of no-execution of the conciliation act, the criminal case is initiated regardless of the condition in the article 171/4 of CCP. If the act is not executed after the decision of deferment of the announcement of the verdict is made during the prosecution process, the verdict is announced regardless of the conditions in the article 231/11.

After the decision of postponing is made by the Public prosecutor, it is regulated in the article 171/4 of CCP that the decision of no-prosecution is made if there are no intentional crimes committed within the postponement period, and the criminal action is initiated if there are intentional crimes committed within the postponement period. This regulation is parallel to the regulation on the decision of postponement regardless of the conditions in the article 171 in the case of execution of conciliation act. If the conciliation act is put forward, the law-maker not requiring the conditions in the article 171 for the decision of postponing does not necessitate

the initiation of the criminal action with the condition in the article 171/4 in the case of no-execution.

In the case of postponing the conciliation act in the prosecution process, in parallel with not requiring the conditions in the article 231 for the deferment of the announcement of the verdict, the conditions in the article 231/11 are not required for the announcement of the verdict in case of no-execution of act. According to the article 231/11 of CCP, the court announces the verdict if an intentional crime is committed or behaving contrary to the obligations of the probation within the supervision period.

Whether an act, which is postponed and executed at once, is executed will be determined according to the time of execution written in the report. However, if the execution of act is split into installments, will the time of execution be determined according to the each installment time or the prosecutor or judge wail until the last installment? In our opinion, they should not wait until the last installment if one of the installments is not executed, it should be accepted as no-execution of act at time of first installment not executed. Therefore, the perpetrator executing the act in installments should make a notice with a document indicating the execution of the act to the relevant authority. As there are no regulations about the notification of executing the act, it is projected the perpetrator should make this notice.

It is possible for the parties to agree on one or more acts at the end of the conciliation. For example, the conciliation can be reached by paying compensation to the victim and issuing an apology in the newspaper. In case of execution of one act and no-execution of other act, we think that the conciliation act is no executed in compliance with the article 253/19 of CCP.

Will the act be considered as executed if it is executed after the time specified in the report? In our opinion, the conciliation act is executed by meeting all the conditions agreed by the parties. The act is not executed if the time of act is not honored.

No-execution of the act may lead to serious results for the perpetrator. For example, the re-conciliation cannot be resorted or the action is not discontinued if there is a crime that is not subject to complaint but that is included within the scope of conciliation according to the article 253 of CCP.

The conciliation report or document in terms of the conciliation act that is not executed is considered as a document of decision in compliance with the article 253/19 of CCP. The act creditor due to conciliation can collect the act receivables through execution of debt against the act debtor[367].

5. Act of Conciliation and Personal Right Compensation

If the crime is an unfair action as well, rules of civil procedures allow victim to recoup harms that occurred because of the crime[368]. If the subject of conciliation is in question, in case of conciliation for CCP act 253/19, it has been stated that can not be possible to sue for damages and additionally the offender will count as waived from the case. By the reason of this judgement, Conciliation Service formed on Criminal Procedure Law causes results in related to field of civil law.

On the following words, the decision taken by the Supreme Court within the law is discussed on doctrine. *"After between victim and offender arrived at agreement, the victim neither commence an execution for debt, nor files a court case... When conciliation which aims to solve the disagreement between victim and offender without criminal procedure comes into play, it disables criminal and law procedure*[369]*."*

In accordance with critical approach, conciliation service is which solves both private and criminal-law disputes, not limited to either law disputes and also provides an economic and quick way to solve criminal-law related problems. Conciliation is not an enterprise which connects both results from criminal-law conflicts and private-law conflicts at the same time and solving them in a certain way. Unless the victim or mistreated provides a document which declares that the person has forsaken his demands tied to private law conflicts, conciliation is obstructed from entering the areas other than the criminal-law. But according to CCP a. 253/9 prosecuting either provided conciliation or conciliation crime-related problems cannot be done. If there is a claim in such matters, that claim is renounced[370].

---

[367] Kaymaz and Gökcan, p. 191.
[368] V. Ö. Özbek et al., **Ceza Muhakemesi**, p. 883.
[369] CGK., 05.07.2005 date, 2005/10-84 E., 2005/90 K., https://www.corpus.com.tr, (16.07.2014).
[370] Ünver and Hakeri, pp. 813, 814.

In accordance to the view which defends that personal claims should end with the conciliation; conciliation foundation provides a solution to all vindictive and juridical results from crime-related problems. Both victim and the perpetrator should come to an agreement to recover loss. Even with the partial recover loss, victim cannot prosecute about the matter. If the victim prosecutes after conciliation or there already is an ongoing prosecution, both prosecutions should end in claim denial. "Cannot sue for damage" in law should receive a wide interpretation. All prosecutes ranging from recover loss of crime to law complete restitution and compensation are in this interpretation[371]. "Sue for damage" in law should be seen as "Any prosecution" would have been a better layout for this matter[372]. Also as defined in CCP a. 253/16 conciliation document means conciliation from crime-related damage requests and prosecutes are renounced[373].

If conciliation obligations are not fulfilled after arrangements has been made, conciliation report becomes equivalent of a warrant document. During withdrawal of complaint, if waiver has not declared forfeiting his personal rights separately and openly victim can prosecute[374].

Benefits of conciliation foundation aimed by lawmakers, in accordance with Supreme Court decisions and doctrine views; we are convinced that prosecute prohibitions are suitable if conciliation necessities are fulfilled. It can be seen that some criticism about the doctrine is ceases to exist by conciliation implementation. Implementation during conciliation process is included of informing both parties by prosecutors or savants about recovery loss demands and forming conciliation acts in accordance with these fundamentals. In case of conciliation negotiations; conciliation entity, verdicts and consequences are informed to both parties once more. Lastly because of conciliation arrangements, parties are informed that they cannot sue for damages via written reports and they are required to sign these documents as a proof of comprehension.

Using phrase "if conciliation necessities are fulfilled" from law states that, at inquiry instance public prosecution will be made and at prosecution instance verdict

[371] Kaymaz and Gökcan, pp. 207, 208.
[372] İpek and Parlak, p. 130.
[373] Sezer, p. 129.
[374] Kunter el al., p. 1243.

will be clarified however preventing any debate if the act is not executed. But when phrase "provided conciliation" is used, it opens a way to debates about making claims which is also prevented if conciliation is in place since the phrase dictates that sue for damages cannot be made if the act is not executed. Does "provided conciliation" phrase used by lawmaker dictates that conciliation negotiations are concluded or conciliation acts has been executed? Our opinion is lawmaker finds it sufficient if parties came to an agreement at the end of conciliation even if act is not executed. It is considered that if parties are agreed to conciliation procedures, only the amount defined in report can be demanded, report may be subject of execution for debt and sue for damage is prohibited if the amount surpasses conciliation report. In case of conciliation expire, loss of victim or complainant due to expiration must be defined by TCO' s general provisions.

If conciliation acts are not executed, act beneficiary can pursuit act obligor via execution approach according to Debt Enforcement and Bankruptcy Law (DEABL) a. 38' s court decision defining conciliation reports as warrant entity. But our opinion is collecting conciliation in this way has no effects on criminal-law, even if the debt is collected via execution approach. According to CCP a. 253/19 at investigation indictment will be regulated and at prosecution verdict will be clarified.

It is often that either victim or complainant requests excessive rights to be reserved before agreeing conciliation report. But in accordance with the statements above, our opinion is it will not make any difference for judicial outcomes even if there are documents stating such requests. If a conciliation act has been arranged with reserving excessive rights, according to CCP a. 253/19 neither party can sue for damages or if there is an ongoing prosecution about the matter it will be counted as resigned.

D. Conciliation Report

1. In General

In accordance with a. 253/15 of CCP, at the end of conciliation hearing, conciliatory, by preparing a rapport which includes signatures of parties, gives it to Public prosecutor. It is explained in the rapport how parties come to an arrangement.

However in accordance with a. 21/2 of CCP, the statements related with commission of offence do not take part in the report during conciliation debates. Conciliation report must have a context which reflects procedure without failure and lack and it must avoid details related with crime[375]. In accordance with the example which takes part in appendix of CCP, conciliation report is prepared in the manner that is one more than party number.

In case of conciliation which is made by Public prosecutor or judge personally, by filling the sections that are proper to quality of procedure, the report is signed and sealed[376].

In accordance with clause 253/17, if Public prosecutor designates that conciliation leans to free wills of parties and action has compliance with laws, he keeps in the investigation file by signing and sealing the report. On the contrary, in accordance with clause 21/4 in CCP, Public prosecutor does not approve the report and he writes the reason of refusal in the report. In this situation, conciliation counts as incomplete.

In accordance with clause 253/16 in CCP, victim and suspect can make a statement to the Public prosecutor that means they have reconciled between them until the time of accusation arrangement. This document becomes known as "conciliation document". In case of determination by leaning to free wills of parties and by making it compliance with laws, conciliation report is approved by Public prosecutor.

Conciliation report or conciliation document which is approved by Public prosecutor during investigation and which is approved by judge during prosecution, in accordance with clause 253/19 in CCP, it counts as court decision which is written in clause 38 of DEABL.

2. Auditing of the Report

If compliance audit of conciliation report is at a level of examining and Public prosecutor is at a level of proceeding, it is realized by judge. In case of having all

[375] Şahin and Göktürk, p. 193.
[376] Sezer, p. 126.

clauses which are under mentioned, it has been thought that conciliation report will be accordant with procedure and principle. These are;

- The report must include all binding explanations, by using example of conciliation report which is found in CCP appendix.
- It should be one more than the number of parties.
- Conciliation must be in progress with authorized person (guardian, trustee, procurator and advocate).
- The report should include signatures of all parties which participate to debate.
- The result of conciliation should lean to free wills of the parties.
- Action should not be against to laws, human rights, morals and public order.
- It should not be impossible to fulfil the action as of its subject.
- Conciliation result must be determined as clear and without hesitation or doubt.
- If there is any action, it must be determined what they are.
- If the action is performed, it must be determined how it is performed. If the action is post phoned or it is made an instalment plan or it offers continuity, its time and prosecution must be determined.
- The reasons must be valid in case of non conciliation.
- If there is any debit, it must be determined.

3. Adjudication and Finalization of the Report

Conciliatory prepares a report regarding that the conciliation has not been provide, in case parties do not negotiate or just one of them does not participate in. This report is signed by conciliatory or with one of the parties. The report is prepared by conciliatory and it is signed with the parties again, if the parties do not negotiate or they have an agreement.

The unaudited report that is signed by conciliatory and parties is invalid by oneself (make an appointment with freewill, compliance with laws). If Public prosecutor or judge decides that conciliation depends on freewill and that action is

compliance with laws, they can sign it[377]. The essential fact for adjudication of conciliation report[378] is recognition of report by Public prosecutor or judge. Although report depends on freewill and results with judgement authority, it has been considered that ruler outclassed to conciliation services. Just because complaint renounce cannot be audited, however Public prosecutor or judge can audit if conciliation depends on freewill[379]. It is not important if conciliation brings a successful conclusion for make the report valuable. It is necessary and enough to be approved by Public prosecutor or judge.

To make conciliation report final, there should not be any appeal for object to report. If there is any legal remedy for object to the report, according to result of them, procedure continues.

E. Conciliatory Fees and Other Conciliation Expenses

In accordance with c. 253/22 in CCP, it has been stated that fee proportional with labour and expenses of conciliatory will be arranged by Public prosecutor. Conciliatory fees and other conciliation expenses count as adjudication expenses. If conciliation is not provided and suspected is about jailed, in accordance with general judgements, conciliation expenses are paid by suspect [380]. In case of realization, conciliation expenses are provided by The Public Purse.

It is explained principals related with fees and expenses in CCP (a.31) how the fee of conciliatory is given by Public prosecutor at examining stage and by judge at prosecution stage. These are;

- *By considering conciliatory skills in conciliation and assessment of significant differences such as age, maturity, education, social and economic conditions of accused or victim, a reasonable fee proportional with his work is determined (expenses expected) by Public prosecutor at stage of examining and by judge at stage of prosecution as long as determined fee in payable wage scale of defender and substitutes won't pass over budget double as*

[377] Yenisey and Nuhoğlu, p. 92.
[378] Kaymaz and Gökcan, p. 153.
[379] Yenisey and Nuhoğlu, p. 92.
[380] Yenisey and Nuhoğlu, p. 102.

stated in CCP. Expenses made by conciliatory such as necessary travel expenses are paid separately without exceeding determined price for stage of examining.

- *After presentation of the report which will be arranged at the end of conciliation procedure, conciliatory fees are paid by Public prosecutor or judge with expenditure decision.*
- *If there is more than one conciliatory in the case, their fees are shared out in accordance with their contribute.*
- *Conciliatory fees and other conciliation expenses count as adjudication expenses and they are allocated by related funds.*
- *If the conciliation does not occur, judgements related with adjudication expenses are applied about conciliatory fees and other conciliation expenses.*
- *In case of realization, conciliatory fees and conciliation expenses are provided by The Public Purse.*
- *If conciliatory does not request for a fee, these clauses are no applicable.*

In accordance with a. 253/22 of CCP, it has been stated that conciliatory fee is paid by Public prosecutor and it does not belong any schedule. Conciliatory fee has not been limited within the laws, but in accordance with a. 31 of CCP, it has been relation with payable wage scale of defender and substitutes[381]. The upper limit for payments of conciliatory is determined as double the amount of fee in the regulation and examining. In my opinion, conciliatory fee should be paid by Public prosecutor or judge freely and the upper limit in CCP (a. 31.) must be abated.

IV. LEGAL WAYS OF CONCILIATION AND PRESCRIPTION

A. Legal Ways

1. Objection to Report

Parties can revoke their will regarding conciliation offer after they agreed on conciliation or in case of avoidance from conciliation negotiations their conciliation

[381] A. Özen, p. 320.

agreement will be counted as rejected. However if the conciliation acts are executed as conciliation agreement dictates, parties can not reject conciliations. Meaning that signing conciliation documents as agreed by both parties will be counted as executed conciliation acts[382]. After this stage, stage being verdict made by Public prosecutors or judges, it is possible to appeal legal ways to object the verdict as stated in CCP a. 253/23.

At investigation stage objections will be made as stated in CCP a. 173 against non-prosecution verdicts made by Public prosecutors. At stage of prosecution, if case is dropped by the court due to conciliation, a new appeal must be made since court decisions are verdicts[383].

In case of conciliation report approval, Public prosecutors will decide either non-prosecution if conciliation acts are executed abruptly or postpone Public prosecution if conciliation acts are deferred to a further date. Either party can appeal legal ways to object either decision made by Public prosecutors. At stage of prosecution; if conciliation acts are executed abruptly as stated in conciliation agreement dismissal of case will be decided, if execution is deferred to a further date verdict will be set back and if act is executed case will be dropped again. Any objections after this point should be made as an appeal since dismissal of case verdict is final. Objections regarding verdict setbacks can be made as per CCP a. 231/12. In case of conciliation not to meet with approval; investigation and prosecution will continue and verdicts from these stages can be appealed in legal ways. Disapproval of conciliation agreement can be asserted in such objections as a reason[384].

2. Pseudo Report Claim

As stated in CCP' s "Confidentiality of Conciliation Negotiations" headline's 19th clause, any documents, notes or official reports are delivered to Public prosecutor if required by mediator. Envelope which is only regulated by mediator will be signed and sealed by Public prosecutor. This envelope cannot be opened even by Public prosecutor. In case of pseudo report discrepancy, envelope

[382] Kaymaz and Gökcan, p. 153.
[383] Yurtcan, p. 82.
[384] Mecit, pp. 383, 384.

can be opened to dissipate any discrepancy and can be used as evidence. In case of pseudo report claims, official complaints should be made and any procedure should be made accordingly with the verdict.

Confidentiality principle is a key feature of conciliation and any conciliation procedure information or information learned due to conciliation methods are forbidden to be used as evidence in court. Any information other than closed envelope or conciliation report inside investigation or case file should be counted as illegitimate evidence[385]. Our opinion is any evidence inside case file, similar to information stated above, cannot be used in pseudo report claims or prosecution stage.

B. Prescription and Duration of a Lawsuit

As stated in CCP a. 253/21 a case which has prescription and prosecution conditions cannot be processed between definite periods of time. In accordance with that statement, prescription and duration of a lawsuit cannot be processed from when conciliation is proposed to either suspect, victim or complainant to when conciliation attempt is decided to be ineffective or latest mediator presented his/her report to Public prosecutor.

CCP' s "Prescription" headline' s 24th clause' s second anecdote states in case of not responding to conciliation proposal in time or rejecting conciliation proposal, conciliation attempt is counted as inconclusive. Third anecdote states that; if parties, legal representative or substitute avoids from attending conciliation negotiations or one party states an abandonment of conciliation either verbal or nominal during negotiations, processing of court case which has prescription and prosecution conditions will be started anew.

In case of negotiation made by Public prosecutor; if parties, legal representative or substitute avoids from attending conciliation negotiations or one party states an abandonment of conciliation either verbal or nominal during negotiations, Public prosecutor will take a statement down and processing the case

[385] Yenisey and Nuhoğlu, pp. 80, 81.

which has prescription and prosecution conditions will be started anew as stated in CCP a. 24/4.

Prescription and processing of lawsuit rules are important and necessary regulations. For example DEABL' s 347th clause states time for a complaint is decided as three months. Predicted cases such as this shows importance of regulations regarding prescription and processing of cases which as prescription and prosecution conditions[386].

[386] Bıçak, p. 307.

CONCLUSION

Our project argued outcomes of legal regulations regarding conciliation and offered suggestions to dissipate such matters. Results we have reached and suggestions to eliminate current problems are collected under two headlines. First of all we will discuss whether changes are needed or not about the encountered problems during processing of conciliation method regarding arrangements of Laws and Regulations. Secondly there will be examples and suggestions about efficiency and public renown of conciliation implementations.

Conclusions and suggestions regarding this study are as follows:

I. Regulations are necessary about conciliation foundation in **Rules and Regulations**. Conciliation is stated in CCP a. 253, 254, 255. Conciliation should be regulated in a **separate legislation.** As being one of the reparative justice proceses, conciliation should not be split from justice system. However it should be regulated similar to Conciliation Law of Judicial Discrepancy. This way conciliation foundation will contribute reparative justice better and will attract jurists' interest more.

Many crimes which fall under conciliation category are not part of it. It is a logical conclusion that **some crimes stated in Turkish Crime Legislations should be included in conciliation**. Primarily, it can be foreseen that some crimes which are not in conciliation category but falls under conciliation due to nature of the crime should be integrated in conciliation foundation; forgery, fraud and similar crimes being the example.

At investigation stage, conciliation offers are stated by law enforcements under instructions of Public prosecutors however causing parties to refuse conciliation offers without negotiating sufficiently. It is quite possible to increase solution rates of conciliation negotiations if **authorization to instruct law enforcements is nullified** and instead stating conciliation offers by Public prosecutors or judges themselves.

In case of resulting with conciliation way of examining or prosecution of the crimes related with conciliation, crime is not dependent on repetition. It has been considered that requires **repetition rules** arrangement with relation to crime resulted

with conciliation, in case of conciliation result and realization of significant conditions. For instance, although conciliation is accepted, suspect cannot fulfil his action and so on.

In accordance with the arrangements, there should not be any assignment directly between attorneys registered in conciliation list of bar association by Public prosecutor or judge. Public prosecutor or judge should demand a conciliatory from the bar association. In fact, there is not any arrangement that shows bar association as intermediary in case of assignment of registered attorney. Conciliation services can be more effective if it is supposed to have assignment without mediatory between registered conciliatory in bar association.

There can be several conciliation negotiation attempts which bring parties together to solve conciliation related discrepancy problems. These negotiation attempts can last for several hours in some cases. When heavy workload of Public prosecutors and judges are being thought of, it can be seen that if they oversee all conciliation negotiations, it would take all their time. This could lead to some problems regarding their other legal obligations and work obligations. Also if suspected party, whom accepted the conciliation offer, negotiates with the other party that could mean acceptance of fault. However if suspected party does talking in front of Public prosecutors or judges, this could lead to insincerity as the verdict may lead to suspect' s opposition. Thus leading conciliation attempts to stalemate. From this point of view, our opinion is that **Public prosecutors and judges should not make conciliation negotiations themselves**.

Freedom has been given to negotiation attendants to testimony due to information they learned from conciliation attempts. Testimony of conciliation attendants or listening them in a hearing brings conflict about negotiation confidentiality and intrusion of prohibited evidence rule. Our opinion is it would be better if a law has been made about testimony prohibition for attendants regarding conciliation negotiations. There should be a **testimonial ban for negotiation attendants** and cases which allows attendants to testify should be stated. Such as forgery claim allowing attendants to testify.

Processing conciliation related crimes with non-related crime leads to not applying conciliation methods. **Processing conciliation related crimes with non-**

related crimes should be processed via conciliation methods and there should not be any restrictive provisions about content of crime. Our opinion is, under this circumstance there should be a separate investigation about crimes which falls under conciliation scope and it would be better to apply conciliation implementation if necessary conditions are met.

The clause about acceptance of conciliation by victim or by all who gets harm should be abolished for procure conciliation in crimes that cause harm more than one victim. In my opinion, even if victim accepts negotiation for conciliation, he/she is deprive of this method and its consequences because of that clause. **Moreover, there should be conciliation between victim and suspect who accept it, in crimes that have more than one victim.** In crimes committed by more than one person, even if suspect has a privity with victim, he/she can benefit from conciliation. The right given to suspects should be brought for victims and there should be negotiation in case of conciliation acceptance by only one of victim.

II. It has been concluded that conciliatory process has positive impacts on both victim and suspect, in crimes that applied method of conciliation. It has been understood that method of conciliation is not applied commonly except Izmir Courthouse and that requires to make progress for **improvement of conciliation services.**

Although it has been foreseen Public disclosure with guidebook and other methods about conciliation in a. 34 of CCP, conciliation services have not been known by individuals which are not legist. In this context, its publication by preparing public service ad and taking part conciliation subject in TV series with high rating, forming of consensus and peace culture in society with increasing attention of media to conciliation services, **introduction of conciliatory services** which is arranged in CCP should be provided.

According to article 2 of clause 15 titled as “fees on conciliation, agreement and every kind of peace agreement”, published in the official gazette (dated 28 December 2013 and numbered 28865), it has been stated that will be attorney fee for conciliation, agreement and every kind of peace agreement. This new arrangement which does not take part in former instructions is a positive development for lawyers who participate in conciliation debates. But even this arrangement had not been quite

enough for prefer to conciliation ways instead of sue. Extensive legal arrangements which encourage attorneys should be offered for **being preferred** conciliation way **by attorney** primarily. In additional, in my opinion there should be an obligation about encouraging clients for conciliation ways before any personal right action.

It has been seen that there are educational differences between conciliatory registered in bar association and conciliatory registered in Public prosecutor' s office. It has been necessary to define people who can train about conciliation and to give training to conciliatory periodically and invariably. Providing **unity and invariability in training** will have contributed to solve problems about implementation.

In case of having an agreement on conciliation of discrepancies, number of case in Supreme Court has decreased. It has been clearly seen that many of cases reached to Supreme Court are the ones which have not accomplished their conciliation procedures. However, it has not been found many decisions related with principal which appears at the end of conciliation. It should be constituted a judicial unity in Ministry of Justice for providing association and be produced **unity providing solutions** in implementation in terms of method and principal in conciliation, by gathering conciliation report samples to this judicial unity.

When number of decision in relation to not having prosecution by reason of conciliation, Published by The Director for Criminal Records, Statistics Registering, has been examined, number of case that found in The Public Prosecutor of Izmir has been pointed out. According this, it has been seen that conciliation procedure were implemented successfully in Izmir Courthouse. **The implementations of conciliation services in the Public Prosecutor of Izmir** should have been examined before sharing the experience, moreover the reasons of conciliation method usage commonly and how discrepancies resulted with conciliation should have been identified. If the main principles of method and cause effect relationship of the implementation are sent to all courts via UYAP or in black and white, it has been considered that conciliation implementation will increase.

In the act of conciliation, conciliatory fee and charges are paid by the public purse. In practical terms, it is seen that spending decision was written without delay, in case of recognition by Public prosecutor or judge after conciliation report was

delivered. However conciliatory fees have been paid months later even after spending decisions are written just in time. **Conciliatory fees** must be paid without delay. It has been predicted that payment of conciliatory made just in time will contribute to implement of conciliation service effectively.

REFERENCES

Acar, Sami and Hülya Gürsoy. **Türkiye Mahkemelerinde Sesli Görüntülü Kayıt ve Video Konferans Sistemi Uygulamasına Geçiş: Ceza Mahkemeleri Örneği**, Journal of Ankara Bar, Volume: 2012/4, pp. 109 – 137.

ABGS, http://www.abgs.gov.tr/index.php?p=105&l=1, (07.05.2014).

Acmer, http://web.deu.edu.tr/acmer/TR/index.html, (03.08.2014).

Adalet, http://www.cigm.adalet.gov.tr/duyurular/2012/uzlasmacalistaykitabi.pdf, (06.03.2014).

Adalet, http://www.uzlasma.adalet.gov.tr/doc/clstplnt/rapor.pdf, (06.03.2014).

Adalet, http://www.uzlasma.adalet.gov.tr/doc/ihtiyac/grprplr/3grupkitap.pdf, (31.05.2014).

Albayrak, Mustafa. **Bilimsel Görüşler, Yargıtay CGK ve Ceza Daireleri Kararları Işığında Notlu – Atıflı – Uygulamalı Türk Ceza Kanunu Öz Kitap**, 10. Edition, Adalet Publishing House, Ankara, 2012.

Alger, Chadwick F. **The United Nations System A Reference Handbook**, Abc-clio, California, 2006.

Ankara Barosu, http://www.ankarabarosu.org.tr/Siteler/1940-2010/Kitaplar/pdf/, (08.12.2013).

Ankara Barosu,http://www.ankarabarosu.org.tr/siteler/ankarabarosu/tekmakale/2012-4/5.pdf, (14.07.2014).

Atay, Oğuz. **Günlük ve Eylembilim**, 3. Edition, İletişim Publications, İstanbul, 1992.

Ankara University Law Faculty, http://auhf.ankara.edu.tr/dergiler/auhfd-arsiv/AUHF-2002-51-02/AUHF-2002-51-02-Ozbek.pdf , (08.12.2013).

Ankara University Law Faculty, http://auhf.ankara.edu.tr/dergiler/auhfd-arsiv/AUHF-2005-54-03/AUHF-2005-54-03-Ozbek.pdf, (10.03.2014).

Avrupa Birliği Raporları, http://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_6_raporlar/1_2_green_papers/com2002_green_paper_on_alternative_dispute_resolution.pdf, (07.05.2014).

Bacaksız, Pınar. **İddianame Pazarlığı**, Journal of Criminal Law, Ankara, 2008, Issue: 7, pp. 151 – 170.

Baro Birlik, http://tbbdergisi.barobirlik.org.tr/m2009-82-516, (23.07.2014).

Baro Birlik, http://tbbyayinlari.barobirlik.org.tr/TBBBooks/436-d.pdf, (17.05.2014).

Berzins Andrei. **Ceza Adalet Sisteminde Uzlaştırma Uygulamalarının Geliştirilmesi Projesi Çalıştay Raporu,** İstanbul, 2008.

Bıçak, Vahit. **Suç Muhakemesi Hukuku**, Seçkin Publishing, Ankara, 2010.

Bulur, Alper. "Arabuluculukta Avukatın Rolü", **Dünyada Arabuluculuk Uygulamaları Konferansı,** TBB Publications: 216, Ankara, 2012, pp. 69 – 78.

Centel, Nur and Hamide Zafer. **Ceza Muhakemesi Hukuku El Kitabı**, 3. Edition, Beta Publication, İstanbul, 2012.

Coronas, Clara Casado. "Mağdur Fail Arabuluculuğu Hizmetlerinde İyi Uygulamalar", **Onarıcı Adalet Mağdur Fail Arabuluculuğu ve Uzlaşma Uygulamaları: Türkiye ve Avrupa Bakışı**, (Ed. Gamla Jahic and Burcu Yeşiladalı), İstanbul Bilgi University Publications, İstanbul, 2008, pp. 109 – 196.

Corpus, https://www.corpus.com.tr/, (06.03.2014).

Çetin, Soner H. **Ceza Muhakemesi Kanununda Uzlaşma (CMK m. 253, 254, 255)**, TBB Journal, Number: 82, Ankara, 2009, pp. 1 – 33.

Çetintürk, Ekrem. **Ceza Adalet Sisteminde Uzlaştırma**, HD Publications, İstanbul, 2009.

Çulha, Rifat. "Uzlaşma", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010, Special: 1, pp. 184 – 203.

Demir, Şamil. **Avukatın Uzlaşma Sağlama Yetkisi**, Adalet Publishing House, Ankara, 2011.

Demirbaş, Timur. **Ceza Hukuku Genel Hükümler**, 9. Edition, Seçkin Publishing, Ankara, 2013, **(Genel Hükümler)**.

Demirbaş, Timur. **İnfaz Hukuku**, 3. Edition, Seçkin Publishing, Ankara, 2013.

Dendorfer, Renate. "Almanya ve Avusturya Örnekleri", **Dünyada Arabuluculuk Uygulamaları Konferansı,** TBB Publications: 216, Ankara, 2012, pp. 48 – 58.

Dergiler, http://dergiler.ankara.edu.tr/dergiler/38/1679/17897.pdf, (13.07.2014).

Dokuz Eylül University, http://deu.summon.serialssolutions.com, (04.09.2014).

Doğan, Koray. **Ceza Muhakemesinde Hüküm**, Journal of Criminal Law, Ankara, 2008, Number: 7, pp. 171 – 201.

Dökmen, Üstün. **Küçük Şeyler**, 11. Edition, Sistem Publishing, İstanbul, 2007.

Dölling Dieter. "İşlenen Suç Nedeniyle, Suç Failleri ve Mağdurları Arasında Arabuluculuk", ttanslated by Sulhi Dönmezer, **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010, Special: 1, pp. 18 – 21.

Dutertre, Gilles. **Avrupa İnsan Hakları Mahkemesi Kararlarından Örnekler**, European Council Publications, Şen Printing, Ankara, 2007.

Economy, Peter. **Uzlaşma İlkeleri**, translated by E. Sabri Yarmalı, Hayat Publishing, İstanbul, 1999.

Erdem, Mustafa Ruhan. **Türk Ceza Hukukunda Silah**, Gazi University Journal of Faculty of Law, Ankara, 2003, Volume: VII, Issue:1 – 2, pp. 187 – 199.

Erdener, Yurtcan. **CMK Avukatının ve Uzlaşma Avukatının Başvuru Kitabı**, 5. Edition, Beta Publication, İstanbul, 2007.

Erem, Faruk. **Diyalektik Açısından Ceza Yargılaması Hukuku**, 6. Edition, Işın Publishing, Ankara, 1986.

Eser, Ferda. **Ceza Muhakemesinde Uzlaşmada İzmir Modeli**, (Unpublished Master Degree Thesis) Yaşar University, Institute of Social Sciences, İzmir, 2013.

European Commission, http://www.un.org/en/aboutun/index.shtml, (16.02.2014).

Feyzioğlu, Metin. "Uzlaştırma Teklifi ve Taraflara Bildirilmesi", **Uğur Alacakaptan' a Armağan**, (Ed. Mehmet Murat İnceoğlu), Volume: 1, İstanbul Bilgi University Publications, İstanbul, 2008, **(Uzlaştırma Teklifi)**, pp. 331 – 338.

Fisher, Roger and Daniel Shapiro, **Duygularla "Mantık Ötesi" İkna Teknikleri**, translated by Özlem Gültekin, Sistem Publishing, İstanbul, 2008.

Fisher, Roger, William Ury ve Bruce Patton. **"Evet" Boyun Eğmeden Anlaşmaya Varmak**, translated by Fatma Güven Burakreis, İstanbul Bilgi University Publications, İstanbul, 2008.

Furlong, Gary T. **The Conflict Resolution Toolbox : Models & Maps For Analyzing, Diagnosing, And Resolving Conflict**, Wiley, Canada, 2005.

Gerkin, Patrick M. “Participation in Victim-Offender Madiation: Lessons Learned From Observations”, **Criminal Justice Review**, Volume: 34, Issue: 2, Georgia State University, 2009, pp. 226 – 247.

Gözübüyük, A. Şeref and A. Feyyaz Gölcüklü. **Avrupa İnsan Hakları Sözleşmesi ve Uygulaması**, 4. Edition, Turhan Publishing House, Ankara, 2003.

Grand National Assembly of Turkey (TBMM), **Meeting Records of Human Rights Investigation Commission**, Ankara, 2013.

Gupta, Dipak K. **Understanding Terrorism And Political Violence : The Life Cycle Of Birth, Growth, Transformation, And Demise**, Routledge, New York, 2008.

Gümüşel, Ebru. **Ceza Usul Hukukunda Uzlaşma Kurumu**, (Unpublished Master Degree Thesis), İstanbul University, Institute of Social Sciences, İstanbul, 2007.

Hargie, Owen and David Dickson. **Skilled Interpersonal Communication Research, Theory and Practice**, 4. Edition, Routledge, New York, 2005.

HB Restorative Justice Turkish, http://www.unodc.org/documents/justice-and-prison-reform/HB_Restorative_Justice_Turkish.pdf, (02.01.2014).

Hukuk Dergi, http://web.deu.edu.tr/hukuk/dergiler/DergiMiz7-1/PDF/ozbek7.pdf, (10.05.2014).

Hukuk Dergi, http://webftp.gazi.edu.tr/hukuk/dergi/14_1_14.pdf, (09.03.2014).

Hukuk Dergi, http://webftp.gazi.edu.tr/hukuk/dergi/7_tam.pdf, (10.07.2014).

Hukuk Makale, http://www.turkhukuksitesi.com/makale_936.htm, (18.05.2014).

İlhan Üzülmez, **Vücut Dokunulmazlığına Karşı Suçlar**, Adalet Publishing House, Ankara, 2013.

İnceoğlu, Asuman Aytekin and Ulaş Karan. "Türkiye'de Ceza Davalarında Uzlaşma Uygulamaları: Hukuki Çerçevenin Değerlendirilmesi", **Onarıcı Adalet Mağdur Fail Arabuluculuğu ve Uzlaşma Uygulamaları: Türkiye ve Avrupa Bakışı**, (Ed. Gamla Jahic and Burcu Yeşiladalı), İstanbul Bilgi University Publications, İstanbul, 2008, pp. 45 – 81.

İpek, Ali İhsan and Engin Parlak. **Mevzuatta Yapılan En Son Değişiklikler ile Ceza Muhakemesinde Uzlaşma**, 2. Edition, Adalet Publishing House, Ankara, 2013.

İstatistik, http://www.adlisicil.adalet.gov.tr/istatistik_2012/12.pdf, (10.07.2014).

İstatistik, http://www.adlisicil.adalet.gov.tr/istatistik_2013/19.pdf, (10.07.2014).

İzmir Barosu, http://www.izmirbarosu.org.tr, (14.07.2014).

Jahic Galma and Burcu Yeşiladalı. "Onarıcı Adalet: Yeni Bir Yaklaşım", **Onarıcı Adalet Mağdur Fail Arabuluculuğu ve Uzlaşma Uygulamaları: Türkiye ve Avrupa Bakışı**, (Ed. Galma Jahic and Burcu Yeşiladalı), İstanbul Bilgi University Publications, İstanbul, 2008, pp. 15 – 20.

Kalem Berk, Seda. **Türkiye' de "Adalete Erişim" Göstergeler ve Öneriler**, Tesev Pblications, İstanbul, 2011.

Kalem, Seda. "Ceza Davalarında Uzlaşma: Uygulayıcı Görüşü", **Onarıcı Adalet Mağdur Fail Arabuluculuğu ve Uzlaşma Uygulamaları: Türkiye ve Avrupa Bakışı**, (Ed. Galma Jahic and Burcu Yeşiladalı), İstanbul Bilgi University Publications, İstanbul, 2008, pp. 83 – 108.

Kanbur, Mehmet Nihat. **Kendiliğinden Hak Alma Fiillerinin Yeni Türk Ceza Kanunu Bakımından Değerlendirilmesi**, Journal of Criminal Law, Ankara, 2006, Issue: 2, pp. 67 – 99.

Karakara, http://www.kararara.com/forum/viewtopic.php?f=46&t=10283, (03.04.2014).

Karakara, http://www.kararara.com/yargitay/YHDK/yrgtyk12348.htm, (03.04.2014).

Katoğlu, Tuğrul. **Ceza Hukukunda Suç Mağduru Kavramının Sınırları**, AÜHFD, 2012, Volume: 61, Issue: 2, pp. 657 – 693.

Kaymaz, Seydi and Hasan Tahsin Gökcan. **Uzlaşma ve Önödeme**, 2. Edition, Seçkin Publishing, Ankara, 2007.

Kazancı, http://kazanci.com.tr/gunluk/12cd-2012-13117.htm, (23.04.2017).

Kekeç, Elif Kısmet. **Arabuluculuk Yoluyla Uyuşmazlık Çözümünde Temel Aşamalar ve Taktikler**, Adalet Publishing House, Ankara, 2011.

Köknel, Özcan. **Akıl ile Düşünce Gücü**, Altın Kitaplar Publishing House, İstanbul, 2003.

Kunter, Nurullah, Feridun Yenisey and Ayşe Nuhoğlu. **Muhakeme Hukuku Dalı Olarak Ceza Muhakemesi Hukuku**, 18. Edition, Beta Publication, İstanbul, 2010.

Kupchan, Charles A.**How Enemies Become Friends: The Sources of Stable Peace**, Princeton University Press, New Jersey, 2010.

Küçükyumuk, Adnan. **Ceza Muhakemesinde Uzlaşma**, (Unpublished Master Degree Thesis), Selçuk University, Institute of Social Sciences, Konya, 2010.

Macuncu, Muhsin. "Amerikan Hukuk Sisteminde Anlaşmazlıkların Alternatif Çözümleri", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010, Special: 1, İstanbul, 2010, pp. 75 – 85.

Mecit Kemal and İsmail Ademoğlu. "Alternatif Uyuşmazlık Çözüm Yollarından Uzlaşma Kurumunun Gelişimi ve Hukukumuzdaki Yeri", **Uzlaşma**, Bahçeşehir

University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010, Special: 1, İstanbul, 2010, pp. 348 – 390.

Miall, Hugh, Oliver Ramsbotham ve Tom Woodhouse, **Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts**, Polity Press, Cambridge, 2000.

Mitrani, Aslı Ataş. "Adli Psikoloji", **Psikolojiye Giriş**, Anadolu University Publication, Publication No: 2686, Eskişehir, 2012.

Moore, Christopher W. and Peter J. Woodrow. **Handbook of Global and Multicultural Negotiation**, Jossey-Bass, San Francisco, 2010.

Navaro, Leyla. **Beni Duyuyor Musun?**, 3. Edition, Ya-Pa Publications, Ankara, 1990.

Nuhoğlu, Ayşe. "Uzlaşma Bakımından Şikâyete Bağlı Suçlar", **Ceza Muhakemesi Hukukunda Uzlaşma,** (ed. Feridun Yenisey), Arıkan Publishing House, İstanbul, 2005, pp. 281 – 284.

Nuhoğlu, Ayşe. "Uzlaşma Bakımından Şikâyete Bağlı Suçlar", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010, Special: 1, İstanbul, 2010, pp. 86 – 92.

Nur Centel and Hamide Zafer, **Ceza Muhakemesi Hukuku**, 7. Edition, Beta Publication, İstanbul, 2010, **(CMH)**.

Onarıcı Adalet. **Onarıcı Adalet Programları El Kitabı**, Criminal Justice Handbooks, translated by Civil Society Association in Criminal Execution System (CISST), New York, 2006, pp. 5 – 11.

Özbek, Mustafa Serdar. "Çağdaş Ceza Adaleti Sistemlerinde Alternatif Çözüm Arayışları ve Arabuluculuk Uygulaması", **Uzlaşma**, Bahçeşehir University Law

Faculty Kazancı Refereed Law Journal, İstanbul, 2010, Special: 1, **(Arabuluculuk Uygulaması)**, pp. 116 – 183.

Özbek, Mustafa. **Adalete Ulaşmanın İyileştirilmesi ve Alternatif Uyuşmazlık Çözümüne Yöneliş,** Hukuk Merceği 7, Conference and Panels, Ankara Bar, 2006, pp. 523 – 529.

Özbek, Mustafa. **Avrupa Birliğinde Alternatif Uyuşmazlık Çözümü,** TBBD, 2007/68, pp. 265 – 320.

Özbek, Mustafa. **Avrupa Konseyi Bakanlar Komitesinin Ceza Uyuşmazlıklarında Arabuluculuk Konulu Tavsiye Kararı**, Dokuz Eylül University, Law Faculty Journal, Volume: 7, Number: 1, İzmir, 2005, pp. 127 – 166.

Özbek, Mustafa. **Ceza Muhakemesi Kanununda Uzlaştırma**, Ankara University Law Faculty Journal, 2005, Volume: 54, Number: 3, **(CMK' da Uzlaştırma)**, pp. 289 – 321.

Özbek, Mustafa. **Dünya Çapındaki Adalete Ulaşma Hareketiyle Ortaya Çıkan Gelişmeler ve Alternatif Uyuşmazlık Çözümü**, Ankara University Law Faculty, 2002-51-02, pp. 121 – 162.

Özbek, Veli Özer and Koray Doğan. **Ceza Muhakemesi Kanunu' nda 5560 Sayılı Kanun' la Yapılan Değişikliklerin Değerlendirilmesi**, Journal of Criminal Law, Ankara, 2006, Issue: 2, pp. 227 – 252.

Özbek, Veli Özer, Mehmet Nihat Kanbur, Koray Doğan, Pınar Bacaksız and İlker Tepe. **Türk Ceza Hukuku Özel Hükümler**, 5. Edition, Seçkin Publishing, Ankara, 2013.

Özbek, Veli Özer, Mehmet Nihat Kanbur, Koray Doğan, Pınar Bacaksız, İlker Tepe. **Ceza Muhakemesi Hukuku**, 5. Edition, Seçkin Publishing, Ankara, 2013, **(Ceza Muhakemesi)**.

Özbek, Veli Özer. **Ceza Hukukunda Suçtan Doğan Mağduriyetin Giderilmesi**, Seçkin Publising House, Ankara, 1999, **(Mağduriyetin Giderilmesi).**

Özen, Atilla. "Ceza Yargılamasında Uzlaşma", **Uzlaşma**, Bahçeşehir University Law Faculty Refereed Law Journal, İstanbul, 2010, Special: 1, pp. 311 – 326.

Özen, Mustafa. **Non Bis In Idem, the principle of (adjudication is not made twice fort he same action)**, Gazi University, Journal of the faculty of Law, Volume.:XIV, Number: 1, Ankara, 2010, pp. 389 – 417.

Öztürk Bahri and Mustafa Ruhan Erdem. **Uygulamalı Ceza Hukuku ve Güvenlik Tedbirleri**, 13. Edition, Seçkin Publishing, Ankara, 2005.

Öztürk, Bahri, Durmuş Tezcan, Mustafa Ruhan Erdem, Özge Sırma, Yasemin F. Saygılar Kırıt, Özlem Özaydın, Esra Alan Akcan and Efser Erdem. **Nazari ve Uygulamalı Ceza Muhakemesi Hukuku**, 5. Edition, Seçkin Publishing, Ankara, 2013.

Öztürk, Yavuz. "Uygulayıcı Bakışı ile Uzlaşma", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010, Special: 1, İstanbul, 2010, pp. 204 – 282.

Öztürk, Yavuz. "Uygulayıcı Gözüyle Uzlaşma", **Ceza Muhakemesi Hukukunda Uzlaşma**, (ed. Feridun Yenisey), Arıkan Publishing House, İstanbul, 2005, p. 165 – 186.

Pelikan, Christa. "Onarıcı Adalet Üzerine", **Onarıcı Adalet Mağdur Fail Arabuluculuğu ve Uzlaşma Uygulamaları: Türkiye ve Avrupa Bakışı,** (Ed. Galma Jahic and Burcu Yeşiladalı), İstanbul Bilgi University Publications, İstanbul, 2008, p. 21 – 28.

Platt, John. "In Court Conciliation: A Discussion Paper", **Liverpool Law Review**, Volume: 18, Issue: 2, Springer Publishing, 1996, pp. 188 – 195.

QFinance: **The Ultimate Resource**, A & C Black, London, 2010.

Rehber, http://www.ab.gov.tr/files/rehber/10_rehber.pdf, (07.05.2014).

Reske, Henry J. **Victim – Offender Mediation Catching On**, ABA Journal, Volume: 81, Chicago, 1995.

Rona Aybay, **An Introduction to Law**, 2. Edition, İstanbul Bilgi University Press, İstanbul, 2009.

Sarısözen, M. Sehat. **Uyuşmazlıkların Alternatif Çözüm Yolları Işığında Avukatlık Hukukunda Uzlaştırma**, Yetkin Publications, Ankara, 2011.

Schehr, Robert Curl. "From Restoration to Transformation: Victim-Offender Mediation as Transformative Justice", **Conflict Resolution Quarterly**, Wiley Subscription Services, Inc., A Wiley Company, 2000, Volume 18, Issue 2, pp. 151 – 169.

Serials Solutions, http://nj8bs2kt8z.search.serialssolutions.com/, (04.09.2014).

Sezer, Ahmet. **Öğreti ve Uygulamada Ceza Usul Hukukunda Uzlaşma**, Adalet Publishing House, Ankara, 2010.

Soygüt Arslan, Mualla Buket. "Ceza Hukukunda Mağdurun Korunması ve Onarıcı Adalet Anlayışı", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010, Special: 1, İstanbul, 2010, pp. 284 – 310.

Soygüt Arslan, Mualla Buket. **Ceza Muhakemesinde Uzlaşma: Temel Sorunlar ve Öneriler**, Journal of Crime and Punishment, M.B., 2008, pp. 81 – 99.

Soysal, Tamer. "Türk Ceza Hukukunda Uzlaşma", **Ceza Muhakemesi Hukukunda Uzlaşma**, (ed. Feridun Yenisey), Arıkan Publishing House, İstanbul, 2005, pp. 203 – 246.

Summon Center, http://search.proquest.com/docview/194372070?pq-origsite=summon#center , (04.09.2014).

Şahin, Cumhur and Neslihan Göktürk. **Ceza Muhakemesi Hukuku**, Volume: 2, 2. Edition, Seçkin Publishing, Ankara, 2013.

Şahin, Cumhur. **Ceza Muhakemesi Hukuku**, Volume: 1, 4. Edition, Seçkin Publishing, Ankara, 2013.

Şahin, Cumhur. **Ceza Muhakemesi Kanunu Gazi Şerhi**, Seçkin Publishing, Ankara, 2005.

Tamar, Müge. **Gençlikte Değişim ve Süreklilik**, Çelikkol Publishing, İzmir, 2005.

Tanrıver, Süha. **Hukuk Uyuşmazlıkları Bağlamında Alternatif Uyuşmazlık Çözüm Yolları ve Özellikle Arabuluculuk**, TBBD, Number: 64, 2006, pp. 151 – 177.

TBB Dergisi, http://tbbdergisi.barobirlik.org.tr/m2006-64-227, (08.12.2013).

TBB Dergisi, http://tbbdergisi.barobirlik.org.tr/m2007-68-291, (10.03.2014).

TBMM,http://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.goruntule?pTutanakId=91, (07.05.2014).

Tekin, Erim. **Türk Ceza Adalet Sisteminde Mağdur-Fail Arabuluculuğu: Uzlaşma Kurumunun Yasal Analizi**, (Unpublished Post-graduate Thesis), Institue of Social Sciences, İstanbul Bilgi University, İstanbul, 2010.

Tekin, Uğur. "Çocuk Yargılamasında Avrupa' daki Yeni Uygulamalar", **Çocuklar ve Suç – Ceza**, (ed. Yener Ünver), Comperative Current Criminal Law Series: 4, Seçkin Publishing, Ankara, 2005, pp. 487 – 492.

Tezcan, Durmuş, Mustafa Ruhan Erdem and R. Murat Önok. **Teorik ve Pratik Ceza Özel Hukuku**, 10. Edition, Seçkin Publishing, Ankara, 2013, **(Ceza Özel Hukuku).**

Tezcan, Durmuş, Mustafa Ruhan Erdem, Oğuz Sancakdar and Rifat Murat Önok. **İnsan Hakları El Kitabı**, 4. Edition, Seçkin Publishing, Ankara, 2011.

Topçu, Sedat. **Çocuk ve Gençlerin Cinsel İstismarı Ensest ve Pedofili**, 2. Edition, Doruk Publishing, Ankara, 1997.

Toroslu, Nevzat and Metin Feyzioğlu. **Ceza Muhakemesi Hukuku**, Savaş Publications, Ankara, 2012.

Tunç, Nazım. **Ceza Muhakemesi Hukukunda Uzlaştırma**, (Unpublished Master Degree Thesis), Bilecik University, The Institute of Social Sciences, Bilecik, 2010.

Turkish Linguistic Society, http://www.tdk.gov.tr/ , (01.01.2014).

Ulusal Tez Merkezi, https://tez.yok.gov.tr/UlusalTezMerkezi/, (10.05.2014).

Umbreit, Mark S. "Mediation of Victim Offender Conflict", **Journal of Dispute Resolution**, University of Missouri, Columbia, 1988, pp. 85 – 105.

UNDP and Ministry of Justice, **International Workshop for the Victim– Offender Conciliation in the Criminal Justice System**, İstanbul, 2012.

UNDP and Ministry of Justice, Status Analysis Group Actions for the Project of Developing the Conciliation Implementations in Criminal Justice System, 3. Group Report**, Suça Sürüklenen Çocuk ve Suç Mağduru Çocuklarda Uzlaşma,** Ankara, 2008, pp. 1 – 26.

Ury, William. **Pozitif Hayır' ın Gücü**, translated by Aylin Yengin, İnkılap Publishing House, İstanbul, 2007.

Ury, William. **Zor İnsanla Diyalog**, translated by Murat Özkul, Öteki Printing House, Ankara, 1999.

Uzlaşma Yönergesi, http://www.istanbulbarosu.org.tr/documents/UZLASMA_YONERGESI20050929.doc, (13.07.2014).

Uzlaşma, http://www.uzlasma.adalet.gov.tr/, (06.03.2014).

Uzlaştırma Teklifi, http://www.feyzioglu.av.tr/yayin/uzlastirma-teklifi-ve-taraflara-bildirilmesi.html, (11.03.2014).

Ünver, Yener and Hakan Hakeri. **Ceza Muhakemesi Hukuku**, 5. Edition, Adalet Publishing House, Ankara, 2012.

Wallensteen, Peter. **Understanding Conflict Resolution War, Peace and the Global System**, Sage Publications, London, 2002.

Weitekamp, Elmar. "Reparative Justice: Towards A Victim Oriented System", **European Journal on Criminal Policy and Research**, 1993, Volume: 1, Issue: 1, pp. 70 – 93.

Yapar, Mehmet Emin. **Ceza Muhakemesinde İddia Pazarlığı**, Adalet Publishing House, Ankara, 2013.

Yargıtay, http://emsal.yargitay.gov.tr/VeriBankasiIstemciWeb/, (01.01.2014).

Yargıtay, http://www.kararara.com/yargitay/4cd/k1195.htm, (03.04.2014).

Yazıcı Tıktık, Çiğdem. **Arabuluculukta Gizliliğin Korunması**, On iki Levha Publishing, İstanbul, 2013.

Yenisey, Feridun and Ayşe Nuhoğlu. **Ceza Muhakemesinde Uzlaşma Rehberi ve Arabuluculuk Mevzuatı**, Bahçeşehir University Publications Number:78, Uğur Publishing, İstanbul, 2013.

Yenisey, Feridun. "Ceza Muhakemesi Hukukunda "Uzlaştırma" Hakkında Temel Bilgiler", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010, Special: 1, İstanbul, 2010, pp. 7 – 17.

Yenisey, Feridun. "Ceza Muhakemesinde Uzlaşma", **Ceza Muhakemesi Hukukunda Uzlaşma**, (ed. Feridun Yenisey), Arıkan Publishing House, İstanbul, 2005, **(Uzlaşma)**, pp. 247 – 258.

Yıldız, Ali Kemal. "Uzlaşma – Şikayet İlişkisi", **Uzlaşma**, Bahçeşehir University Law Faculty Kazancı Refereed Law Journal, İstanbul, 2010, Special: 1, İstanbul, 2010, pp. 93 – 115.

Yılmaz, Ejder. **Hukuk Sözlüğü**, 3. Edition, Seçkin Publishing House, Ankara, 1985.

Yılmaz, Zekeriya. **Ceza Muhakemesinde Mağdur Hakları – Davaya Katılma – Yargılama Giderleri**, Seçkin Publishing, Ankara, 2007.

Zernova, Margarita. **Restorative Justice: Ideals and Realities**, Ashgate Publishing Ltd, Abingdon, Oxon, GBR, 2007.

Zoga, Ergun. "Huzurdaki Sır", **İnsanımsılıktan Kurtuluş"** 3. Edition, Repa Publishing, Ankara, 1996.

Zoga, Ergun. "Yüceleşmenin Yüceliği", **İnsanımsılıktan Kurtuluş**, 3. Edition, Repa Publishing, Ankara, 1996.