DOKUZ EYLÜL UNIVERSITY
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THE VICTIM-OFFENDER RECONCILIATION IN TURKEY AND A CASE STUDY FROM THE PROVINCE OF AYDIN

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APPROVAL PAGE

DECLARATION

I hereby declare that this master‟s thesis as “The Victim-Offender Reconciliation in Turkey and Case Study From the Province of Aydın” has been written by myself by 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 honor.

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Merve ÖZ

ABSTRACT

Master's Thesis

The Victim-Offender Reconciliation in Turkey and Case Study From the Province of Aydın

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As there may be conflicts when two or more persons come in contact with one another or the event of relationships among human beings, we may witness the resolution of such conflicts using the concept of reconciliation. The concept of restorative justice, which is a new understanding, has emerged upon the failure of the traditional criminal understanding of the conflicts having a legal dimension to achieve the desired results. Therefore, restorative justice has brought about reconciliation as an alternative resolution.

This alternative way of resolution which has been practiced in our country since 2005 is also included in our legal system with the Articles 253-255 of the Code of Criminal Procedure No. 5271 and Article 73/8 of the Turkish Penal Code No. 5237.

In this study, the reconciliation process was evaluated in terms of the victim and the offender. The reasons of the victims and offenders to choose the reconciliation method and the effects of reconciliation were investigated. 8 investigation files that were concluded during the investigation stage as a result of the obtained performance executed by 8 different conciliators who were actively involved in the Aydın Public Prosecutor's Office's reconciliation list were examined. The qualitative data analysis was conducted with a semi-structured interview technique as a result of the voluntary participation of 11 victims and 8 offenders included in the relevant investigation files. The categories were formed

using content analysis of the participants' answers given to 15 questions included in the questionnaire.

This study further attempts to explain how the reconciliation institution is practiced for the victims and offenders who are the main actors of reconciliation. The arrangements in the Turkish Penal Code regarding reconciliation, the extension of the scope of offense and the increase in the files which are positively concluded with reconciliation reveal that reconciliation has been developing successfully in Turkey. It is also hoped that closely observing and deeply interpreting the process and carefully developing suggestions in terms of victims and offenders will contribute to the reconciliation institution as well.

Keywords: Reconciliation, Victim-Offender, Restorative Justice, Conciliator, Performance

ÖZET

Yüksek Lisans Tezi

Türkiye'de Mağdur-Fail Uzlaştırması ve Aydın İli Örnek Olay Çalışması

Merve ÖZ

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Sosyal Bilimler Enstitüsü

İngilizce İşletme Anabilim Dalı

Anlaşmazlık Çözümü Programı

İlişkilerin olduğu her yerde anlaşmazlık yaşandığı gibi bu anlaşmazlıkların çözümü de uzlaştırma kavramı ile karşımıza çıkmaktadır. Hukuki boyut kazanan anlaşmazlıklarda klasik ceza anlayışı ile istenen sonuçların alınamaması üzerine yeni bir anlayış olan onarıcı adalet kavramı ortaya çıkmıştır. Onarıcı adalet alternatif çözüm yolu olan uzlaştırmayı beraberinde getirmiştir.

Ülkemizde de 2005 yılından beri uygulanan bu alternatif çözüm yolu 5271 sayılı Ceza Muhakemesi Kanunu'nun 253-255. maddeleri ve 5237 sayılı Türk Ceza Kanunu'nun 73/8 maddesi ile hukuk sistemimizin içerisinde yer almaktadır.

Araştırmada uzlaştırma süreci mağdur ve fail açısından değerlendirmeye çalışılmıştır. Uzlaştırma yöntemini seçen mağdur ve faillerin uzlaştırmayı tercih etmelerinin sebepleri ve uzlaşmalarının etkileri araştırılmıştır. Aydın Cumhuriyet Başsavcılığı uzlaştırma listesinde aktif olarak görev yapan 8 ayrı uzlaştırmacının soruşturma evresinde bir edim karşılığında uzlaştırma ile sonuçlandırdıkları 8 soruşturma dosyası incelenmiştir. Soruşturma dosyalarında 11 mağdur ve 8 failin gönüllü katılımları sonucunda yarı yapılandırılmış görüşme tekniği ile nitel veri analizi yapılmıştır. 15 soruyu yanıtlayan katılımcıların verdikleri cevaplardan içerik analizi ile kategoriler oluşturularak uygulamada uzlaştırma süreci incelenmiştir.

Uzlaştırmanın baş aktörleri olan mağdur ve failler açısından uzlaştırma kurumunun nasıl uygulandığı anlatılmaya çalışılmıştır. Türk Ceza Hukuku'nda

uzlaştırmaya yönelik yapılan düzenlemeler, suç kapsamının genişletilmesi ve anlaşma ile sonuçlanan dosyaların artması uzlaştırmanın başarılı bir şekilde ilerlediğini göstermektedir. Sürecin mağdur ve failler açısından gözlemlenmesi, yorumlanması ve öneriler geliştirilmesinin de uzlaştırma kurumuna katkı sağlayacağı ümit edilmektedir.

Anahtar Kelimeler: Uzlaştırma, Mağdur-Fail, Onarıcı Adalet, Uzlaştırmacı, Edim.

THE VICTIM-OFFENDER RECONCILIATION IN TURKEY AND CASE STUDY FROM THE PROVINCE OF AYDIN

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ABBREVIATIONS

ADR	Alternative Dispute Resolution
CMK	Criminal Procedure Law
CMUY	Reconciliation Regulation in Criminal Law
et al.	Et Alia
etc.	Et Cetera
i.e.	Id Est
No.	Number
O	Offender
p	Page No
SEGBIS	The Audio and Video Information System
SMS	Short Message System
TCK	Turkish Penal Code
UK	United Kingdom
USA	United States of America
UYAP	National Judiciary Informatics System
V	Victim
VOR	Victim Offender Reconciliation

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INTRODUCTION

Conflicts occurred in terms of victims, offenders, community and criminal justice have increased in a short period as the traditional criminal approach made only offender-oriented decisions. As a result, instead of the traditional criminal approach, different methods have been sought. Reconciliation, which is a method allowing peace rather than punishing persons and communication among the parties through a neutral person, has begun to be utilized. At first, this alternative method of resolution, which was used by only a few states of law, started to be utilized in many states of law. In our country, the reconciliation process which has been practiced since 2005 gives the expected positive results. The most important outcomes are resolving conflicts with peace and helping to reduce the increased burden of courts. Individuals who cannot express themselves during the court proceeding have the chance to disclose the effects caused by the conflict, their regrets and their real desires with the help of an impartial third party.

Furthermore, the scope of offense was expanded and necessary arrangements were made for the conciliators in charge during the legalization process. Reconciliation has become a method that can be applied in simple criminal cases both at the investigation and the prosecution stages. The conciliators who guide the parties in this process become part of this process following passing through specific training on law and negotiation skills. It is aimed to further develop reconciliation and increase the cases of resolution with victim-offender reconciliation. For this reason, it is useful to examine the reconciliation institution in detail from the perspectives of the agreeing parties.

In the first chapter, the concept of reconciliation is emphasized. Then, the historical development of reconciliation and the concept of restorative justice which is very important from a legal point of view are discussed. The benefits arising out of reconciliation in terms of victim, offender, community and criminal justice are explained and the forms of its practice in other countries are briefly mentioned. In the second chapter, the issues of the legalization process of reconciliation and how it is practiced in our country are elaborated. In the light of the Reconciliation Regulation,

the necessary conditions for reconciliation, the types of crimes and the characteristics that a conciliator should bear are emphasized. In the final chapter, the victims and the offenders who were included in eight different files and reached to a conciliation due to any pecuniary or non-pecuniary compensation the investigation phase of the eight active conciliators registered to the Reconciliation Office of the Aydın Chief Public Prosecutor were interviewed. It was aimed to obtain the opinions of the agreed parties on the reconciliation authority by using a semi-structured question technique in face-to-face interviews with 11 victims and 8 offenders. Therefore, it was attempted to research what sorts of effects the reconciliation authority may have on the agreed parties.

This study was carried out with the participation of the victims and offenders of the Aydın Chief Public Prosecutor's Office who were the parties of simple criminal cases that are subject to reconciliation. Before the interviews, preliminary information was obtained about the parties from the conciliators and they were called on the phone if they would like to participate. The data were collected by personally meeting the victims and offenders in the files that were peacefully resolved as a result of the performance among the simple criminal cases transferred to the Reconciliation Office. A total of 19 participants were interviewed with the participation of 11 victims and 8 offenders. The types of crimes in the 8 investigation files included in the study are in forms of menace, libel, willful injury attempt, bodily harm, reckless injury.

The criterion sampling which is among the purposive sampling method was used. In the purposeful sampling, the individuals who constitute the sampling are selected among the persons who can answer the research question. The criterion sampling consists of individuals, events, objects or situations having the identified characteristics related to the problem. In this study, the persons who have been reconciled with a pecuniary or non-pecuniary performance have been selected from the investigation files with at least one victim and one offender. The aim is to find out the opinions of the agreeing party about the steps taken. Since all conflicts occurred in the province of Aydın, they are the files of the Aydın Chief Public Prosecutor's Office and consist of the offenses that are within the scope of reconciliation during the investigation phase.

CHAPTER ONE

THE CONCEPT OF RECONCILIATION, RESTORATIVE JUSTICE, AND BENEFITS OF RECONCILIATION

1.1. CONCEPT AND LEGAL CHARACTERISTICS

1.1.1. Conciliation, Reconciliation and the Concept of Conciliator

Communal life brought differences and these differences led to the emergence of conflicts in communities, which is clearly explained by M. Afrazur as, "When two or more social entities (i.e., individuals, groups, organizations, and nations) come in contact with one another in attaining their objectives, their relationships may become incompatible or inconsistent" (Rahim, 2001:1). Conflicts are inevitable, but managing them is a fact that can be solved by individuals who are the very source of such conflicts.

Conflicts can be also resolved peacefully by the desires of the individuals. There are very few cases where all individuals agree. Before making a decision, individuals discuss with each other, exchange views, and in the end, they often meet in the middle, so they reach reconciliation (Kağıtçıbaşı, 2012:340). Yet, this solution will be possible if both parties find a middle ground or settle their conflicts by agreeing.

The dictionary meaning of conciliation means "agreeing on disputes arising from differences of opinion and interest between persons by removing them through mutual compromises" or "coming to terms", "coming to an agreement" (Turkish Linguistic Society, 2018). In legal jargon, it means "maintaining unity, coming to an integrity and unity for the actions to be performed by resolving conflicts between the opposites" (Yerdelen, 2018:19).

Reconciliation is as old a resolution as human existence. Individuals have been able to solve their problems with the help of an independent third party conciliator when they could not resolve alone. It has gradually taken its present form with the development of societies and the legal systems. Although various examples of reconciliation in different legal systems are available, it is generally a peace-building activity with the help of an impartial third party.

Moreover, agreeing means “uniting in terms of thought, emotion, and purpose” (Turkish Linguistic Society, 2018). Agreements may result in a reconciliation by individuals who have differences of thought and interest, but may also be concluded with an agreement using a third party who is an independent and impartial eye. In this case, the concept of conciliator emerges. When we look at the world, the need for conciliators has increased due to reasons such as choked judicial system and prolonged trial process, victim's being unable to meet the necessary satisfaction for his victimization and the accused's being unable to express himself correctly.

Reconciliation whose basic philosophy is rooted in the idea of restorative justice is defined as a process that allows the victim and the offender to come together in a safe and supervised environment with the help of an impartial person. In this process, the presence of a conciliator who makes the victim and the offender feel relaxed, safe and is equal to the parties is very important. In particular, the more the victim feels safe, the more clearly he reveals the situation he experienced and his expectations as well.

Although in some sources the conciliator is described as the person(s) working for the reconstruction of the broken dialogue, maintaining a healthy discussion environment and introducing suggestions to find a solution to the conflict in cases where the conciliator is unable to resolve the conflict between the parties, it should be kept in mind that the conciliators are only transformative in the transition of the parties from the state of conflict to the state of peace (Akçay, 2011:130). The task of the conciliator is not to offer advice or resolutions, but to enable the parties to communicate correctly in the negotiation process.

Conciliation is not reconciliation itself but it is the desired positive goal. However, there is no guarantee that the positive goal will be attained at the end of this process. Reconciliation process may bring about a positive result due to the agreement of the parties or a negative result due to disagreement of the parties (Ekinci and Yemenici, 2018:448). For this reason, conciliation is a concept that expresses only the result while reconciliation is a concept that describes the entire negotiation stage.

On the other hand, Yerdelen, for instance, discusses that while reconciliation refers to the process executed under the chairmanship of the conciliator, conciliation refers to the agreement reached as a result of this process or the negotiations between

the parties without having any conciliator (Yerdelen, 2018:19). As it is understood, the victim and the offender may also come to a conciliation without having a conciliator who is a third eye.

These concepts in the Turkish Criminal Law are also defined in the Regulation on Reconciliation in Criminal Procedure (Reconciliation Regulation in Criminal Law [CMUY], 2017: article 1). Accordingly, conciliation means that the victim and the offender have agreed by the procedures and principles in the regulation for an offense falling within the scope of reconciliation. Secondly, reconciliation refers to the process of conflict resolution by making the victim and the offender agreed on middle grounds using a conciliator by the procedures and principles of the regulation for an offense falling within the scope of reconciliation. Conciliator is defined as a person who is a lawyer or has studied law and assigned by the approval of the public prosecutor to manage the reconciliation negotiations between the victim and the offender.

1.1.2. Legal Characteristics of Reconciliation

Although conciliation refers to the two parties' preference of a state of peace in an issue where they conflict, it is an alternative way of resolution that carries legal status nowadays. Countries may have differences according to their justice systems but reconciliation is already a recognized method of restorative justice.

There are two different legal systems in the world, namely the Anglo American legal system and the Continental European legal system. The way of alternative conflict resolution, which is an institution with Anglo-Saxon roots, has quickly developed and practiced in the Continental Europe due to its fundamentally pragmatist character and the effect of globalization as well (Tanrısever, 2006:151).

Criminal law is a branch of law which examines the structure of the human activity called offense and enforces sanctions specific to such offense. The two main elements of criminal law are offense and sanctions (Ünal et al., 2018:3). In criminal law, the retributive function is utilized if the offense is committed. However, with increasing population and increasing criminal activities, the retributive function has given way to reconciliation in the Anglo-Saxon and Continental European legal systems as retribution cannot make the victim or the offender happy at all.

Our country has a homogenous societal structure which includes different cultures. Although this situation leads to conflicts arising from different perspectives, we can see that reconciliation has been practiced for many years in some regions. Moreover, in the legal sense, information on reconciliation is regulated in the Criminal Justice System with Articles 253, 254 and 255 of the Code of Criminal Procedure No. 5271.

A criminal law that interrupts the relationships between victims and offenders is abandoned; instead, offense is assumed to be not only against the state but against human beings in essence (Özbek, 2010). The main objective is that the victim and the offender conclude not just by satisfying one party only but also the real interests of both parties in the event of any conflict. In practice, it can be seen that an offender who is punished in line with the traditional concept of retribution cannot make the victim happy in full sense. For example, in an offense where the victim has suffered pecuniary damage, the compensation of such loss may be a more appropriate result in virtue of the victim.

The reconciliation authority may appear to only be a remedy for the victimization of the parties in conflict, but it paves the way for a more peaceful environment. It is of utmost importance that the victim is compensated for his loss which may be caused by the offensive act and that the victim can explain what he feels at the time of offense. Thus, the traditional concept of retribution is replaced by reconciliation which is an alternative resolution, and thus peaceful results may be achieved.

Reconciliation has a mixed legal characteristics and it is an institution consisting of material criminal law in one aspect and of criminal procedures law in another aspect (Yerdelen, 22). If the offense is within the scope of conciliation, an offender and a victim must first seek reconciliation. If the parties do not agree using the appointed conciliator, then the court proceeding is continued. In other words, in our legal system, any offense under reconciliation must be first sought for agreeing.

Furthermore, in the sense of material criminal law, if the victim and the offender agree, the offender has no liability for the penalty arising from such offense because the victim has agreed to reconcile. While reconciling, the victim may request any pecuniary or non-pecuniary performance or want to agree without any such

request. If there is a request for performance, the offender fulfills the requirement of reconciliation by meeting such performance. In this case, there is no criminal liability for the offender too.

Finally, reconciliation is an institution that protects the resources of the state and eases the workload of the courthouses as it is a way of resolution in which the result is obtained faster than the court proceedings. Courts may utilize their resources that they utilize for simple offenses for other types of offenses. With this aspect, reconciliation will also provide relief for the legal system.

1.2. HISTORICAL DEVELOPMENT OF RECONCILIATION

People have collectively lived and created communities since their existence. While collective life often protected them from some dangers, it could not prevent conflicts among people and acts harming people. The idea that several acts which are thought to be wrong by society should be penalized emerged as such acts would harm innocent people. In general, the concept of offense is defined as a deviation from the norms existing in society. Offense, just like a deviant behavior, is an act deviating from the values and norms of society (Burkay, 2008:3). Norms can also be defined as rules and patterns accepted by society.

When societies were transformed into the state structures, they developed their existing norms and established laws. However, laws can be shaped according to the needs emerging over time. For example, cybercrime has not been mentioned in the years when technology was not developed, but today it has become a crime that we often encounter. Moreover, the sanctions of states enforced to prevent offenses may vary.

On the other hand, laws may lose their effectiveness during the process of rapid social change. In this context, one cannot argue that laws fully satisfy the demands of people. Therefore, the formation of laws in societies is a dynamic process. This process continues with the life of societies. In short, the law needs new regulations due to changes in social relations (Bahar, 2009:177).

It is understood that the traditional criminal approach could not help the victim to attain the desired outcome as a result of trials as the victim has not been fully

compensated for his loss even though the offender is sentenced with the necessary retribution following the criminal act. For example, in the case of a property damage offense, the victim's original request for restoring the damaged property is a much more rational resolution. This situation caused legal systems to search for a new resolution. Peace-Making resolutions implemented without the rule of law have succeeded in taking their places in the legal systems of states.

When we examine the criminal sanctions in the historical process, it is observed that they are applied in the forms of isolating from society by execution, exile, imprisonment or physical torture or torment and causing social harm (Artuk and Alşahin, 2015:146). With the advance of time and the change of societies, the criminal justice system has taken its present form. It is observed that retributions issued according to the modern criminal law caused chokes in the legal system in time. As a result of these chokes, alternative ways are started to be sought.

"Alternative dispute resolution (ADR) is a means of resolving civil disputes between two parties without resolving litigation. ADR methods include mediation, arbitration, negotiation, conciliation, early neutral evaluation, and summary jury trial, of which the most common are mediation and arbitration. ADR gained popularity in the United States starting in 1980's a way of dealing with the increasing time and expends of court trials" (Groff, 2013:1) There are alternative conflict resolution methods such as mediation, reconciliation, arbitration. The most commonly used way of resolution is reconciliation. In some systems, reconciliation can be used in the same sense as mediation.

The first victim-offender reconciliation in the history is the case of Elmira. It showed an alternative resolution to the crime of the two children who committed property damage in 1974 in Elmira, Ontario, Canada. The children were brought to justice for twenty times due to damaging property of the inhabitants of the town. The fact that children of that age can commit such crime of harming the property and repeat it twenty times is an extraordinary situation. A civil servant in the court deeply recognized the situation and requested that the children should receive psychological support and that the victims should be interviewed one by one. Upon the judge's acceptance of such request, the children who listened to the crime they had committed

from the mouths of the victims saw the seriousness of the results that the thing they thought to be a game had caused (Kervan, 2018).

The control officer in this event happened in 1974 in Canada decided that the best way to treat the two children who had committed the crime of harming the property would be to meet them with the victims and discuss compensation to be paid. The parties who came together with the help of a conciliator resolved the issue of compensation in a short period of six months. The obtained result which was satisfactory has also increased the number of reconciliation cases (Özbek, 2018:86).

Thus, for the first time, the traditional concept of retribution was abandoned and alternative resolutions were adopted. This first step in restorative justice began to spread slowly to the whole world following Canada. In general, as mentioned above, legal systems in the world are divided into two as the Continental Law System (civil law) and the Anglo-American Legal System (common law). The Continental Law System is the legal system used in Europe and Turkey-based on Roman Law. Law is subject to written rules. In the Anglo-American Law System, the judge can make law. The court's issue judgments based on the events happened, not on written rules.

The lack of a legal order in the Anglo-American system led to the emergence of a law technique based on the court's opinion and event groups. Therefore, the conflicts were discussed in detail and justified and resolved within the framework of a concrete and historical perspective (Güveyi, 2017:102). Alternative dispute resolution (ADR) methods have been started to be used as ways of resolution too. It is understood that the implementation of these methods has resulted in better resolutions because the parties who conflict can identify their interests rather than following pre-defined specific legal forms. This movement, which was first utilized in Anglo-American law, also started to be used as alternative methods in the legal systems of other countries.

Different methods such as mediation, negotiation, arbitration, and reconciliation emerge as the methods of ADR employed for victim and perpetrator. The most common one is victim-offender reconciliation. The victim and the offender are brought together by a neutral third party. Two different individuals or groups in conflict meet in the common denominator by using the conciliator's communication skills.

1.3. THE UNDERSTANDING OF RESTORATIVE JUSTICE

1.3.1. Emergence of Restorative Justice

In states of law where the traditional criminal justice system was adopted, it was understood that the retribution of the offender did not prevent the recurrence of offense and even the rate and types of offenses increased with the increasing population. This situation also threatens social peace. Therefore, the recognition of emerging problems led to the search for new ways of resolution.

Although societies have sought to ensure the right dispense of justice for ages, arrangements are still needed in the legal sense. The dissatisfaction with the results of the traditional criminal justice caused to discuss a new understanding which is restorative justice. "Arguably, the term 'Restorative Justice' was first introduced in the contemporary criminal justice literature and practice in the 1970s. However, strong evidence suggests that the roots of its concept are ancient, reaching back into the customs and religions of most traditional societies" (Gavrielides, 2007:20).

It is aimed to satisfy the parties affected by the actual crime on condition that the loss due to the actual crime is compensated and the victim is brought back to the state before the actual crime. This approach stipulates a crime and criminal justice mechanism that compensates the victim. The aim is to compensate for the loss of the victim and to rebuild social peace, safety and security in this manner (Bıçak, 2018:3). Restoring social peace is the greatest function of restorative justice because the traditional criminal understanding does not separately and individually evaluate the victim, the offender, and the community; however, restorative justice is a peace-making understanding by considering the loss incurred to all elements and working for reconstruction of peace.

The extent of the damage suffered by the victim can be analyzed with the understanding of restorative justice. This analysis avails the victim, the offender, the community and the justice system. As stated above, the goal is the construction of social peace. Although the concept of restorative justice seems to be only a victim-sided view, it serves four different rooms.

The influence of the understanding of restorative justice is seen both in the Continental European legal system and the Anglo-Saxon legal system. For instance,

Germany, France, Austria in the Continental European legal system and the United Kingdom, the United States and Canada in the Anglo-Saxon legal system are the primary countries utilizing restorative justice. These countries implement alternative ways of resolution according to the functioning of their legal systems.

Also, international standards are being developed in terms of countries utilizing alternative ways of resolution together with restorative justice. To do this, the Council of Europe, the European Union, and the United Nations are carrying out significant works on the issue of accessing justice. These works are about the most commonly utilized reconciliation method which is among alternative ways of resolution. The Council of Europe has published some advisory documents to encourage reconciliation. They are the Decision of the Conciliation in Criminal Disputes No. 19 and the European Code of Conduct for Mediators (Özbek, 2005:127). The Council is encouraged to utilize reconciliation and other alternative ways of resolution. The European Union has carried out some studies on access to justice for the member states. The most important of these studies is *the Green Book* which emphasizes the need to improve the right to access to justice regarding alternative ways of resolution (Özmumcu, 2016:810). "Guidance for Effective Mediation", prepared by the Secretary-General of the United Nations, is a resource developed for an effective resolution of intra-state and inter-state conflicts. It is a guide for the peaceful resolution of disputes and the prevention of conflicts that may occur (United Nations, 2012). The concept of restorative justice adopted by many legal systems in the world has been developing in terms of victim, offender, community and criminal justice system together with the alternative resolution methods employed and the standards identified.

1.3.2. Differences Between Restorative Justice and Traditional Retributive Justice

States adopting the understanding of restorative justice in legal sense realize that the real victim is not the state itself but the victim who is suffered due to the offense in all courts. The true demands of the victim affected by the offense may not be the retribution of the offender, but the compensation of his pecuniary or non-pecuniary loss.

Regarding this issue, Yavuz discusses that one of the most important problems of the understanding of retributive justice is that it prioritizes that the offender should be penalized rather than recovering the damage caused to the victim and society by such offense (Yavuz, 2015:92). This situation does not allow the victim affected by the offense explaining his requests and his feelings as a result of such event. Perhaps in this process, the victim may request the reinstatement of his loss caused by the offense rather than just retribution of the offender. This need also directs the parties in conflict towards a restorative mechanism.

While the offender plays a primary role in the understanding of retributive justice, the victim is placed in the second spot. The victim is in the process of retribution but judicial bodies decide on what sort of retribution will be issued. However, in restorative justice, the victim plays an active role in the process and can decide on what his real need is. It is also worth noting that restorative justice is not just a system for the victim. As mentioned before, the restorative function is performed as victim, offender, society and judgment.

Moreover, Özbek argues that the issues highlighted by the criminal justice system are what offense is committed, who is committed such offense, and the penalty that the offender should be sentenced whereas the spots focused by the understanding of restorative justice are who is harmed by the offense, the needs of the damaged persons and who is responsible for compensating those needs (Özbek, 2005:5).

Following the retributive justice, a penalty to be discussed if it is appropriate to the nature of the offense, the victim who spent a long time before the judicial authorities, the offender who could not express himself as a result of the short period of the court, and the example of the state using his resources in this process of justice can be seen both in our country and in the world. Besides, the time to be spent and the costs of accessing justice can cause people to stop looking for their rights too. However, even the introduction of one of the alternative ways of resolution in the legal system can make the state and the individuals more comfortable in terms of time and costs.

It is seen that most of the parties of reconciliation files submitted to the judicial authorities file their complaints due to the severity of the conflict they had and that over time, they can manage their conflicts without the involvement of judicial

authorities. Furthermore, the implementation of direct criminal proceedings can have irreparable consequences for the offender instead of the alternative means provided by restorative justice. An offense of libel, which is concluded using reconciliation, gives the offender a chance to avoid being registered in forensic records and archives and the victim to compensate his loss due to the offense without any trial. Otherwise, the victim will not be able to recover the damage too.

The most important aspect of restorative justice is that both the victim and the offender can express themselves clearly. The person suffered by the offense, the consequences of this damage and the real needs are revealed. The psychology of the offender at the time of the offense and the main source of the act show guidance towards the construction of peace. Both the victim and the offender feel special during the restorative process because the trial periods shouldn't be short and not have enough time to express themselves. When both the victim and the offender express themselves openly, they can go win-win in the conflict with the best restorative form.

Retributive and restorative systems seem to be the opposite of each other in virtue of the manner of trial. The retributive system is utilized for the offense committed by the person whereas the restorative system is used to compensate for the damage due to the offense. However, it should be noted that both systems are utilized to ensure the proper functioning of justice. Differences between retributive justice and restorative justice are shown in the table below.

Table 1: Differences Between Retributive Justice and Restorative Justice

Retributive Justice	**Restorative Justice**
The understanding that offense is committed against the state	The understanding that offense is committed against the individual and society
Control of offense is provided by the Criminal Justice System.	Control of crime is provided by society.
Offense is a personal responsibility.	Responsibility arising out of offense has personal and social dimensions.
The offender is liable for the penalty previously determined for the offense he committed.	The offender is responsible for the extent to compensate for the damage caused by the offense.

The existence of retribution prevents individuals from committing offense and regulates their behavior.	Penalty is not enough to regulate the behavior of persons. It may hamper the harmony of society, relationships.
The victim is not at the center of the trial process.	The victim is at the center of the trial process.
It focuses on what the offender did in the past.	It focuses on how to resolve the actual act.
The problem is highlighted.	Dialogue and agreement are highlighted.
Penalty is given to deter and prevent the person.	The goal is to create a peaceful environment. Recovery is for both sides.
The state represents society.	Society directly participates in the restorative process.
What the offender did in the past is important.	That the same crime is not committed in the future and the result due to the offense are important.
There is dependence on professionals.	Parties play an active role in the process.

(Roche as cited in Baytaz, 2013:125)

1.4. BENEFITS OF RECONCILIATION

1.4.1. Benefits for the Victim

The Council of the European Union highlights the needs of the victim in the "Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceeding" as "victims' needs should be considered and addressed in a comprehensive, coordinated manner, avoiding partial or inconsistent solutions which may give rise to secondary victimisation" (Official Journal of the European Communities, 2001). However, it is also worth mentioning the concept of "the damaged by the offense" which is frequently referred to in reconciliation files. Related to this, Katoğlu suggests that the concept of the victim of the offense should be understood not as anyone who suffered from the offense, but only as those who are the owners of the assets or interests violated by this act and which constitute the subject of criminal protection (Katoğlu, 2012:662).

The concept of "the damaged by the offense" stated in reconciliation files should not be confused with the victim. For example, the person who died in the offense of willful murder is the real victim whereas the relatives of the deceased are

the damaged [ones] by the offense. Furthermore, while the tenant is the victim in case of stolen property in the hands of this tenant by a thief, the owner of the property is damaged by the offense.

Although it is desirable that everyone in the judicial proceedings can benefit from judicial services in a short period and an equal manner, the heavy workload in the courts hinders this. Therefore, reconciliation, where the victim's loss can be recovered within the shortest time, is the most commonly used ADR method. Due to the prolonged judicial process, the victim may feel that justice is not done or the retribution imposed on the offender is not sufficient even if justice is done and it may lead to weaken his belief injustice. The reconciliation institution shall ensure that the victim is directly involved in the process. During the investigation and prosecution process, he becomes aware of the functioning of the process under the guidance of a conciliator. The victim, who could not find an opportunity to explain himself fully during the trial process, can explain the harm caused by the offense using a conciliator. The fact that he is being listened to and his being able to decide what he can do for the resolution are relaxing methods for the victim's psychology.

In particular, concerning children, even if the judicial process has been implemented by the Rules and Procedures regarding the Child Protection Law, the children who are party to the file may have been negatively influenced during this process. Reconciliation will help children to express themselves without the need to come to court. In the event of agreeing, their participation in the court or any judicial process will be prevented too.

Even if the offender is punished with a fine or imprisonment at the end of the trial in the traditional criminal approach, the offender can himself determine his compensation using a pecuniary or non-pecuniary performance to be fulfilled by the offender in reconciliation. The offender's fulfillment of such performance to be determined by the victim makes the victim feel valuable. Of course, such performance should be applicable in a humanistic manner.

While the victim cannot have the opportunity to find answers to the questions in his mind during the normal judicial process, the victim has the opportunity to learn the answers to all of his questions during the reconciliation negotiation. For example, a victim who is in a reconciliation negotiation for a petty offense of theft may learn

how the offender committed it and thus may take some measures to avoid the reoccurrence of the same offense. The victim of an offense of libel may speak up the effects of the event he suffered using a conciliator. The offender has also the chance to listen to the damage he has caused at first hand. Thus, the offender's becoming aware of the pecuniary or non-pecuniary consequences of the conflict may prevent the reoccurrence of the offense and new potential victimizations.

1.4.2. Benefits for the Offender

The offender is described as "a person who commits an offense causing a legal consequence" (Turkish Linguistic Society, 2018). Reconciliation is not only a victim-sided ADR. The person who is in the position of the offender in a committed act may also benefit from reconciliation. According to the traditional criminal approach, the offender who is responsible for the state only faces the victim directly with reconciliation. The offender has a chance to tell his mood when committing the offense and the reasons of such offense. Also, the first-hand hearing of the victimization arising out of the offense help the offender realize that the offense is not a simple act and see the pecuniary or non-pecuniary damages caused to the victim. The victim's and the offender's coming face to face is a desirable situation in a conciliation activity. Perhaps confronting may be a method of preventing the reoccurrence of the offense. However, in some cases, the parties may not be brought together. Again the parties agree on this under the supervision of a third person who is trained in this area.

Undoubtedly, one of the most important benefits is that no criminal record or archive record is created for those who committed such offense for the first time and children. If the victim and the offender agree as a result of negotiations held due to the offensive act, the offender shall fulfill the performance if requested by the victim. Or agreeing is maintained without any performance requirement. Thus, the trial is not continued and the file is closed. The offender fulfills his pecuniary or non-pecuniary liability to the victim.

It also provides the offender with a relief of conscience as well as prevents any criminal record after such offense in the life of the offender. For example, a person is at the situation of being an offender of reckless injury in a road accident that may

happen to anyone in the traffic. Normally, this person who has not committed any offense may continue his life without any criminal record of such case by compensating the victim's damage.

Moreover, the short duration of the courts and the low number of judges per capita also impede the offender's being able to express himself. The offender who has a chance to express himself sufficiently during reconciliation negotiations can freely explain the situation he is in and the underlying reasons for the offense.

Finally, the function of the neutral third party in negotiations is also very important. It is essential to identify who is responsible for the offense and what the victim's real wishes are. Thus, the offender has a chance to realize the conditions required for reconciliation. It is an undesirable situation for the offender not to know the real wishes of the victim and it is a big obstacle to reconciliation.

As a result of the process carried out by a conciliator who uses his communication skills correctly, the offender must transform a way that he does not repeat the offense. If the conciliator helps the offender realize the consequences of the offense that he fails to see, the offender may not repeat such offense in the future. Thus, the restorative justice system is functioned to attain its goal of peacemaking.

1.4.3. Benefits for the Community

Human beings who settled in a communal life have developed certain values and norms. After a while, norms were developed to such extent that they formed the rules of law. That individuals can easily access to justice shows that it is a healthy society. Reconciliation has several benefits for the community, which is also effective in the preference of reconciliation by many countries as a way of resolution preference.

Due to the limited length of the trial period, the victim may not have the opportunity to tell how much he was affected by the incident. In this case, the offender cannot see the consequences of the offense he has committed. If the offender fully becomes aware of the damage he has created, the recurrence of the offense may be avoided. There may be a reduction in crime rates with reconciliation.

An offense of libel committed by family members of the first degree is, for instance, is escalated to the judicial authorities as the family members do not agree among themselves. The negotiation process is commenced if the parties request following the conciliator acquires the necessary information about the event appointed by the prosecutor or the court. The conciliator who properly and effectively uses his communication skills helps the victim and the offender understand each other after a while and thus prevents the recurrence of the offense of libel crime. In this way, the victimization is compensated; no penalty is imposed on the offender and peace within the family is maintained.

Offenses have negative effects on both society and the judicial system. Victimization arising out of offenses in a society shakes the trust of individuals' injustice. However, if the damages are restored using reconciliation, the trust of the community in justice also increases. With the elimination of file burden due to reconciliation, judicial bodies may also concentrate on other issues that threaten the community.

Furthermore, Özbek expresses that reconciliation mitigates the negative effects of imprisonment on society and helps individuals who have taken lessons from the offense join the community again (Özbek, 2018:13). The sentence of a punitive fine or imprisonment to a person committing crime who has a low-income level and provides living of his family may cause some economic problems. These problems will not only be economic, but they will also harm the family immaterially. Or other members of the family may even commit different offenses to prove living of the family. However, all of these problems may be avoided when the person who is obliged to look after the family compensates the victim's damage using reconciliation.

Another benefit is that the parties that utilize the reconciliation institution may share their experiences with the individuals around their surroundings and talk about the existence of such an alternative way of resolution if they are satisfied with the negotiation process, the conciliator and the result. The reconciliation method learned by other members of society also provides the foundation for the establishment of a reconciliation culture.

Changes in social structure and environmental factors (domestic violence, circle of friends, etc.) adversely affect children. Bülbül and Doğan suggest that the

child's difficulty in complying with social and legal norms causes him to move in an unhealthy environment by behaving abnormally and to be dragged into crime in the early stages of his life (Bülbül and Doğan, 2016:32). Although there is a legal reduction in terms of children being dragged into crime, the rate of perceived crime and punishment of a child cannot be as much as an adult.

The main purpose of the implementation of the reconciliation institution is to prevent the children who are dragged into crime from turning back to crime again. An alternative way should be certainly used for the children who are not yet fully aware of the crime phenomenon and its consequences. The child who listens to the effects of the offense and the victim at first hand may see both the results and compensate the damage before the trial. Measures can be taken for a safer society by identifying the reasons that drag children into crime. Children who are not rehabilitated may be faced with more serious crime rates in the future. Alternative ways of resolution should be utilized and developed in terms of children who are dragged into crime.

1.4.4. Benefits for the Criminal Justice System

Although restorative justice and reconciliation being implemented within it seem to be a way of resolution that only serves the victim, the offender, the community and the criminal justice system also benefit it. For Yavuz, restorative justice offers a promising new approach to justice by reminding that the victim and the offender cannot only fight with each other but also negotiate (Yavuz, 2015:110). In particular, in countries where reconciliation is applied in terms of criminal and juvenile justice, the trust of individuals' injustice is increasing.

When we look at the reconciliation figures published by the Department of Alternative Resolutions in 2017, we see that 223.000 files out of 278.000 files on average within the scope of reconciliation were resolved with reconciliation (Alternative Dispute Resolution Publications, 2018). It can be understood from this success of eighty percent across Turkey that the use of the reconciliation method as a new approach provided by the restorative justice within the traditional criminal justice system is the right decision. Resolution of files by the impartial third parties allows prosecutors, judges and law enforcement officers to focus on other cases that require

intensive work and labor by reducing their workload. This situation also offers such opportunities to prolong the duration of trials which is generally short and to allow the victim and the offender to be listened by judges and prosecutors insufficient periods.

Besides, the potential costs of the court will be prevented by the files which are resolved with reconciliation. If reconciliation is maintained in terms of the persons committing offenses for the first time and the children, the pecuniary loss to be imposed upon the state due to the sentence of imprisonment will be eliminated too. The occupancy of prisons and bad living conditions of prisoners due to such occupancy are prevailing issues to be resolved; however, reconciliation will alleviate the intensity of prisoner by preventing the addition of new prisoners.

The victim's having a voice in the decision made using reconciliation will allow the individuals receiving satisfactory services in the justice system because the proceedings are carried out quickly and by the desires of the victim. Thus, the trust injustice will be increased and a peaceful environment can be built by adopting such a way of resolution for petty crimes by society. When the parties accept the agreement in the reconciliation method being applied in our country, it does not mean that the offender also accepts the offense. In this sense, the offender can easily begin negotiations for reconciliation. For example, the parties who agree to reconcile for the offense of libel with a voice or video message will prevent the court from losing time and spending resources during the collection of evidence and the proof of the offense.

CHAPTER TWO
IMPLEMENTATION OF RECONCILIATION THE TURKISH PENAL CODE

2.1. LITERATURE REVIEW

The resolution of disputes in a peaceful manner by victims and offenders is an alternative method which is applied not only in our country but also in many states of law. In this sense, it is useful to look at the studies that contribute to this field for improving the victim-offender reconciliation. These studies are in-depth analysis of the victim-offender reconciliation encouraging effective implementation of mediation. Therefore, it would be appropriate to briefly mention such studies. In the study of the effectiveness of the victim-offender reconciliation by Coates and Gehm, 83 percent of offenders and 59 percent of victims were satisfied with the experience. The researchers also found that when the victim and the offender met, an agreement was reached 98 percent of the time (Coast and Gehm, 1989:255). It has been observed that disputes were largely resolved as a result of the reconciliation activities of victims and offenders.

The victim-offender reconciliation, which is applied in many countries of the world, is mostly utilized in offenses of actual bodily harm and offenses against property. According to a research by Mark S. Umbreit among a state-selected group of subjects in the state of Minnesota, 82% of the subjects stated that they could participate in the victim-offender reconciliation program for crimes against property. Similarly, in interstate research in the United States including 280 victims who participated in the victim-offender reconciliation programs in four states, 91% of the victims stated that their participation was fully voluntary (Umbreit as cited in Özbek, 2007:133).

In their study, Niemeyer and Schicker observed that in the first eight months of 1995, the victim-offender reconciliation was applied in more than a thousand cases and that the parties were able to have results by reconciliation. It was intended to maintain that the settlement of the disputes was permanent. It was aimed to observe if the children or young people dragged into crime had disputes after resolving their

disputes with the help of reconciliation. It was observed that children and young people have less disputes after reconciliation. (Neimeyer and Schicker, 1995:31).

The American Bar Association fully accepted the implementation of the victim-offender reconciliation and communication programs and incorporated these programs into legal systems in a year-long study conducted in 1994. Also, the American Bar Association has encouraged the use of the victim-offender reconciliation in courts in the entire country (Yerdelen, 2018:27).

Many lawyers have worked on the settlement in Turkey. There are studies on how econciliation is applied, its effects in terms of victims and offenders, and the scope of crime. Özbek examined in detail the recommendations of the Council of Europe and the Committee of Ministers. This review contains clauses on how conciliation will be implemented in other countries (Özbek, 2005:128). Akçay's research contains circumstantial acquirements about restricting the extent of victim-offender mediation for juveniles, the regulation about appointment of mediators, quality and training of mediators, and deficiency in infrastructure of victim offender mediation establishment (Akçay, 2011:29). Özmumcu examines reconciliation in terms of other countries, concludes that mediation is not mandatory and that victims and perpetrators should be involved in this process voluntarily. (Özmumcu, 2016: 838). Reconciliation examples, which were first encountered in legal sense in the early 1970s, continued to increase over the years. It is clear that the alternative resolution ways first applied in the Turkish legal system in 2005 is a method that needs to be developed.

Many sources can be accessed regarding the concept of reconciliation in criminal procedure, the scope of offense and the conditions required for its implementation. However, it is noted in the literature review that reconciliation in Turkey was examined only in the legal sense and no study was carried out regarding its practice in terms of victims and offenders. Therefore, it is hoped that in-depth research with victims and offenders about the implementation of reconciliation will contribute to its applicability.

2.2. THE LEGALIZATION PROCESS OF RECONCILIATION IN TURKEY

The disputes in recent years have greatly increased the workload of the states of law in the world. The states of law have sought alternative ways of resolution for the reasons such as the increase in crime rates, the transfer of conflicts to the judicial system without negotiation. The alternative ways of resolution which are as old as the history of humanity have been arranged judiciously and have taken their place in the legal systems. This system, which provides services to the parties in conflict by offering the results they want to in a short period, has also achieved a great efficiency for the governments. Increase in access to justice for citizens, decrease in time and effort spent on petty disputes and, most importantly, ensuring social peace has increased the use of alternative ways of resolutions.

The method of reconciliation, which is widely used for the resolution of disputes in Anglo-Saxon and Continental European Law Systems, has been successfully implemented with the help of impartial, independent and trained third parties. Alternative ways of resolution applied in Austria, the UK (United Kingdom), the USA (United States of America) and many other countries also started taking their place in our country.

Although the method of reconciliation where resolutions may be obtained in a shorter period than that of the traditional judicial system varies according to the countries, it is generally a swift and effective method. Reconciliation entered into our criminal justice system for the first time in 2005 was amended in the following years and took its final form. Reconciliation was included in our Criminal Law with the Turkish Criminal Code No. 5237 and the Code of Criminal Procedure No. 5271. A new regulation was introduced in 2006 following the difficulties in implementation with its first state.

The Articles 253, 254 and 255 of the Code No. 5271 define how to implement the reconciliation institution. However, since the desired results were not achieved due to the problems experienced with these articles, some articles were amended with the Code No. 5560 in 2006 (Etin,2009:1). The amendment made by the Code No. 5560 is intended to provide a better improvement of the system and to provide the service of restorative justice with the full meaning of reconciliation.

With the amendment of the Code No. 5560, the phrase of "conciliation" was removed and replaced with the phrase of "reconciliation" which has a broader meaning. It was understood that any information obtained during the negotiations would not be deemed to be evidence. The number of offenses covered within the scope of reconciliation was increased; the requirement for confession was abolished, and the concept of performance was used instead of compensation of the loss.

In 2016, some laws were amended again with the Code of Criminal Procedure No. 6763. According to such amendments, the Department of Alternative Resolutions is located at the central office and the reconciliation offices are reconciliation institutions operating in provinces. The reconciliation activities are carried out by the prosecutor who is assigned for reconciliation, not by the prosecutor in charge of the investigation (Yerdelen, 2018:22).

2.3. AN OVERALL VIEW OF THE REGULATION FOR RECONCILIATION

Many states of law have developed some rules in line with their legal systems and international standards by moving away from the traditional retributive justice and turning to reconciliation as a part of the restorative justice system. The legal framework must also be set up for the healthy implementation of reconciliation.

The Regulation for Reconciliation within the Turkish Code of Criminal Procedure guides practice by determining the procedures and principles related to reconciliation. The Regulation for Reconciliation No. 5271, which entered into force in 2004, includes further information on reconciliation such as the types of offenses to be applied, the characteristics, duties and responsibilities of conciliators, audit, the rules they are obliged to comply with, the criteria sought in the organizations providing reconciliation training, the registers of conciliators, the working way of reconciliation offices, the proposal of reconciliation, the negotiating stage, and the documents required to be maintained (CMUY, 2017: article 2).

The Regulation for Reconciliation published by the Ministry of Justice consists of 11 chapters. It includes clauses starting from the definition of reconciliation to the way of its implementation, which are identified in detail. The principles regarding

reconciliation are set out in Articles 5, 6 and 7. The basic principles are generally composed of clauses arranged to enable the victim and the offender to receive a service in the negotiation process in which they will feel willing and confident. They should be able to express themselves well during the negotiations so that a healthy conclusion may be attained.

Moreover, the ethical principles include the rules that the conciliator has to comply with from the moment he is appointed to such duty. The conciliator must act honestly and equally when performing his duties. He should be able to stay at equal distance to the parties regardless of the conflict. It is also important to consider that the parties should not be judged according to the type of offense committed.

Finally, the legal consequences of the situations that may be experienced during the implementation stage and the services provided to the parties are specified in the general provisions. The regulation for reconciliation is similar to the contents of the international reconciliation documents. The regulation, which has been regulated and extended over time, guides in terms of negotiations and legal process.

2.4. CONDITIONS REQUIRED FOR THE IMPLEMENTATION OF RECONCILIATION

2.4.1. Offenses Subject to Reconciliation

For reconciliation to be implemented and the parties in conflict to benefit from reconciliation, the offense must be a crime within the scope of reconciliation. The lawmaker stated that offenses subject to complaint would be within the scope of reconciliation unless otherwise stated. However, for those offenses which are not subject to complain, it should be clearly stated that reconciliation can be applied with special provisions.

As mentioned before, reconciliation institution in restorative justice was applied for children for the first time. For this reason, countries are expanding the types of offenses that are subject to reconciliation, especially in terms of children being dragged into crime. It is useful to examine the types of offenses that are contained in reconciliation in terms of children being dragged into crime. There may be cases where reconciliation provisions cannot be applied to certain offenses even if they are subject

to complain. Offenses within the scope of reconciliation, offenses regarding children being dragged in crime and offenses which are not within the scope of reconciliation should be generally evaluated.

2.4.1.1. Offenses within the Scope of Reconciliation Regardless of Being Subject to Complaint

Since there were shortcomings in terms of the offenses subject to complain within the scope of reconciliation, some offenses such as violation of the immunity of residence and reckless injury were contained in the scope of reconciliation with the amendment made in 2006. Furthermore, the scope of reconciliation was extended in 2016 even in terms of the offenses that the provisions of effective repentance were applied (Özbek et al., 2018:157). Offenses within the scope of reconciliation regardless of their being subject to complain as specified in Article 253 of the Code can be listed as follows:

- Willful injury (TCK 86/2)
- Reckless injury (TCK 89/5)
- Menace (TCK 106/1, Sentence 1)
- Violation of the immunity of residence (TCK 116, 4)
- Overt theft (TCK 141)
- Overt fraud (TCK 157)
- Abduction and Retention of the Child (TCK 234/1, 2)
- Disclosing the Information and Documents in the Quality of the Trade Secrets, Banking Secrets or Customer Secrets (239/4)

In case of willful injury, for example, if it is committed using firearms or committed against spouses, the provisions of reconciliation cannot be applied. The condition of complaint is not required in the event of reckless injury committed with conscious recklessness such as causing the injury of a person while driving under the influence of alcohol. It is not subject to complain if there is an attack on the life of the victim or his relative, the violation of the immunity of body or sexual immunity in the offense of menace and is within the scope of reconciliation. The offense of violation of the immunity of residence committed by use of menace or at night is within the

scope of reconciliation, not subject to complain. Overt theft and overt fraud are the offenses that are within the scope of reconciliation not requiring complaint. There is no requirement of complaint for the abduction and retention of the child by parents whose custody is withdrawn. No complaint is required if the crime of disclosure of information and documents in the quality of the trade secrets, banking secrets or customer secrets by a person who is compelled to disclosure by using coercion and threat (Criminal Procedure Law [CMK], 2004: article 253).

2.4.1.2. Offenses within the Scope of Reconciliation which are Subject to Complaint

Complaint is the way of applying to the necessary judicial authorities regarding the victimization of the person who is damaged as a result of the offense. The right to complain is personal and does not pass on to others (Albayrak, 2008: 287). The rights regarding complaints are also secured by making the necessary arrangements by the lawmaker in terms of the issues such as persons damaged by the offense under the age of eighteen, the presence of legal representative, and complaints in legal persons.

According to the regulation for reconciliation, the offenses that are within the scope of reconciliation, being subject to complaint can be listed as follows:

- Violation of freedom of work and labor;
- Deterioration of peace and order;
- Libel;
- Insulting the memory of the person;
- Violation of the confidentiality of communications;
- Tapping and recording of conversations between individuals;
- Violation of privacy;
- Theft of use;
- Damage to property;
- Trespass;
- Breach of trust;
- Use of blank bond;
- Disposition upon the property that has been lost or obtained wrongfully.

For the above offenses, the provisions of reconciliation can be applied following the commencement of criminal procedures as a result of the complaint to be made by the person damaged by such offense, sufficient evidence and the existence of doubt. Furthermore, the criminal cases not being subject to complain among those offenses which are within the scope of reconciliation regardless of their being subject to complaint are to be included in this list.

2.4.1.3. Offenses within the Scope of Reconciliation for the Children Being Dragged into Crime

The use of the reconciliation method in a conflict to which children are the parties is of great importance. The traditional methods of juvenile justice do not always generate the desired results. However, resolving conflicts using reconciliation plays an educational role in resolving the problems of children. Expressing and resolving conflicts help to strengthen the social aspects of children (Özbek, 2005:294).

While the rights of children like life, development, and protection should be secured, their punishment after they are dragged into crime as per the understanding of traditional retribution system should be the last method to be followed. The Code of Child Protection, therefore, requires the implementation of the provisions of reconciliation for children who are dragged into crime (Özbek, 2008: 462).

There are certain conditions in terms of penal responsibility for the implementation of reconciliation in respect of children who are dragged into crime. Children who have not completed the age of twelve and deaf-mute children who have not completed the age of fifteen at the time of committing the offense have no penal responsibility. Furthermore, those children who are completed the age of twelve but not completed the age of fifteen and deaf-mute children who have completed the age of fifteen and not completed the age of eighteen at the time of committing the offense have no penal responsibility if their capabilities of perception and direction are not sufficiently developed (TCK, 2004: article 31).

Before the amendment made in 2016, the offenses subject to complain, all of the offenses committed by recklessness, the offenses committed willfully requiring imprisonment with a lower limit not exceeding two years and judicial fines were within

the scope of reconciliation in virtue of children who are dragged into crime. With the amendment made in 2006, reconciliation was changed in such a way that it would be implemented in the same way for children dragged into crime as it was implemented for the adults (Uğur, 2010: 130). In 2016, the scope of reconciliation was extended in terms of children dragged into crime. Reconciliation activities are applied for the offenses requiring imprisonment with an upper limit not exceeding three years and judicial fines, provided that the victim or the damaged by the offense is a natural or private legal entity (CMK, 2004: article 253).

2.4.1.4. Offenses Within the Scope of Reconciliation Determined by the Special Law

Crimes which are subject to complaint do not need to be only be included in the Turkish Penal Code. It is also possible to apply the reconciliation method concerning the crimes which are subject to complain by special laws (Özbek, et al., 2018:156). The offenses determined by special laws and subject to complaints can be listed as follows.

2.4.1.4.1. The Code of Intellectual and Artistic Works No. 5846

Provisions of reconciliation are applied to the offenses such as processing, representing, reproducing, and so on a work without the permission of the rights holder, showing a work that belongs to someone else as his own work, quoting a work without referring to such work, giving an explanation about a work which is not publicly introduced without the permission of the owner of such work, giving reference to a work in a misleading, insufficient and deceptive way, reproducing, distributing, disseminating a work by using the name of someone else.

2.4.1.4.2. The Turkish Code of Commerce No.6102

The provisions of reconciliation are applied in terms of the offenses such as deliberately committing one of the acts of unfair competition, deliberately giving inaccurate and incomplete information about the activity of the trade, and the employers' failure to prevent their employees from committing an act of unfair competition requiring retribution after such employers become aware of such offense.

2.4.1.4.3. The Law No. 5042 Concerning the Protection of the Plant Breeder's Rights of New Plant Species

The provisions of reconciliation are applied to the offenses such as using the powers without the consent of the rights holder, reproducing, selling, exporting, and storing the material, usurping the rights, extending the rights granted without permission or transferring these powers to a third person, and avoiding giving information about the production of unfairly produced material.

2.4.1.4.4. The Law No. 3573 Concerning Rehabilitation of Olive Cultivation and Grafting the Weeds

Provisions of reconciliation are applied to the offenses such as moving all kinds of animals into olive cultivation fields and constructing sheep and goat pens in the vicinity of olive cultivation fields except for settlement areas.

2.4.1.4.5. The Industrial Property Law No. 6769

The provisions of reconciliation apply to persons who produce, sell, import or export, transport, store the goods having a trademark owned by someone else and who remove the trademark indicating that there is brand protection from the goods or the packaging without authorization.

2.4.1.4.6. The Law No. 5941 Regulating Bank Checks

The provisions of reconciliation are applied to the bank officer who does not make any dishonored transaction regarding the dishonored check and who does not make the payment of the amount that the bank is obliged to pay to the person who wants to collect the check.

2.4.1.4.7. The Cooperatives Law No. 1163

If the partners who have learned the secrets of the cooperative do not keep such secrets confidential, the provisions of reconciliation are applied.

2.4.1.5. Offenses Which Are Not Within the Scope of Reconciliation

Except for the offenses which are within the scope of reconciliation regardless of whether they are subject to complain and the offenses which are specified by special law subject to conciliation within the scope of reconciliation, all of the remaining offenses are not within scope of reconciliation. Offenses committed against sexual immunity are outside the scope of reconciliation. Sexual assault, sexual abuse of children, offense of sexual intercourse with minors and sexual harassment are not included in the scope of reconciliation even though they are subject to complain. Even if such offense is committed by a child who is dragged into crime, the provisions of reconciliation are not applied. Moreover, the offense committed to the heads of foreign states is not included in the scope of reconciliation since the right to make a complaint is granted to the foreign state and it is naturally an offense committed to the public legal entity. Reconciliation cannot be applied to the offense of writing a bad check as it is clearly stated in the Law that reconciliation is not applied to such offense (Özbek et al., 2018:57).

2.4.2. Committing an Offense Within the Scope of Reconciliation using an Offense Outside the Scope of Reconciliation

The Article 8 of the Regulation for Reconciliation, Section "Offenses within the scope of reconciliation and exceptions" states that the resolution by reconciliation cannot be utilized in the event that any offense which is within the scope of reconciliation is committed by the suspect or the accused by means of an offense outside the scope of reconciliation. CMUY, 2017: article 8). To illustrate this situation with a decision of the Penal Department No. 6 of the Supreme Court of Appeals will be appropriate for the clarity of the issue. It is stated by reference to the following event that the provisions of reconciliation cannot be applied to the offenses of looting, libel and petty threat committed at the same venue and the same time:

The defendant committed the offenses of looting and threat when taking the cell phone by committing the offense of looting as a result of the dispute between the defendant and the victim who is his ex-girlfriend, and threatened her by saying "I will kill you here". At a later hour on the same day, the offense of threat and libel were committed again. Thereupon, the defendant appealed the case in order for benefitting from the provisions of reconciliation regarding the offense of threat and libel which is within the scope of reconciliation, but the Supreme Court of Appeals decided that the provisions of reconciliation cannot be applied in the event that an offense which is within the scope of reconciliation, even if such offense is subject to complain for investigation and prosecution, is committed by means of an offense which is outside the scope of reconciliation (Court of Appeals for the 6th Circuit, article: 2017/4691).

2.4.3. Conditions for Investigation and Prosecution

In some cases, the performance of an investigation or prosecution is dependent on certain circumstances. Trial procedures are subject to certain conditions, which are called the necessary conditions for the realization of the trial such as are complaints or permits. The conditions that should not exist to avoid the trial are called negative trial conditions. As an example, the defendant is not mentally ill; the statute of limitations does not pass; the pre-payment is not realized (Özbek, et al., 2018:50).

Sufficient doubt and evidence must be available for the offense. The investigation stage in the Criminal Procedure begins with suspicion. When the suspicion that if the offender has committed the offense has increased to a certain level, the prosecution stage is initiated. If it is certain that the offender has committed the offense, the trial is terminated (Gültekin, 2010:112). If there is sufficient doubt in the light of evidence, a bill of indictment is issued by the public prosecutor and the type of the offense is identified.

According to Article 73 of the Turkish Penal Code, for an offense whose investigation and prosecution are subject to complain, the person who has damaged due to the offense must make a complaint within six months. The investigation and prosecution cannot be initiated without the complaint of the victim as there is a condition of complaint for the offense. The damaged one by offense has the right to make a complaint as well as the right to waive (TCK, 2004: article 73). A victim must make a complaint for reconciliation due to an offense that the investigation and prosecution of the parties in conflict are subject to complain. Otherwise, since investigation and prosecution cannot be initiated, the provisions of reconciliation cannot be applied.

According to Article 129 of the Constitution, permission is required for the offenses committed by civil servants or other public officials (Constitution, 1982: article 129). To perform investigation and prosecution due to the alleged offense, it is necessary to obtain permission from the district governorship in districts and the province governorship in provinces. After the permission is obtained, the necessary judicial actions are performed. For example, in a dispute between a patient and his doctor occurred in such a way that the offense of reckless injury is committed by the surgeon who cuts the patient's lip instead of his nose during a nose aesthetic surgery. In this case, it is required to obtain permission from the relevant institution to continue investigation and prosecution.

According to Article 31 of the Turkish Penal Code (TCK), children who have not reached the age of twelve at the time when the act is committed have no penal responsibility. Consequently, the provisions of reconciliation cannot be applied since no criminal proceedings can be made to such individuals. In the Article 32, it is stated that a person who does not perceive the legal meaning and consequences of the act he

commits because of mental illness or whose ability to direct his behavior about this act is significantly reduced shall not be punished (TCK, 2004: article 31). Therefore, it is understood that the method of reconciliation cannot be applied because it is clearly stated in the law that criminal procedures cannot be performed due to the reasons such as being underage and mental health.

Some people have immunity before the law due to their duties. The rule of immunity is regarded as an impediment to trial so that they may fulfill their duties without any impediments (Feyzioğlu, 1991-1992: 22). As immunity impedes with the trial, criminal proceedings cannot be made and thus no reconciliation can be applied. Prepayment is the payment of the amount of money to be determined by the public prosecutor or the judge for certain offenses by the offender who committed the offense to the state treasury within the due time deemed to be proper. With this payment, criminal proceedings come to an end (Gültekin, 2007:204). No prepayment can be applied to an offense which is within the scope of reconciliation in the Regulation for Reconciliation.

2.4.4. The Requirements for Conciliators

The conflict resolution method to resolve the dispute of the parties involved with the help of a third party is a method accepted and applied by legal systems. Although there are different criteria in the selection of the independent third persons who will perform the reconciliation activities, it is generally those individuals who have the culture of reconciliation.

In our Law, the qualifications that a conciliator should bear are elaborately defined under the heading of registry, training, testing, and auditing within the regulation for reconciliation. Reconciliation which is required to be practiced by those who graduate from faculties of law or faculties predominantly offering legal education in our country is successfully practiced by those conciliators who predominantly took legal education by using their negotiation skills even though some lawyers may think that it cannot be practiced by others than the graduates of law faculties of law, it is also successfully implemented by mediators who use negotiation skills.

To carry out the reconciliation activities specified in the Regulation without any problems, the first reconciliation trainings were started in 2017. These trainings were given by faculties of law and bar associations although the trainings were not offered in all provinces. Thirty-six hours of theoretical training and twelve hours of practical training were given to the candidates by expert trainers. Topics include the legal nature of reconciliation, its conclusions, communication skills, and negotiation techniques. Conciliators who have the opportunity to practice with the courses of the trainers following theoretical courses work on case studies by being divided into small groups. The candidates who have completed the training are deemed to be successful after they have passed a written test.

Chief Public Prosecutor's Offices appointed by the Ministry of Justice have a reconciliation office, reconciliation prosecutor, staff in charge of the office and conciliator. Candidates are required to apply to the Department of Alternative Resolutions electronically upon successful completion of the test. The conciliators are determined by the Department of Alternative Resolutions if they successfully meet the requirements and included in the list of conciliators of their preferred provinces and districts. The following conditions are required to be registered in the reconciliation register:

- To be a Turkish citizen,
- To be fully competent,
- To be registered to the bar for lawyers,
- To be graduated from the faculty of law for persons who have studied law or to have completed at least four years of higher education, which provides sufficient legal knowledge or legal education in their programs,
- Not to be convicted of a deliberate crime,
- Not to have any connection with terrorist organizations,
- To have completed the conciliator training and be successful in the written test,
- Not to be dismissed from or prohibited to perform their profession due to disciplinary reasons (CMUY, 2017: article 48).

Conciliators who meet the requirements will be included in the list of conciliators of the region in which they are registered.

Apart from the above formal requirements, the reconciliation negotiations should be carried out professionally from beginning to end by the regulated ethical rules. The conciliator must perform his duty independently and impartially. He must approach the parties at equal distance and inform the parties who have chosen the reconciliation. It should be remembered that the reconciliation service provided will serve restorative justice when fully and accurately fulfilled. The parties of reconciliation may be of any age, educational level or status. In the presence of such differences, the conciliator should fulfill his duty by taking a polite and respectful stance and leaving his prejudice aside. In addition to all of these requirements, the obligation of confidentiality continues even if the conciliator submits the file. Violation of this obligation also brings about penal liability.

2.5. IMPLEMENTATION OF RECONCILIATION

2.5.1. Reconciliation at the Stage of Investigation

2.5.1.1. Sending the Investigation File to the Reconciliation Office

The public prosecutor immediately begins to investigate the truth of the matter to determine if it is necessary to initiate a criminal case as soon as he becomes aware, by a denunciation or otherwise, of a situation giving the impression that an offense has been committed (CMK, 2004: article 160). The research process carried out in this process constitutes the investigation stage. For a crime to fall within the scope of reconciliation during the investigation stage, there must be sufficient doubt and evidence about that offense.

The most important purpose of the public prosecutor in the procedure performed with the help of the law enforcement officers regarding the situation giving the impression that an offense has been committed is to determine whether such a situation is a crime according to the laws. It is significantly important to reach evidence of by whom the act of offense was committed for the decision. Therefore, it is of utmost importance that the evidence is collected in a way that does not allow any objection regarding the act defined as an offense (Karabulut et al., 2015:387).

The document issued by the public prosecutor after the collection of evidence to conclude that the necessary conditions for filing a lawsuit have been established is

called a bill of indictment (Aydın, 2016: 377). Upon preparing the bill of indictment by the investigating prosecutor and finding that the offense is within the scope of reconciliation, the file is sent to the reconciliation office by the investigating prosecutor. But the file is not forwarded directly to the reconciliation office. After the decision of transfer is approved by the chief public prosecutor or his deputy, the file falls into the pool of the reconciliation office. The decision of transfer is of great importance for conciliators because the conciliator learns the event, the persons involved, and the offense that reconciliation will be applied through this decision of transfer (Özbek et al., 2018: 181). The decision of transfer can also be interpreted as a summary of the event for the conciliator.

In the Section 7 of the Regulation for Reconciliation, the legal arrangements have been made on the duties and responsibilities of the reconciliation office, places where such offices are to be established, the division of labor of the personnel working in the office and how the supervision of the office will be carried out. Reconciliation offices established within certain Public Prosecutor's Offices are sufficiently employed with prosecutors, chief clerks, and clerks. The judicial personnel working in the reconciliation office are responsible for carrying out the procedures regarding reconciliation promptly. They allocate the files to conciliators through National Judiciary Informatics System (UYAP) with the approval of the public prosecutor by saving the files and documents to UYAP. They are also responsible to send the contact details of the assigned conciliator to the parties via a short message service (SMS) to the phone number specified in the file. The audit of the works in the office is under the supervision of the chief public prosecutor, his deputy or the public prosecutor (CMUY, 2017: article 40).

2.5.1.2. Assignment of the Conciliator and Receiving Documents

The agreeing of the parties in conflict with the help of third parties at a common point is called conciliation and the persons who guide the parties to agree at the common point are called conciliators. As in many other countries, the method of reconciliation, which will reduce the increasing burden of judicial system and quickly yield results to the parties involved, has already contained in our law as an alternative

way of resolution in our country. Those who graduate from faculties of law or faculties predominantly offering legal education and who have fulfilled the requirements by the regulation may be conciliators. The candidates take the test after their training and if they are successful, they work as conciliators in their preferred provinces or districts. Reconciliation offices perform reconciliation assignments with the help of an automatic allocation system according to the lists determined by the Ministry of Justice.

Before the automatic allocation system, the reconciliation offices were distributing the files accumulated in their offices to the conciliators on the list with the approval of the reconciliation prosecutor without looking for any criteria. However, this allocation had to be done more systematically. In June 2018, the first electronic allocation was made via the NJIS with the efforts of the Department of Alternative Resolutions.

The conciliator portal is an electronic medium where there are sections such as personal details of the conciliator, information on files to which the conciliator is assigned, and active-passive status preference in terms of any potential task. When a file is assigned to the conciliator, he is noticed by a message to his phone and e-mail address. Following the notification, the conciliator accesses to the portal and accepts or rejects the task within twenty-four hours. While the file which is rejected is submitted to another conciliator, a copy of the accepted file must be taken from the reconciliation office within three days. However, to avoid conciliators' loss of time in receiving files and bureaucracy, the works have been performing since January 2019 by the Department of Alternative Resolutions so that conciliators can also see the statements of the parties at the online portal.

Another innovation that comes with the electronic allocation system is the performance criteria for conciliators. They will be scored according to their success in the files they are assigned to and they will be allocated files by their scores. Conciliators are scored according to the following criteria:

- The nature and number of the offense under reconciliation,
- Number of the parties and the location of the parties,
- Deadline for the submission of the reconciliation report,

- All conciliators will be scores by considering the criteria like the outcome of the reconciliation offer and the allocation of files will be performed according to these scores (CMUY, 2017: article 13).

The conciliator, who learns that he is assigned by automatic allocation, takes a copy of the necessary parts of the file and signs the conciliator assignment record. In this record, the person who is appointed as a conciliator in the relevant file, the privacy statement and the commitment to act in compliance with the regulation for reconciliation are signed in.

The conciliator can have overall details about the conflict by reading the decision of transfer in the first place in the file. To avoid the problem of inaccessibility to the parties, which is a situation commonly encountered by conciliators, it is useful to confirm the current telephone and address details of the parties through the reconciliation office at the time when the file is received. In this way, the conciliator does not waste time to reach the relevant parties of reconciliation.

The entire investigation file is not granted to the conciliator for the reasons of confidentiality. Instead, the conciliator takes copies of witness statements and other documents depending on the type of offense. For example, in case of an offense of willful fixing, a doctor's report or case of an offense of overt theft, camera recording images will be attached to the reconciliation file. The statement records which include identity details of the parties, dates, and places of their birth, educational status, occupation, marital status, and income provide information to the conciliators before negotiating with the parties. Also, the conciliators should not meet with the parties without a thorough review of the statements and the way that the offense under the subject of reconciliation has been realized in advance.

2.5.1.3. The Reconciliation Invitation

After the conciliator receives the file, the 30-day term of reconciliation commences. In this process, the conciliator, who has to reach the parties first, gets the address and telephone details of the parties in the light of the statements given the file. In the initial contact with the parties, the conciliator should introduce himself, give brief information about reconciliation and propose a face-to-face meeting. The first

meeting can be held by phone if available, through the reconciliation office, using the audio and video information system (SEGBIS) for prisoners or convicts, by rogatory or by conducting social media research.

In the section where the details of the party are included in the reconciliation file, the conciliator should introduce himself and his assignment by the public prosecutor and remind the parties of the issue by briefly informing on the criminal suspicion and the event. Then, he should give brief information about reconciliation. The first meeting should be carried out in clear and concise sentences by the conciliator, depending on the age of the parties and their educational background. An appropriate time to discuss the details and listen to the parties is determined.

If there is no telephone number in the file or if the party cannot be reached via the available telephone number, a notification is sent through the reconciliation office if the party resides in the province or district where the conciliator is assigned. If the party resides in a different province, he is invited to negotiate by rogatory. The conciliator sends the reconciliation offer form and invitation letter to the address specified in the file. The tender form contains the nature of settlement, the legal consequences of acceptance or rejection. In the invitation letter, the offense which is the subject of the file and in what capacity the party is included in the file are specified and it is stated that if there is no return to any of the specified contact addresses of the conciliator within three days, the offer of reconciliation shall be deemed to have rejected by the relevant party.

If one of the parties is a prisoner or convicted, the conciliator may meet with such party through the method of free visitation in prison with a copy of the letter of assignment. If the party cannot be reached by address and telephone number, witness statements available in the file can sometimes help the conciliators. It is therefore of utmost importance that the statements should be read thoroughly and carefully. Social media research is sometimes a way to reach out to the parties too. Finding the person searched on social media by the party's name, age, date, and place of birth, and residing address is among the frequent experiences of the conciliators.

Telephone, invitation letter and social media research constitute the first stage of reconciliation. It should be noted that the first stage is only the invitation stage. It should be decided whether to continue the negotiations by coming face to face at the

common venue and time mutually determined by the parties and the conciliator. It is in essence only a call using communication instruments to offer a proposal of reconciliation.

2.5.1.4. Termination of Reconciliation and Legal Consequences

2.5.1.4.1. Completion of Reconciliation with Positive Consequence

The completion stage of negotiations is arrived when the negotiations are completed with positive consequences and the real needs of the parties are disclosed. Reconciliation has been used as an alternative resolution method since the first day when it started to be applied as a way in which the damage of the victim arising out of the offense can be compensated within a period shorter than the term of the trial. For the offender, it is a way in which he can listen to the consequences of the offense committed by him from the victim and find the opportunity to compensate such damage. Before commencing the reconciliation process, the conciliator should inform the parties that the conciliator is impartial and that the victim and the perpetrator have their rights, and that there will be legal consequences and that they have free will to decide. Also, the victim may make a pecuniary or non-pecuniary claim for the compensation of the damage or have the authority to reconcile without any request. It is possible to divide this way of reconciliation into two as reconciliation with performance and reconciliation without performance.

Performance is called as the situation in which the creditor has the authority to demand his debt and the debtor falls under the responsibility of meeting this demand (Kılıçoğlu, 2012:3). The victim, who knows that he cannot file a claim for pecuniary or non-pecuniary damages after reconciliation, may request pecuniary or non-pecuniary performance since he knows that his loss will be compensated using reconciliation in a short time. The performance requested by the victim must comply with the law and ethics. In general, in case of domestic conflicts, the suffering party does not request any performance. In particular, conflicts between a mother and a child or spouses result in reconciliation without performance. However, the relatives, neighbors of the parties suffering due to the result of the offense in the event may request pecuniary or non-pecuniary performance. Non-pecuniary performances can be

in the form of apologies or promises, but the victim cannot request from the offender any performance that may be humiliating or degrading. In this sense, the conciliator should remind the parties that the performance should be requested by the law and ethics. For example, it would be appropriate for a victim who is caused to be emotionally harmed by the offense to request a non-pecuniary performance.

The types of pecuniary performance may vary according to the relationship between debt and receivables. Types of performances such as giving, acting and not acting are seen. Common performances observed in reconciliation can be in the form of reinstating damage, giving money, and helping a social organization. The conciliator should remind the parties that the offender and the victim have equal rights in determining the pecuniary. For example, the victim should request a reasonable amount of pecuniary performance for the offense of libel. He should not allow the emergence of a situation like unjust enrichment or abuse of right.

In addition to complying with the law and ethics in fulfilling a performance, it is also important to be reasonable in the pecuniary performance. Apart from them, it is also possible to utilize installments in fulfilling performance. For example, the parties who have reached an agreement due to an offense of bodily wounding, it is possible for the victim to fulfill the performance payment of TRY 5000 on the specified days of the month and with the payment method to be determined. The understanding of restorative justice is an understanding that prevents both the victim and the offender from suffering from any further victimization without difficulty.

In case of a reconciliation with positive consequence during the investigation stage, the following decisions can be legally made:

- If the performance is fulfilled, the conciliation prosecutor decides that there is no place for prosecution;
- If the performance is deferred to be fulfilled on a later date, the decision to postpone initiating a criminal case is again taken by the public prosecutor in charge of reconciliation. The reconciliation office is responsible for the follow-up of such performance (Özbek et al., 2018: 265).

2.5.1.4.2. Completion of Reconciliation with Negative Consequence

If one of the parties dies, is abroad or cannot be reached for any reason during the investigation phase, reconciliation becomes unsuccessful and the file is delivered to the reconciliation office with a text explaining the reasons for the completion of reconciliation with negative consequence by the relevant conciliator. Then, with the approval of the reconciliation prosecutor, the reconciliation process is terminated.

Although the parties have accepted the offer of reconciliation with their free will and have participated in all of the negotiations, they may renounce reconciliation at the last stage. Again, in this case, the conciliator should prepare the necessary record and terminate the reconciliation process. Usually, after the performance is determined, the suspect may renounce fulfilling the performance and may not respond to the conciliator's request for meeting via communication instruments. Although this situation is undesirable in terms of time and labor spent by the conciliator and the victim until the last stage, it should be also remembered that the parties have the right to withdraw from negotiations with their free will.

The victim may not get over the trauma of the event he suffered and may have had a conflict with the same suspect during the cooling process. Different reconciliation files of the same individuals are frequently witnessed, especially for the offense of threat to ex-wife. Negotiations cannot be commenced because the suffering party feels that the offense will be repeated continuously and thus refuses to accept the offer of reconciliation. The conciliator should be understanding and not be insistent too.

In case of a reconciliation with negative consequence during the investigation stage, the following decisions are made:

- If no reconciliation is reached, the investigation will continue from the point where it is left;
- If the performance is in continuation and the suspected of whom a decision to postpone initiating a criminal case against is given fails to fulfill such performance, a criminal case is initiated;

- If the victim does not accept the offer of reconciliation or if any of the parties cannot be reached, a criminal case is initiated against the suspect. (Özbek et al., 2018: 286).

2.5.1.4.3. Preparation of Reconciliation Documents and the Approval of the Public Prosecutor

The first document, which means the negotiation phase in reconciliation will be commenced and continued, is the reconciliation proposal form. It is a document to be signed by the relevant party following the positive or negative result after the reconciliation proposal form is submitted by the conciliator. The reconciliation proposal form consists of the sections including the investigation number, the type of the offense, name and registry number of the conciliator who proposes reconciliation, the legal consequences of reconciliation and the positive or negative results of reconciliation and the signature section stating that the parties accept or reject reconciliation by understanding the consequences. This document must be certainly read by the parties because it is possible to talk about free will as a result of decisions made by knowing what reconciliation means legally and what the possible consequences are.

The reconciliation report is a document that provides information on how reconciliation is conducted as a result of negotiations and how the parties agree. The reconciliation report should be written by the form specified in the regulation, including the frequency, date and time of negotiations, the way of fulfillment and due date of performance if any. It is important for clarity that the reconciliation report should be written in a language that the parties will understand, and if necessary, together with the sequence of negotiations followed by a sequence number. The report, which should be written in plain language instead of legal terms, should be prepared in copies one more than the number of parties. It is a document which is a declaration in nature for the follow-up of the performance and a copy of the report may be provided to the parties if desired too.

Parents, guardians or legal representatives of the parties may also sign the reconciliation report. However, it would be more beneficial for the parties to

participate personally to fully serve the restorative justice. The parties are required to sign at the bottom of each page to ensure that they have read and understood the reconciliation report. After the conciliator has delivered all of the documents to the reconciliation office, the office staff will immediately submit the reconciliation report and the reconciliation forms to the reconciliation prosecutor.

The reconciliation documents of the conciliator, which are first examined by the office staff, are then reviewed by the reconciliation prosecutor. The presence of signatures of the parties, details of the parties, compliance to the regulation in terms of its form are checked by the office staff in the first place. The public prosecutor, on the other hand, checks whether the reconciliation takes place with free will and if any, whether the performance conforms with the law and ethics. With the approval of the public prosecutor, the report is scanned and recorded in electronic media.

Moreover, the reconciliation prosecutor determines how much money the conciliators will receive in return for their labor spent on the file. A decision to expend shall be made by the tariff determined by the Ministry of Justice. The number of persons in the file, the nature of the offense and the conciliator's efforts during negotiations are carefully considered in this decision to expend. Also, if the conciliator has spent the expenses for negotiations, he can get the payment of the transportation expenses that he incurred if he adds the relevant bills to the file.

Together with the new regulation in 2018, a scoring system was introduced to the conciliators through a performance review system. The new scoring system is performed in such a way that the criteria such as delivering the file on time, performing the necessary actions and ensuring that the parties negotiate enough, are evaluated and scored by the reconciliation prosecutor. Immediately after the submission of the file, the reconciliation prosecutor evaluates the file by the specified criteria and records the performance of the conciliator. This system aims to remove the conciliators who do not work sufficiently and to encourage successful conciliators to conclude the new files with reconciliation.

2.5.2. Reconciliation at the Stage of Prosecution

The reconciliation procedure in the investigation and prosecution stages has minor differences in practice so it is generally applied in the same way. It is useful to mention the sections that will differ in the implementation of reconciliation during the prosecution stage. The following conditions are required for reconciliation during the prosecution stage:

- The nature of the offense has changed during the prosecution stage;
- The indictment is accepted even though no reconciliation is applied during the investigation stage,
- The offense is recognized to be within the scope of reconciliation for the first time during the prosecution stage;
- A case has been filed with a document substituting the indictment;
- The offense which has been brought before the court with a document substituting the indictment issued by the public prosecutor is an offense subject to reconciliation in its nature (CMUY, 2017: article 22).

For example, an offense which is not within the scope of reconciliation during the investigation phase can be included in the scope of reconciliation with the amendment of the law during the prosecution phase. In such cases, the provisions of reconciliation may be also applied during the prosecution stage.

The reconciliation process is carried out by the reconciliation office and the reconciliation prosecutor during the prosecution stage just as the investigation stage. When it is understood that the offense is within the scope of reconciliation during the prosecution stage, the file is sent to the reconciliation office. While a file at the investigation stage is sent to the reconciliation office by a decision to transfer, a file in the prosecution stage is sent to the reconciliation office by an interlocutory decision. As in the decision to transfer, the interlocutory decision contains the details of parties, the type of offense and a summary of the event. This decision is the first source of information about the event for conciliator. The parties are described as the suspect and the complainant in the investigation stage and as the defendant and the victim in the investigation stage. Therefore, it is necessary to pay attention to the use of such titles for the individuals in the report and the proposal form. After the file is sent to the

reconciliation office with the interlocutory decision, it is sent to the reconciliation prosecutor by the office personnel.

Upon the approval of the reconciliation prosecutor, the file is automatically assigned to a conciliator from the allocation pool. The conciliator receives assistance from the reconciliation prosecutor and the office staff instead of the court. Reaching to the parties, negotiation phase, and the preparation of the report proceeds as in the investigation phase. After concluding reconciliation with a positive or negative consequence, the documents are submitted to the reconciliation office. The reconciliation prosecutor sends the documents to the court with a cover letter. The court also performs the necessary investigations. After the court approves the reconciliation procedure, the reconciliation prosecutor issues the decision to expend deemed to be proper to the conciliator. Applying to reconciliation during the prosecution phase has the following consequences:

- If reconciliation is realized during the prosecution stage, the case is decided to be discontinued;
- If there is a performance divided into installments for the realization of reconciliation, the announcement of the verdict is deferred;
- If the performance is not fulfilled, if one of the parties does not want to reconcile or if any of the parties cannot be reached as specified by the regulation, the verdict is announced.

CHAPTER THREE
METHOD

This study aims to examine in depth the experiences of the participants (victim-offender) who choose the reconciliation method in the conflicts subject to the offense. The study was conducted by using the qualitative research method. A "semi-structured interview technique" was used to collect data in this research. The data were collected by personally meeting the victims and offenders in the files that were peacefully resolved as a result of the performance among the simple criminal cases transferred to the Reconciliation Office of the Chief Public Prosecutor of Aydın. The reason for choosing the interview technique is to examine the experiences of the offenders and victims in the reconciliation process in-depth and detail from their perspectives. For this purpose, the interview technique, which is one of the qualitative research techniques, was adopted as the main data collection tool. Investigating the reasons for the parties to choose the path of reconciliation and the effects of their reconciliation has led the researcher to establish the research questions. Therefore, the answers to the following questions were sought in the research:

1. What are the reasons for the victims and offenders who conflict to prefer reconciliation?
2. What are the effects of reaching a reconciliation on the victims and offenders who conflict?

3.1. WORKING GROUP

This study was carried out with the participation of the victims and offenders of the Aydın Chief Public Prosecutor's Office who were the parties of simple criminal cases that are subject to reconciliation. To be able to get in touch with the victims and offenders, the necessary permission was first obtained from the reconciliation prosecutor, the conciliators were met and then the contact details of the victims and offenders who previously agreed using such conciliator was obtained by the volunteer conciliators. The parties were contacted one by one and the study was explained to

them informing that their personal information will be kept confidential by the principle of privacy.

A total of 8 cases were examined due to the lack of voluntary conciliators, the parties not willing to provide information, and the limited number of files that were reconciled with performance. A total of 19 participants were interviewed with the participation of 11 victims and 8 offenders. The interviews took place in the courthouse, the workplaces, and the houses or the places designated by the parties. 5 of the victims were female, and 6 were male; 4 of the offenders were female and 4 were male. The age ranges of victims and offenders were between 21 and 58 years. The educational level of the participants also varies. The victims consist of 1 literate, 2 primary, 5 high school, and 3 university graduates whereas the offenders consist of 2 primary, 2 high school and 4 university graduates. When evaluated in terms of occupational groups, occupations such as public officers, teachers, real estate consultants, drivers, tradesmen, and sales representatives appear.

The types of crimes in the 8 investigation files included in the study are in forms of menace, libel, willful injury attempt, bodily harm, reckless injury. The offense of menace was committed in the four files and the offense of libel was committed in the three files. The two types of offense are the most common types of offenses which are the subject of reconciliation.

3.2. DATA COLLECTION TOOL

Before the interviews, preliminary information was obtained about the parties from the conciliators and they were called on the phone if they would like to participate in the study. Interviews were conducted face-to-face by identifying a common time and place with volunteered participants. During the interview, the method of hand-held note-taking were used. To obtain realistic responses to the questions posed, the participants were interviewed alone and any conciliator or the other participant in conflict were not included in the interviews.

In this study, the criterion sampling which is among purposive sampling method was used. In the purposeful sampling, the individuals who constitute the sampling are selected among the persons who can answer the research question (Erişti

et al., 2013: 84). The criterion sampling consists of individuals, events, objects or situations having the identified characteristics related to the problem. In this study, the persons who have been reconciled with a pecuniary or non-pecuniary performance have been selected from the investigation files with at least one victim and one offender.

A semi-structured interview technique was used to collect qualitative data. The purpose of this is to obtain the same kind of information from different people by focusing on similar issues. Before the interview questions were prepared, a draft interview form was prepared by reviewing the similar research. The interview form was presented to the academic staff to ensure that it was properly prepared for the study and that it could be understood by the participants. As a result of the suggestions made, the interview form was reorganized and finalized. The questions were formed according to the progress of the process from the moment of the assignment of the conciliator regarding the offense to the reconciliation with a performance. An "interview form" was used to provide commonality in all questions asked in all interviews when interviewing victims and offenders. The open-ended questions available in the form are given below:

1. Have you received any notification message regarding your file at the investigation stage or prosecution stage that the offense is within the scope of reconciliation and that a conciliator has been appointed? How did it affect you?
2. What did you think about the reconciliation institution after your first meeting?
3. What influenced your decision to start negotiations?
4. Do you think that the location and time of negotiations were determined in such a way that was appropriate for you?
5. Did you prefer the negotiations to be held in the form of joint meetings or separate meetings?
6. What is your reason for choosing joint meetings?
7. What is your reason for choosing separate meetings?
8. What are the implications of your learning that you can reach to reconciliation as a result of a pecuniary or non-pecuniary performance?
9. How did the fulfillment of the performance affect you?
10. Do you believe that the performance is sufficient for the elimination of victimization?
11. Do you think you were able to express yourself in this process?

12. What differences did you notice between reconciliation and traditional judicial services?
13. How did these differences affect your trust in the justice system?
14. What was the legal impact of reconciliation with positive consequence?
15. Would you like to benefit from this service if you have a conflict within the scope of reconciliation in the future? If yes, why? / If no, why not?

The questions were prepared in the light of the steps taking place from the beginning to the end of the reconciliation process. Since there were participants from various education and age groups, the questions were written using a simple language. The use of the open-ended question technique provided in-depth answers while ensuring that the answers given did not stray away from the focused topic. The interviews lasted for 20-30 minutes. After the above questions were asked to the participants, the qualitative data of the research were collected by taking notes of the answers. The given answers were jotted down to the sections at the bottom of the questionnaire.

3.3. DATA ANALYSIS

The verbal data collected by a semi-structured interview technique were combined in computer media and the answers were listed one by one. The written text of each question was read several times and the categories related to the research questions were identified depending on the answers of the participants. In the research, "Content Analysis" approach was used for the analysis and interpretation of the data obtained from the interview results. In the content analysis, similar data is organized and interpreted around certain concepts and categories (Erişti, 2013: 155). In the answers of the participants, the concepts that are related to each other were combined and thus categories were obtained. Before the categories were interpreted, they were checked by a specialist ensuring that consistent categories were formed. Following this, the resulted categories were interpreted depending on the content of the problem.

CHAPTER FOUR
FINDINGS

4.1. Notification Made to the Parties

The participants were posed with 15 questions about the process from the moment of the appointment of a neutral third party who is the conciliator to the moment of the realization of reconciliation. According to the regulation for reconciliation, the questions were formed by the order in which a negotiation is conducted. The aim is to find out the opinions of the agreeing party about the steps taken. Since all conflicts occurred in the province of Aydın, they are the files of the Aydın Chief Public Prosecutor's Office and consist of the offenses that are within the scope of reconciliation during the investigation phase. Upon the complainant of the offender who is one of the participants in the conflict, the public prosecutor transfers the file to reconciliation in the presence of sufficient evidence to initiate a criminal case.

The files transferred to the reconciliation office are delivered to the conciliators respectively. The conciliator that the offenders and victims will communicate is sent to the parties via an SMS message. The opinions on sending notification messages to the parties, which is the first step of the reconciliation process and on its effects are given in Table 2.

Table 2: Sending Notification Messages to the Participants

Categories	**V**	**O**	**Discourses of Participants**
Notification was made	8	6	**Victims:** Yes. Conciliator information received. … (V1)/ Received. I was expecting news. … (V2)/ Yes, received. … (V3a)/ Yes, received. … (V3b)/ Yes. I had information on the subject. After talking to the conciliator, the message received. I was sure then. (V4a)/ Yes, received. Received five minutes after the conciliator called. … (V4b)/ Yes, received. … (V6)/ Received. … (V8)/

			Offenders: Yes, the message received. … (O1)/ Yes, received. … (O2)/ Yes, I received it. … (O3)/ Received after talking to the conciliator. I had information in advance. … (O4)/ Yes, received. … (O6)/ Received. … (O8)/
Feeling good	5	1	**Victims:** … So I thought that the file was not unconcluded and it was time to my turn. I felt good. (V1)/ … I thought they were dealing with it. (V2a)/ … I felt strange. I was glad it went to the conciliator. Someone was dealing with my file. (V6)/ … . I thought maybe I could compensate for my damage. I felt good. (V7)/ … I felt good because I did not want to strive for it. (V8)/ **Offenders:** … I thought it was the right practice. At least there was someone who was dealing with it. (O4)/
Not feeling good	-	3	**Victims:** **Offenders:** … I didn't feel good. I didn't think it would be escalated to such a level. (O1)/ … I was upset when I remembered it because I was nervous about the event. It is a family matter. (O6)/ … I was worried. (O8)/
Being surprised	2	2	**Victims:** … I was surprised. I did not expect it to be within the scope of reconciliation. (V3a)/ … I didn't expect that I thought we'd go to the court. (V4b)/ **Offenders:** … I thought whether it was true or not. It has been a long time since the letter received from the public prosecutor's office. I thought the file was closed. I was a little surprised. (O2)/ … For the first time, I have come to face with reconciliation. And I immediately called the conciliator. The message I received included the conciliator's phone number and name. (O3)/

Not being surprised	1	1	**Victims:** … I heard reconciliation has developed. I guessed the file would be subject to such practice. I am not surprised. (V3b)/ **Offenders:** … I did not care. I thought we would go to the court. Later the conciliator called and gave me information. (O5)/
No notification was made	3	1	**Victims:** I did not receive any message. (V2b)/ Not received. I heard the presence of such method when the conciliator called me. (V5)/ Not received. The conciliator called me. … (V7)/ **Offenders:** Not received. The conciliator reached to me. (O7)/
Total	19	14	

In Table 2, the notification messages sent to the participants and their effects are grouped into six main categories as "Notification was made", "Feeling good", "Not feeling good", "Being surprised", "Not being surprised", "No notification was made". The notification message was received by all of the participants except for one victim and one offender. The notification message was not received due to their changing phone numbers or other reasons. Most of the victims who received a notification message felt good at being notified about reconciliation while the offender felt bad because it reminded them of the event. It is seen that only one offender feels good because of the notification message for the resolution of the event. While the parties in conflict who had no previous knowledge of reconciliation were surprised, those who had previous knowledge assumed it normally. As a result, the majority of the participants were informed via the notification messages. It is extremely important to provide information about the consequence of the file after the cooling period and the appointed conciliator. It is emphasized that this notification message was made to the majority of the participants and that they felt good at the beginning of the process.

4.2. The Opinions of the Participants About Reconciliation

After the notification message, the conciliator gets in contact with the parties for the first time by telephone or by sending an invitation letter to negotiation. The first meeting is also held at the jointly designated place and time. The opinions of the participants about reconciliation after the first meeting are given in Table 3.

Table 3: The Opinions of the Participants about Reconciliation after the First Meeting

Categories	**V**	**O**	**Discourses of Participants**
A conciliator-guided practice	4	2	**Victims:** … I thought at least there was someone to calm things down. (V1)/ I understood that there was a resolution without further escalating the issue without the court. This is also done using a conciliator. (V4a)/ I was not thinking of reconciliation, but after talking to the conciliator, he changed my mind. He spoke very moderately …. (V6)/ I was more concerned with the compensation of the damage. We have already settled it with the conciliator. (V7)/ **Offenders:** … I thought at least there was someone to help me. (O5)/ … someone comes and tries to reconcile. (O8)/
A good practice	4	2	**Victims:** It is nice to have something like this. … (V1)/ A member of my family took advantage of reconciliation activity and I knew. I thought it was a nice service. (V2a)/ I did not know it before. I suspected as messages were coming, but when the conciliator came, he explained it to us. In my opinion, it is a nice practice. (V4b)/ No, it is the first time I have ever seen anything like this. It is a good thing to make a stress-free decision without going to court. I thought it was nice and logical. (V5)/ **Offenders:** It is a good thing. It relieves the burden of the courthouse. At least people do not deal with the court. (O3)/ I heard this for the first time when

			the conciliator called me. I thought it was a nice practice. (O7)/
A good service	5	3	**Victims** I knew it before. I thought of good things. I thought the government had such good service. (V2b)/ I thought it might be useful. I researched on the internet. I was curious. When I saw the social benefits, I saw that it was a very good service. (V3a)/ Like I said, I have heard it before. After the conciliator informed me, I do search the internet. I decided it was a good practice. (V3b)/ … I thought it was a good thing. (V6)/ I met with reconciliation for the first time. It made me think of good things. I thought it was a useful way. (V8)/ **Offenders:** I thought it was a good thing. I thought we would settle it by ourselves instead of going to the court. (O2)/ I felt confident. I am also excited. It is good to have such a method, it made me happy. (O4)/ I thought it was a good situation. … (O8)/
A fruitless practice	-	2	**Victims:** **Offenders:** I knew what reconciliation was, but I was not quite sure it would have a positive consequence. (O1)/ I had another file too. I know reconciliation. My other file could not be agreed. I did not have much hope. I thought it would be fruitless. (O6)/
Total	13	9	

In Table 3, the opinions of the participants about reconciliation following the first meeting were grouped into four main categories as "a conciliator-guided practice", "a good practice", "a good service", and "a fruitless practice". Victims and offenders see reconciliation as the presence of an impartial person who legally accompanies this process. The opinions that it is a good service offered by the state and a good practice are also in the majority. However, two of the offenders considered reconciliation as an ineffective practice before starting the process since they thought that negotiations would not be positive. It is not significantly unusual for offenders who are solely concerned about retribution to consider this possibility. In general,

victims and offenders have the opinion that reconciliation is a good service and a good practice. It can be said that the majority of the participants think positively about reconciliation.

4.3. Starting Negotiations

After the participants have been informed about the legal proceeding of reconciliation, negotiations are initiated by the conciliator upon the decision of the participants. The decision to start negotiations should be taken with the free will of the parties. The reasons for the participants to decide to start negotiations are given in

Table 4: Reasons for the Participants to Decide to Start Negotiations

Categories	**V**	**O**	**Discourses of Participants**
Giving chance	2	-	**Victims:** I thought if I complained, the other party would be a victim too. I wanted to give a chance. I thought he deserved forgiveness. (V1)/ … I also started to not cause the other party to compromise his job of official. (V3a)/ **Offenders:**
Not wanting to continue prosecution	3	2	**Victims:** … I did not want to come to the courthouse. (V2a) … I did not want to deal with the court. … (V3b)/ … I did not want to go to court. (V4b)/ **Offenders:** … That I wanted to close the file was effective. (O7)/ … I thought there was no need to go to the court. (O8)/
Not wanting to be further bothered by ending the conflict situation	6	3	**Victims:** I did not want it to be prolonged and not deal with it anymore. … (V2a)/ I wanted it not to be prolonged. I did not want to be bothered. (V2b)/ I did not want the issue to go on. I did not want to be bothered further. (V3b)/ … I started it because I did not want to be bothered. (V4a)/ Frankly, I did not want to waste time because it was too simple. It has already been a while to come to the point of reconciliation. .. I did not

			want to prolong it. (V5)/ I did not want to be bothered. … (V8)/ **Offenders:** I did not want it to be prolonged. I did not want to be further bothered. I wanted peace. (O2)/ I did not want to be bothered. (O5)/ The situation does not become prolonged. It will immediately end. … (O8)/
Presence of the conciliator	2	3	**Victims:** Personally meeting with the conciliator was effective in starting negotiations. … (V3a)/ The conciliator's talking which was giving confidence was effective. (V6)/ **Offenders:** I did not feel guilty. But I couldn't communicate with the other party before. I thought I could communicate using the conciliator. (O1)/ The conciliator's attitude affected me. Otherwise, I would not reconcile. But the conciliator was moderate. (O3)/ … It was the best way to resolve it using a conciliator. That's why I wanted to start negotiations. … (O4)/
Maintaining relationship	1	1	**Victims:** … We have a relationship with a long history. I did not want to be bad with my master. I complained to him with a moment of anger. We still work together. He is like my elder brother. Old friends cannot be enemies. (V8)/ **Offenders:** I decided to continue our relationship with my partner. I have children. … (O6)/
Not wanting to be sentenced	-	2	**Victims:** **Offenders:** … I did not want to be sentenced to this issue too. That is the reason. (O6)/ … I did not want to be sentenced. (O7)/
Total	14	11	

In Table 4, five main categories lead participants to decide to start negotiations. They are "giving chance", "not wanting to continue prosecution", "not wanting to be further bothered by ending the conflict situation", "presence of the conciliator" and "maintaining relationship". Giving chance is an opinion that results from the victim's evaluation of the offender's status. The opinion that everyone may make mistakes or

that the offender may lose his job as a result of the retribution led the victims to start negotiations. Another important reason is that both groups of the participants do not want to go to court. The presence of the conciliator is also a very effective reason in making such a decision. However, it is important to note that the conciliator has affected the victims and offenders in a peaceful and not coercive manner. If the participants have a marriage or business relationship, it is again one of the reasons that cause them to start negotiations.

On the other hand, the offenders decided to start negotiations by considering the possibility of being sentenced if the prosecution stage was commenced. In general, the most common answer to the decision of starting negotiations is to resolve the conflict without any prolonged process. The victim complains about the offender because of the intense feelings of injustice and anger during the initial moments of the conflict. The victim chooses the way of reconciliation without going through the prosecution process when the first impact of the event decreases after the cooling period. Therefore, the most frequent answer was that they did not want to be bothered within deciding to start negotiations.

4.4. Place and Time of Negotiations

Table 5: Determining the Place and Time of Negotiations Proper to the Participants

Categories	**V**	**O**	**Discourses of Participants**
A special place must be available for negotiations	1	1	**Victims:** … We met in a park. It would be better if it was a slightly quieter environment. We might get into a hassle. Hassle in a crowded place would not have been welcomed. A quiet place would be better. (V1)/ **Offenders:** At 4 p.m. we met outside the shop where the event happened at Sevgi Street. I thought it would be more appropriate to have negotiations at a formal office. (O4)/

Appropriately Determined	10	7	**Victims:** Yes, I took the day off and took part in the negotiations. I came to the courthouse. It was appropriate. (V2a)/ It was appropriate. My workplace is close too. We met in the courthouse yard. (V2b)/ Yes it was appropriate. He came to my workplace. We met during working hours. So it was lunchtime. (V3a)/ I think so. Since three of us were working at a hospital, the conciliator came and the process went fast. (V3b)/ Yes it was appropriate. He, the conciliator came to the workplace. He asked a suitable time for me. We acted in consultation. (V4a)/ Yes. The conciliator came to the workplace. He determined the time in advance. It was appropriate. (V4b)/ Yes it was appropriate. No problem. I met him at the courthouse. (V5)/ Yes, I think. It was at a place and time I determined. (V6)/ Yes. Because it was crop time and he waited for me. (V7)/ Yes, it was at the appropriate times. The conciliator came. As he did not know my house, we talked at the pita shop. (V8)/ **Offenders:** It was appropriate. We met in the park. The atmosphere was relaxed. I felt comfortable. We talked during lunchtime as I was working. I did not have any problems with time either. (O1)/ He gave us time and we met at the appropriate time. The venue was also convenient. (O2)/ It was comfortable because it happened at my workplace. Before the conciliator joined the meeting, he was determining an appropriate time. (O3)/ I met at the courthouse. He waited for me to come. Since I was out of town, we found a good time and met with the conciliator. (O5)/ Yes, it was appropriate. Especially the days when I wasn't working were selected. Sometimes I go to the market. Everything is arranged according to my

			request. (O6)/ I think. The conciliator called and arranged everything for me. (O7)/ Yes. It was determined proper to me because I was available in the morning. I went to the courthouse. (O8)/
Total	11	8	

A common time and place should be determined together with the parties so that negotiations may start. Time and place should be determined by the joint decision of both the conciliator and the participants. In Table 5, determining the place and time of negotiations proper to the participants is examined and obtained two main categories. All participants, except for one offender and victim, responded that the place and time were "Appropriately Determined". Conciliators usually had negotiations in the courthouse, in the workplace or public places. While determining the time, the working hours of the participants or the road situation for the participants outside the city were taken into consideration. Only one victim and one offender stated that there should be a special section in the courthouse for negotiation. In general, all participants agree that the time and place are properly determined according to them. It is understood that unlike the prosecution process, reconciliation is a process that is executed under flexible conditions and in line with the desires of the participants.

4.5. The Form in Which Negotiations Are Held

Table 6: The Form of Negotiations

Categories	**V**	**O**	**Discourses of Participants**
Joint meeting	4	3	**Victims:** The joint one was better. (V1)/ Joint meeting. (V2a)/ We met jointly. (V2b)/ It was a joint meeting. (V4a)/ **Offenders:** It was a joint meeting. (O1)/ Joint meeting. (O2)/ A joint meeting was held. (O4)/

Individual meeting	7	5	**Victims:** It happened separately. (V3a)/ ıt was an individual meeting. (V3b)/ I did not her entering the shop. (V4b)/ I talked to the conciliator only. (V5)/ I prefer individual meetings. (V6)/ Held individually. (V7)/ It happened separately. (V8)/ **Offenders:** I wanted it to be separated. (O3)/ No, I did not want to come together. (O5)/ Separately. (O6)/ We had an individual meeting. (O7)/ Separately. (O8)/
Total	11	8	

The form of the negotiations was divided into two main categories as the "Joint Meeting" and the "Individual Meeting". The victims and offenders in the three files preferred to negotiate together whereas in the remaining five files the parties preferred that the negotiations be held in individual meetings. Although the main aim of the conciliators is to continue negotiations with the victims and offenders at the same table, as can be understood from the overall picture, most conflict resolution negotiations were held in individual meetings. In the absence of the reconciliation institution, the offenders and the victims would meet only during the extended court process; but they were able to communicate their desires with the assistance of the impartial third party during reconciliation without coming together.

4.6. Conducting Negotiations as Joint Meetings

Table 7: The Reasons for the Preference of Joint Meetings

Categories	**V**	**O**	**Discourses of Participants**
Seeing remorse	4	-	**Victims:** It is better to decide together. At least when you talk, you can see how the other party feel. It is better to meet face to face. I wouldn't know what the suspect felt if it was a separate meeting. To see if he is regretful. (V1)/ It is good to see the suspect being regretful after insulting. (V2a)/ We were together in the event. After all, I wanted to be together. I wanted to come face to

			face to see his regret. (V2b)/ I wanted to see his regret. (V4A)/ **Offenders:**
Presence of the conciliator	-	3	**Victims:** **Offenders:** Both sides were aware of the issue. I expressed myself comfortable with the presence of the conciliator. (O1)/ No problem experienced as everyone knew himself. We are adults. If there was something, the conciliator was with us and he would intervene anyway. (O2) / They did not take the situation seriously because they were young. The conciliator was aware of everything. (O4)/
Total	4	3	

Two different categories emerged among the reasons for preferring a joint meeting in virtue of the victims and offenders. The victims preferred a joint meeting because they wanted to see remorse in the offenders after the conflict while the offenders preferred a joint meeting because of the presence of the conciliator. Victims want to see the change in the parties after the offense which is the subject of the conflict. If this change is positive (remorse, embarrassment, etc.), it renders negotiations to conciliation. However, if the victim feels that the offender does not feel remorse or embarrassment for the committed offense, negotiations result in a negative outcome. The offenders, on the other hand, participates in negotiations with confidence because the conciliator is an impartial third party assigned by the state and the conciliator's main aim is to achieve reconciliation in the file.

4.7 Conducting Negotiations as Individual Meetings

Table 8: The Reasons for the Preference of Individual Meetings

Categories	**V**	**O**	**Discourses of Participants**
Preventing a new conflict	3	3	**Victims:** I did not want to come face to face and discuss it again. (V3a) / It was much healthier. If we were together, it would be a quiet tension.

			(V3b) / I did not want to get together. If we were together, there would be a discussion again. (V5)/ **Offenders:** … If I saw him, there would be a discussion again. I was more comfortable. (O6)/
Not to feel the bad effects of the conflict again	2	3	**Victims:** I did not want her to enter the shop. (V4b)/ Because I did not want to come face to face and remember the same things. (V6)/ **Offenders:** I was nervous when he came. So we signed separately. (O5)/ … I remembered bad things again, but at least I did not see that woman. (O6)/ I did not experience the problem that I had on that day. My mood was not good anyway. We met separately. I was pleased. (O7)/
Being unable to comply with the specified time	1	1	**Victims:** We had individual meetings due to our works. It would not matter if we met jointly. We are seeing each other now. (V8)/ **Offenders:** We could not find a common time. Otherwise, I would come together.
Total	6	7	

Table 8 examines the reasons for choosing a separate meeting. There are three reasons such as "preventing a new conflict", "not to feel the bad effects of the conflict again", and "being unable to comply with the specified time". The participants of a single conflict where their relationship continued, stated that they had to have separate meetings because they could not come together due to working hours. However, in general, the participants preferred individual meetings due to the possibility that the conflict might be remembered and a new disagreement could occur in the joint meeting. The participants who are unlikely to reunite after the conflict, except for those having a business or family relationship, prefer to benefit from reconciliation without seeing each other following the conflict.

4.8. The Presence of the Performance

Table 9: Effects of Learning the Rights or Obligations of the Performance

Categories	**V**	**O**	**Discourses of Participants**
Not to appear in the court	-	7	**Victims:** **Offenders:** … Because the file was going to be closed. (O1)/ ... I was in favor of not prolonging it any longer. So I thought I would fulfill the performance. (O2)/ … I have other cases too. I did not want to be punished for this. I said I would fulfill. (O3)/ … I thought I would pay it to avoid appearing in the court. … (O5)/ … I thought I would fulfill it as the file would be closed. (O6)/ … I thought I would do it as it would be closed. (O7)/ Positive. If I fulfill it the file will be closed. Not to be prolonged anymore. … (O8)/
Exercising the Current Right	6	-	**Victims:** I thought that the insulting person could also fulfill a non-pecuniary performance. (V2a)/ I thought that I could request a non-pecuniary performance because the caused damage was non-pecuniary. (V2b)/ … I requested. (V3a)/ … I wanted to exercise it when I had such a right. (V3b)/ … I thought it was a good sanction. I wanted to exercise it. (V5)/ I wanted to request. … (V8)/ **Offenders:**
Compensating the Damage	2	-	**Victims:** My son was scared at this event. At least I wanted a gift to overcome his fear. I had the idea to erase the effect of the event. (V1)/ I still wanted my damage to be compensated. I was contented. (V7)/ **Offenders:**
Feeling that it would relax	1	1	**Victims:** I thought it would be a relief to ask for something like this from the other party. (V4a)/ **Offenders:** I proposed it in the negotiations. I wanted to apologize. I thought it would make me feel better. (O4)/

Total	9	8	

The effects of learning the rights or obligations of the performance are examined in Table 9. Four categories such as "Not to appear in the court", "Exercising the Current Right", "Compensating the Damage", and "Feeling that it would relax" emerged. The eight offenders, except one offender, thought that they could fulfill the performance with the concern of being punished when appeared in the court. On the other hand, the idea that the majority of the victims want to exercise their existing rights is apparent. The two victims believe that the performance can be utilized to compensate for the damage. Only one victim and one offender seem to think that the performance can comfort. In general, it is seen in Table 8 that the existence of the performance is a right that should be exercised for the victims and an obligation for the offenders to prevent them from appearing in court. It can be concluded that the victims prefer to use their right to exercise the performance, which is an input of restorative justice, by determining their damages rather than the retribution the court appreciates.

4.9. Fulfillment of the Performance

Table 10: The Effects of the Fulfillment of the Performance

Categories	**V**	**O**	**Discourses of Participants**
Being happy	3	1	**Victims:** I was happy. … (V1)/ … I was happy. … (V2a)/ …. As it was a social performance, I was happy. (V3a)/ **Offenders:** … I was happy. … (O1)/
Feeling safe	2	-	**Victims:** … My son was delighted with and felt safe. … (V1)/ …. I have no fear. I felt safe that they would not come to my door again. (V6)/ **Offenders:**
Relaxation	7	4	**Victims:** I was very relieved. … (V2a)/ Personally satisfied. … (V3a)/ … It did not make me forget the bad aspects of that day, but it made me relaxed. … (V4a)/ … I have had some relief. (V5)/ I became more peaceful. … (V6)/ … I was very relieved. (V7)/ I was relieved when I apologized. (V8)/

			Offenders: … I was relieved. (O2)/ I felt relieved that the work on me performed. (O4)/ … I was very relieved. (O7)/ I was relieved. (O8)/
Compensation of victimization	2	-	**Victims:** …. At least it was a response to the act committed. … (V3a)/ …. At least the other party saw that there was a response to what he did. … (V5)/ **Offenders:**
Other	1	2	**Victims:** I was not affected by anything. I was involved in it later. It made me feel uncomfortable to insult the woman. It is good that he apologized. (V4b)/ **Offenders:** I did not feel bad. At least one of my files was closed, so I did not bother. (O6)/ At least the event has been resolved. The longer it got, the worse it was. It is resolved in a short time. (O7)/
Total	15	7	

The effects of the fulfillment of the performance are examined in Table 10. The categories of "Being Happy", "Feeling Safe", "Relaxation," and "Compensation of Victimization" were emerged. While the three of the victims felt happiness as a result of the fulfillment of the performance, one of the offenders stated that he was happy to fulfill the performance. From the point of victims, it had the effect of showing that the damage they had suffered as a consequence, which is the compensation of such damage. They also felt safe as a result of the performance fulfilled by the offender. These performances are especially observed in cases where the offender promises not to commit the same offense again. However, it is seen that most of the victims and offenders feel relief as a result of the performance. The offenders feel relief due to the end of the dispute without proceeding to prosecution while the victims feel relief due to the fulfillment of the requested performance. In general, the participants referred to the effect of the fulfillment of the performance as "relaxation". Apart from the relief for the two groups of the participants, the fulfillment of the performance provides a decrease in the burden of files in legal sense and a right/obligation to help ensure peace in social sense.

4.10. Sufficiency of the Performance

Table 11: Sufficiency of the Performance

Categories	**V**	**O**	**Discourses of Participants**
Believing to be sufficient	8	8	**Victims**: … it was sufficient. (V1)/ Yes. … (V2a)/ It was sufficient to me. … (V2b)/ I think so. I understood he was regretful. (V3b)/ I think so. It did not make me forget the bad aspects of that day but it relieved me. … (V4)/ … I think it was sufficient. (V6)/ Yes, it was sufficient. … (V7)/ Yes, I think so. It was sufficient for me to being apologized to me. (V8)/ **Offenders:** … I think it was sufficient. (O1)/ I think it was sufficient. They also requested in this way and I did what they wanted. (O2)/ It was sufficient. … (O3)/ … I did my lot. It was sufficient for me. (O4)/ It was sufficient. … (O5)/ Yes, I think so. … (O6)/ … I think it was sufficient. (O7)/ … It was sufficient. (O8)/
Believing not to be sufficient	3	-	**Victims:** I think it was not sufficient, but I determined a symbolic figure. I have heard the other party has economic problems. I did not mean to force. (V3a)/it is not sufficient for such insulting but there is nothing to do because I do not want to bother with it anymore. (V4b)/ As I said it was a small amount. But the other party's wife is my friend. I did not want to force him too much as a result of her request. … (V5)/ **Offenders:**
Total	11	8	

Table 11 examines the subject of sufficiency of the performance and the two categories as “Believing to be Sufficient” and “Not believing to be Sufficient” were obtained. The purpose of reconciliation is not the conclusion of the file with agreement but that the parties are satisfied with the consequence of reconciliation. Only three victims of the participants thought that the performance was insufficient. The performance is deemed to be insufficient due to reasons such as the economic situation

of the offender, not wanting to prolong the conflict any more or the existence of a prior relationship. When we look at the table in general, all of the offenders and eight of the victims think that the performance is sufficient. The opinion that the determined performance is sufficient is the majority because the victims have the right to determine the pecuniary or non-pecuniary damage caused by the conflict with the guidance of conciliators, and the offenders have the chance to compensate for the damage caused by them.

4.11. The Capability of the Participants to Express Themselves in Negotiations

Table 12: The Capability of the Parties to Express Themselves

Categories	**V**	**O**	**Discourses of Participants**
Incapability to express sufficiently	1	-	**Victims:** I expressed myself as much as I could. But I have only literacy. I would have expressed myself more if I had an education. (V1)/ **Offenders:**
Capability to express properly	10	8	**Victims:** Yes, I think. … (V2a)/ I expressed myself. I comfortably expressed myself. … (V2b)/ Yes. I easily expressed myself. … (V3a)/ I think so. I raised the issues. … (V3b)/ Yes. I narrated the event to the conciliator. … (V4a)/ … I think I expressed myself. (V4b)/ I certainly expressed myself. … (V5)/ Yes, I think so. We talked everything related to the event. … (V6)/ Yes. I think so. (V7)/ Of course I talked about everything. (V8)/ **Offenders:** … I think I well expressed myself to the other party and the conciliator. … (O1)/ Yes. … (O2)/ Yes. I expressed myself quite well. … (O3)/ … I expressed myself. (O4)/ Yes. … (O5)/ Yes, I did. … (O6)/ I told everything. … (O7)/ Yes. I think so. … (O8)/
Total	11	8	

The subject of the capability of the parties to express themselves is examined in Table 12. As a result of the answers given, the two categories are formed as: “Incapability to Express Sufficiently" and "Capability to Express Properly". Only one of the participants replied that he could not express himself sufficiently. The reason for this is that his education is only at the level of literacy. The eighteen respondents, except one victim, replied that they expressed themselves well. In general, the participants expressed themselves well in the negotiation process, told the conciliator about the event and sought a resolution. It is understood that there was no communication problem since the participants were able to express themselves better and express their desires and opinions more clearly because the participants of the eight files examined were the graduates of high school and university.

4.12. Traditional Judicial Procedure and Reconciliation

Table 13: The Differences between Traditional Judicial Procedure and Reconciliation Noticed by the Parties

Categories	V	O	**Discourses of Participants**
Being heard by the conciliator	4	3	**Victims:** … The judge would not listen to us, but the conciliator listened. … (V1)/ … The judge does not listen in court. (V3a)/ … I was able to have a very comfortable dialogue with the conciliator. … (V3b)/ … I would not have time to say this much before the judge. (V5)/ **Offenders:** The judge/prosecutor does not allow us to speak or they do not listen to us. … (O3)/ … The judge would not listen to us in court. (O4)/ … The judge could not listen to me this much. But the conciliator listened. (O5)/
Being comfortable	5	2	**Victims:** This is more comfortable, of course, people are more comfortable. … (V2a)/ Reconciliation is a more comfortable process. … (V3a)/ It is more comfortable. … (V4a)/ … I think it is more comfortable. … (V5)/ Reconciliation is more convenient. … (V6)/

			Offenders: … It is more comfortable in reconciliation as if it were a conversation. … (O1)/ … I would not be so comfortable before the judge. (O2)/
Expressing themselves	1	4	**Victims:** … One feels excitement in court. You are not too nervous here. I explained the events more easily. (V4a)/ **Offenders:** I went to court before, I did not feel comfortable. Formal environment. You cannot express yourself well as there is official pressure. … (O1)/ At least no cold court wall. I gave my answers outside and freely. … (O4)/ I could not express myself when I went to court. I expressed myself before the conciliator. … (O5)/ I expressed myself more comfortably. I fear that I cannot express myself in court. (O6)/
Coming to a resolution in a short time	7	2	**Victims:** … You do not waste time. (V2a)/ The court process is taking longer. The issue will be closed in reconciliation. … (V2b)/ … I have saved time. … (V3a)/ The process went much faster. … (V3b)/ We achieved results in a shorter time in reconciliation. … (V4b)/ …. I did not waste time. (V7)/ Useful in terms of time. You do not need to leave your work to go to court. Reconciliation is better than going to court. … (V8)/ **Offenders:** … It would be a waste of time. … (O7)/ Waste of time in court … (O8)/
Incurring material or immaterial damage during the prosecution process	-	3	**Victims:** **Offenders:** If he had gone to court, the process would be longer and longer. I had to hire a lawyer. There would be material and immaterial deterioration. (O2)/ … My psychology would be disrupted. (O7)/ … I was going to be sentenced with a penalty. … (O8)/
Total	17	14	

In Table 13, the answer to the question on the differences between traditional Judicial procedure and reconciliation noticed by the parties is sought and the five categories such as “Being heard by the Conciliator”, “Being Comfortable”, “Expressing Themselves”, “Coming to a Resolution in a Short Time”, and “Incurring Material or Immaterial Damage during the Prosecution Process” are obtained. The conciliator’s active listening to the parties is one of the most important elements to be considered in negotiations. When the parties come together, the victim and the offender are listened to understand the reason(s) of the conflict occurred. The participants think that they could not be heard enough by the judge in the traditional retribution system but the conciliator listened to them sufficiently. While the four offenders and three victims have the opinion that no judge will listen to them during the court, whereas there is a conciliator who listens to them during reconciliation.

“Being comfortable”, which is another category, is an answer given especially by the offenders. Five of the victims believe that reconciliation is a more comfortable process than the court. Besides, two of the offenders believe that reconciliation is comfortable and like an informal conversation and that it cannot be so comfortable before the judge.

The participants replied that they were able to express themselves better in reconciliation because the court was an official environment and they were excited. It seems that the offenders are the majority in the category of expressing themselves. The four offenders and one victim replied that they could not express themselves freely in court and that there was no such problem with reconciliation.

Reconciliation, unlike traditional retribution, aims to resolve in a shorter time. In the Turkish Penal Code, the conciliator's time to finalize a case is thirty days. In case of any request for extra time, this period can go up to fifty days. The reconciliation process, which is shorter than the process until the conclusion of the court, was also reflected in the responses of the participants. The eight victims and two offenders highlighted the difference from traditional retribution as "Coming to a Resolution in a Short Time". It is seen that the victims who compensate their pecuniary or non-pecuniary damages are the majority in this category.

The parties in conflict continue to the prosecution process if they do not agree during negotiations. The offender is punished at the termination of the prosecution process

depending on the type of the offense committed, the victim cannot find the response to his victimization in the full sense. Therefore, the offenders are saved from any material or immaterial damage during the prosecution process by reconciliation. The three offenders responded that there were no material and immaterial losses, such as hiring a lawyer, punishment or psychological wear. In general, the differences between reconciliation and traditional judicial system from the eyes of the participants are defined as it is a process in which they can be heard by the conciliator, an impartial third person, more relaxed and like an informal conversation compared to the court, and where they can express the effects of the event, have reached a resolution in a short time and do not have any material or immaterial losses as in the prosecution process.

4.13. Trust in Justice After Reconciliation

Table 14: The Trust of the Participants in the Judicial System After Reconciliation

Categories	**V**	**O**	**Discourses of Participants**
Increased trust injustice	8	6	**Victims:** … It positively affected my trust. (V2a)/ … My trust in justice is endless. Reconciliation increased this confidence more. … (V2b)/ Positively affected. … (V3b)/ Of course it increased. … (V4a)/ … My trust increased. (V4b)/ … My trust increased. … (V5)/ … Amy trust in justice increased. … (V6)/ Yes, it increased. … (V8)/ **Offenders:** Positively affected. … (O1)/ … My trust increased. (O2)/ … My trust increased. (O3)/ It increased my trust. … (O4)/ My trust increased due to reconciliation. … (O7)/ My trust increased. … (O8)/
Distrust of justice in general	2	1	**Victims:** That my brother and my wife in prison reduced my trust injustice. … (V1)/ I have no trust in the judicial system in general. … (V3a)/ **Offenders:** I do not have much trust in the judicial system. … (O5)/
No Change	1	1	**Victims:** No change. I have already trust in it. … (V7)/

			Offenders: … I have already trust in it. … (O6)/
Total	11	8	

Table 14 examines how the differences between the traditional judicial system and reconciliation examined in the previous table affect trust injustice. In this context, the three different categories were formed as "Increased Trust in Justice", "Distrust of Justice in General", and "No Change". The eight victims and six offenders replied that their trust in justice have increased through reconciliation. This shows that reconciliation is applied correctly and effectively because what is required in the restorative understanding of justice is the access of the parties in conflict to justice, and the participants have responded that they have increased their trust injustice due to reconciliation.

The two victims and one offender stated that they generally did not trust justice. However, it should be noted that one of the relatives of these participants or themselves were persons who had previously been convicted of a crime. Therefore, there was a decrease in the confidence injustice among them because they believed that such punishment was unjust. Although these three participants did not trust justice, they expressed their satisfaction with the reconciliation method too. One victim and one offender replied that they have confidence in injustice and that they have not changed. In general, Table 14 shows that reconciliation increases the trust injustice for both victims and offenders. The participants who preferred reconciliation, which is developed as an alternative way of resolution, increased their feelings of trust injustice.

4.14. The Positive Effects of Reconciliation

Table 15: The Effects of Reconciliation with Positive Consequence

Categories	**V**	**O**	**Discourses of Participants**
Not to appear in the court	8	5	**Victims:** I did not appear in the court. … (V1)/ … I will not appear in the court. … (V2b)/ There is no need to appear in the court. … (V3a)/ … I did not have to appear in court. (V3b)/ I did not appear in the court. … (V4a)/ I did not have the court stress. … (V6)/ My damage was recovered without

			appearing in the court. … (V7)/ … We did not have to appear in court. (V8)/ **Offenders:** I was saved to go to court. … (O1)/ I did not have to appear in the court. … (O4)/ … I did not appear in the court. … (O5)/ I did not appear in the court. … (O6)/ I did not appear in the court. … (O7)/
Having pecuniary and non-pecuniary benefit	4	4	**Victims:** No cost incurred. … (V1)/ … It had material and immaterial benefits. (V2b)/ … I have not worn materially and immaterially. (V7)/ I did not need to hire a lawyer. No loss of job, no material or immaterial loss. … (V8)/ **Offenders:** … It has positive effects both materially and immaterially. (O1)/ Advantageous. No cost incurred. No stress experienced. It caused psychologically relaxed. (O2)/ It was positive. No court process like hiring a lawyer. … (O3)/ I did not need to hire a lawyer. … There would be extra expense and it would be prolonged. (O7)/
Closing the file without a criminal record	4	4	**Victims:** …. I do not have any file at the court. (V1)/ It was better. For my future. No record was kept at the courthouse. The file was closed. (V2a)/ There will be no criminal record. … (V2b)/ … No criminal record was created. … (V3b)/ **Offenders:** ... I did not have a file anymore. … (O1)/ The file was closed. … (O3)/ … No file is opened for me. … (O4)/ … No record was kept on me. (O8)/
Not to waste time	3	-	**Victims:** … No need to waste time and become stressful. … (V3a)/ … We did not waste time and it was resolved. (V4b)/ I did not lose time. It was resolved in a very short time. … (V5)/ **Offenders:**
Not to come face to face with the party in conflict	3	-	**Victims:** … I did not come face to face with the other party again. (V4a)/ I would not be at the court with that person. … (V4b)/ … We would come to face to face if we appeared in court. It was resolved without seeing the other party. (V5)/

			Offenders:
Not to be sentenced	-	3	**Victims:** **Offenders:** … I knew I would be sentenced with more. At least it resulted in a lesser figure. (O5)/ … I avoided being sentenced. (O6)/ I have not been sentenced. … (O8)/
Total	22	16	

The effects of reconciliation with positive consequences are examined in Table 15. As a result of the responses of the participants, six categories were formed. These categories are "Not to Appear in the Court", "Having Pecuniary and Non-Pecuniary Benefit", "Closing the File without a Criminal Record", "Not to Waste Time", "Not to Come Face to Face with the Party in Conflict", and "Not to be Sentenced". The eight victims and five offenders responded that they did not have to appear in the court again and the conflict was resolved as a consequence of reconciliation. In this category, it is seen that the victims are the majority.

If the prosecution process is continued, a deterioration process with several pecuniary and non-pecuniary damages begins for the parties in conflict. The four victims and four offenders among the reconciled participants agreed that they were saved from pecuniary damages (i.e. hiring a lawyer, attending court, loss of job) and non-pecuniary damages (i.e. stress, anxiety) due to reconciliation.

Another important consequence of reconciliation is that there will be no criminal record and no file record is available for the offender or victim. In this category, the four victims and four offenders think that there is no criminal record of them due to reconciliation. This category is especially important for the offenders in terms of their future lives. It is required that there is no criminal record in the recruitment of persons or compulsory public duties.

The three victims stated that they resolved by reconciliation without wasting time. While the conflict can be resolved in a short time within the period specified by the law for reconciliation, it may not be resolved at the same speed during the prosecution process. One of the victims stressed that his different files, other than the one being examined under reconciliation, were still not concluded and highlighted the need to expand the scope of the offense under reconciliation.

Some of the participants stated that they did not have to come face to face with other parties after the conflict using reconciliation. In this category, the three victims mentioned the positive effect of not coming face to face. Instead of recalling the incident by coming together during the prosecution process, they communicated through the conciliator.

In the category of "not to be sentenced", which is the most important effect of reconciliation for offenders, the three offenders responded that the conflict was closed without any penalty. One of the offenders stated that he preferred to fulfill the performance as a consequence of reconciliation because he felt that the fine sentence to be decreed by the court would be higher than the performance he had fulfilled. Many offenders are anxious to be sentenced by the court and strive for fulfilling the requested performance of reconciliation. The participants stated that the effects of reconciliation with positive consequences, in general, were not appearing in court, getting results in a short time, not having any criminal record, not being sentenced in terms of offenders and not coming face to face again in terms of the victims. The most frequent response of the two groups of participants was the absence of a court, which led to the conclusion that it was quite appropriate to utilize a restorative method instead of the traditional concept of retribution.

4.15. Benefitting Again From the Reconciliation Method in the Future

Table 16. Benefitting Again From Reconciliation in a Future Conflict by the Parties

Categories	**V**	**O**	**Discourses of Participants**
Willing to benefit from reconciliation depending on the type of offense	3	2	**Victims:** If it is a serious crime, I do not accept reconciliation, but I will reconcile if it was a result of a momentary act with a nervous response. (V1)/ It depends on the type of crime, the amount of damage. I do not want to reconcile if it is a big event, but if it is a simple thing like that, I will reconcile. (V4)/, Of course, I would. Unless it is a serious incident, I want to reconcile. … (V8)/ **Offenders:** I can benefit from reconciliation, depending on the situation. … (O5)/ In case of this type of crime, I will reconcile, of course, why not. But if it is a heavier crime, I will not reconcile. (O8)/

Willing to benefit from reconciliation for a quick result	5	1	**Victims:** Yes. It is fast in terms of process. I certainly want to benefit from it. (V2b)/ Yes. Because the process in court is postponing. … By reconciliation, I can find an effective solution. (V3b)/ Of course it can. Let the conciliator listen before going to court. It reduces the files of the judicial system. … I wish the other files would be concluded so quickly like this. (V4b)/, Of course, I would like to take advantage. It is a very good method both in terms of time and comfort. (V5)/ I would certainly like to take advantage. I am very pleased. The solution was provided in a short time. (V7)/ **Offenders:** Yes. It ended in a short time. … (O3)/
Willing to benefit from reconciliation instead of appearing in court	3	3	**Victims:** Yes, I would like to benefit. I do not want to go to court. (V3a)/ … If I went to court I would have to see [the other party] and I was more affected. So I would like to take advantage of reconciliation even in another case. (V5)/ Yes I would. Because they talked about my legal rights. I felt safer. Going to court is very stressful. (V6)/ **Offenders:** … I did not deal with the court. There were no legal costs. Of course, I would like to benefit. (O3)/ … It was nice to have such a service without going to court. I was pleased. It does not last forever. (O6)/ I would like to go to reconciliation in all conditions. First, both sides should listen to each other. If not agreed, then they should go to court. (O7)/
Willing to benefit from reconciliation even in the status of a victim	-	2	**Victims:** **Offenders:** … Even if I was the complainant, I would like to benefit from reconciliation. (O1)/ Yes, I think it is a good thing. I liked it. I'd like to have it even if I am right. Anyone can make mistakes. (O3)/
Other	1	1	**Victims:** I would reconcile instead of struggling. Even if I was right, I would reconcile for a performance. (V2a)/ **Offenders:** I would like it. Negotiation should be a front phase for any offense because the remorse of the parties is understood when they come face to face. A requirement of negotiation should be placed before the trial. (O4)/
Total	12	9	

Table 16 poses the question of whether the participants will reconcile in case of a conflict due to an offense within the scope of reconciliation. The answers of the participants were divided into four categories as "Willing to Benefit from Reconciliation depending on the Type of Offence", "Willing to Benefit from Reconciliation for a Quick Result", "Willing to Benefit from Reconciliation instead of Appearing in Court", and "Willing to Benefit from Reconciliation even in the Status of a Victim". The victims and offenders stated that they could reconcile depending on the type of offense. They expressed that they wanted to benefit from reconciliation in the offenses which were the subject of simple criminal cases but they would not reconcile in the offenses which were the subject of heavy penalty cases. In cases where more severe penalties are required, reconciliation cannot be applied too.

Another reason for the participants to benefit from reconciliation is that reconciliation can be resolved in a shorter time than the prosecution process. The five victims and one offender stated that they could benefit from reconciliation in any conflict in the future because the conflict was resolved in a short time. In this category, it is seen that the victims who resolve the conflict with the fulfillment of a pecuniary or non-pecuniary performance are the majority.

The three victims and three offenders are in favor of benefitting from reconciliation rather than appearing in court. That the court is stressful or meeting with the other party causes the participants to prefer reconciliation instead of going to court. Offenders believe that they can benefit from reconciliation even if they are at the status of a victim.

In general, it is understood from Table 16 that since reconciliation is a process which is concluded in a short time and carried out in line with the desires of the parties, all participants are willing to benefit from the reconciliation service in case of any conflict which is subject to reconciliation in the future. The participants who have undergone a mental transformation from the moment of invitations to negotiation to the moment of the performance expressed that even if they were initially indifferent to the idea of reconciliation, they can utilize this method in a future conflict.

Categories were formed by the frequency of the answers given to 15 questions posed to the participants. The answers to the questions such as their opinions about reconciliation, reasons for the decision to start negotiations, the way the negotiations

took place and legal effects in the process of reconciliation from the moment of commissioning of conciliator to the agreement of the parties for the offense within the scope of reconciliation under investigation were sought. In line with the responses of the participants to the questions, it is aimed to explain the reasons for preference and effects of reconciliation in virtue of victims and offenders.

CHAPTER FIVE
CONCLUSION

5. CONCLUSION

According to the traditional concept of retribution, that a criminal act is concluded only after the offender is punished brings about the problem that the damage suffered by the victim cannot be resolved. For this reason, alternative ways of resolution have started to be used as a result of the need not only to focus on the offender but also to consider the victim. These new ways are not only oriented towards criminal sanctions but also addressing the victimization arising out of the offense. Since the main aim is to maintain social peace instead of punishment, alternative ways of resolution have started to be preferred by the states of law. Reconciliation, which is a method allowing hearing and guiding the victim and offender impartially through the understanding of restorative justice, has already become the most frequently used way of resolution in the field of criminal law.

Reconciliation refers to a process aimed at a peaceful resolution that is guided by an independent and impartial third party. Both the victim and the offender are heard and informed legally by resolving the conflict outside the court. The parties can choose the way of reconciliation with their free will, or if they do not want, the traditional trial can be continued. The conciliator appointed by the judicial authorities has a guiding mission in this process, not a directing one.

The method of reconciliation adopted by many states of law in the world is applied by aligning it with the legal rules of such countries. Reconciliation, which entered our criminal justice system for the first time in 2005, has changed in the following years and took its final form. New regulations were made in line with the needs in practice and the scope of the offense was expanded and the persons who could practice reconciliation were determined within the legal framework. Even though lawyers believe that reconciliation cannot be practiced other than the graduates of law faculties, it is also successfully implemented by conciliators who use negotiation skills and predominantly took legal courses. It can be said that the tradition of reconciliation,

which exists in the foundations of the Turkish culture, is utilized effectively in our legal system.

The offense must be a crime within the scope of reconciliation so that reconciliation can be implemented and the disputed parties can benefit from reconciliation. The legislator stated that the offenses subject to the complaint would be within the scope of reconciliation unless otherwise determined. In terms of the offences not subject to complaint, it should be clearly stated that reconciliation with special provisions can be applied. We know that reconciliation is implemented for the first time in restorative justice for children. For this reason, in our country, the types of crimes that are subject to reconciliation are being expanded, especially in terms of children dragged into crime.

Upon the preparation of the indictment by the investigating prosecutor and the finding that the offense is a crime within the scope of reconciliation, the file is sent to the reconciliation office by the investigating prosecutor. The reconciliation office assigns the files to the conciliators who are actively working on the list in the reconciliation office using an automatic allocation system. A message is sent to the victims and offenders included in the file that the conciliator is assigned. The negotiation process starts with the free will of the parties and thus negotiations start. The conciliator reads the file in detail before meeting the parties and collects information about the parties and the subject of the conflict. The parties are invited to negotiations by calling the telephone number or letter of invitation to the address available in the file. After the victim and the offender have been legally notified, the negotiation process starts with the acceptance of such an invitation. There are two situations, such as positive or negative results of the negotiations. If at least one of the parties does not accept the offer of reconciliation, the next stage of the prosecution stage is applied and the punishment provisions are applied. If the parties accept the offer of reconciliation, the reconciliation prosecutor decides that there is no need for further prosecution of the file under reconciliation as the parties come to reconciliation.

A pecuniary or non-pecuniary performance may be requested to resolve the damage suffered after the conflict in a short time. In particular, performances for the benefit of the community show how good consequences that reconciliation can bring about. It is seen that the aid provided to foundations, associations, and people in need

in case of reconciliation reveals the consequences which are beneficial not only to the agreeing parties but also society. This makes social peace sustainable. Furthermore, meeting with the offender in reconciliation negotiations is an opportunity that victims cannot catch in the normal judicial process and they have the opportunity to learn the answer to all their questions in reconciliation negotiations. The damage caused by the act of crime can be resolved in a short time. According to the traditional concept of retribution, the offender who is responsible only to the state faces the victim directly through reconciliation. The offender has the chance to tell his mood at the time of committing the offense and the reasons causing him to commit it. Also, listening to the damage caused by the offense firsthand helps him to see the offense, not a simple act and material and immaterial damages it caused. The fact that the victim has a say in the decision made by reconciliation allows the individuals to receive services from the justice system with satisfaction as the proceedings take place quickly and in line with the desires of the victim. Thus, confidence injustice can be increased and a peaceful environment can be established by adopting such a way of resolution for simple criminal cases.

The analysis of the method of reconciliation applied in our country in terms of victims and offenders constitutes the section of a case study. In this study, the reasons for victims and offenders who prefer to reconciliation and the effects of reconciliation on victims and offenders are investigated. The eight investigation files which were concluded by 8 different conciliators actively included in the reconciliation list of the Aydın Public Prosecutor's Office for a performance during the investigation phase were examined. The reason for examining the files of different conciliators is to allow the participants to answer the questions objectively. As a result of the voluntary participation of 11 victims and 8 offenders, qualitative data analysis was conducted with a semi-structured interview technique. The content analysis of the answers of the participants who responded to 15 questions was utilized to create categories of the responses. Based on the responses of victims and offenders, some suggestions can be made regarding how reconciliation is implemented.

After a conciliator is assigned with a file within the scope of reconciliation using an automatic allocation system, a notification message is sent to the parties by the reconciliation office. It is for the conciliator to be informed of the latest status of

the file before he gets in touch with the parties. The parties are also able to communicate with the conciliator without any doubt when they are called via phone. Failure to obtain full addresses and contact details of the parties at the time when their initial statements were taken causes loss of time for both the conciliator and the parties to initiate the negotiation process. For this reason, the accurate and complete registration of the addresses and contact details of the parties in their first statement will prevent any loss of time.

Negotiations take place upon the determination of a commonplace and time by both the conciliator and the parties. It is seen that there is no rooms or sections reserved for holding reconciliation negotiations at many courthouses both in Aydin in particular and in Turkey in general, which is also emphasized by the opinion of the participants of this study that negotiations may be held at special rooms to be allocated at the courthouses. Therefore, the lack of a private room for reconciliation leads to negotiations holding in public places such as cafes, offices, streets, and parks. However, this situation is contrary contradicts the principle of confidentiality of reconciliation because no matter how much the conciliator adheres to the principle of secrecy, if negotiations take place in public places, the probability of hearing conversations by other people increases during such negotiations are being held. It can also cause the victim and the offender to have difficulty expressing themselves. The specific space to be allocated for reconciliation is an important need for both the parties in conflict and conciliators and future arrangements need to be made for this purpose.

A pecuniary or non-pecuniary performance may be required to resolve the damaged incurred by the conflict in a short time. The damage arising out of the offense and how it will be compensated should be determined exactly and by the law and ethics during the negotiations with the parties. Although the performance in the files examined were lawful and ethical ones, some participants believe that the damage caused by the offense is more than the one specified in the determined performance. Furthermore, when the willingness of conciliators to conclude the files with reconciliation and the concern of offenders to be sentenced with a penalty are overlapped, the determination of a fair and proper performance which exactly and satisfactorily compensates the damage incurred by the offence in virtue of victims may not be fully achieved which does not reflect the peaceful resolution of restorative

justice in full sense. Reconciliation by the purpose of determining victimization and properly compensating it will be an indication that reconciliation is correctly implemented.

It is observed that reconciliation as a legal process may lead to situations such as the participants' inability to understand the process or fully explain themselves. In this case, the conciliators should inform the participants by simply explaining the process according to the age and educational status of the parties and make sure that everything is clearly understood. Indeed, effective communication skills should be employed to help victims and offenders express themselves well. It is also seen that in case of any future conflict all of the participants want to benefit from the reconciliation service again and they are satisfied with the process and thus reconciliation has positive results.

Moreover, it seems that victims and offenders prefer reconciliation instead of the traditional way of trial due to the reasons such as being heard by a neutral third party, reaching a resolution in a short time, expressing themselves comfortably, free practice of conciliation and not moving to the prosecution process. The benefits of reconciliation are the ability to compensate the victim in a short time without going to court in virtue of the victim and the absence of any criminal record or punishment in virtue of the offender.

Yerdelen defines the victim-offender reconciliation as the most advanced expression of restorative justice (Yerdelen, 2018:26). Victims and offenders state that they are not negatively affected materially or immaterially due to lack of costs such as court or lawyer and not being under stress as the prosecution process is not commenced. Also, instead of coming face to face in court, the agreement is maintained using a conciliator even without the need to come together. In a research carried out in Minnesota, it was concluded that 82% of the respondents would take advantage of reconciliation even if they were victims of offense against property. Similarly, in a study conducted in the USA, it was concluded that victims and offenders voluntarily wanted to participate in the reconciliation activities. Similarly, in this study, the majority of the participants also indicated that they would like to benefit from the reconciliation activities again.

In conclusion, the inclusion of the method of reconciliation practiced in many states of law as an alternative way of resolution with the understanding of restorative justice in the Turkish Criminal Law is essential for peacebuilding. Bringing the victim and the offender together with the help of the impartial third party, and ensuring that they can meet at a common point in spite of the offense help restore the peace of society. That the offender and the victim in reconciliation become a part of the resolution with their own free will ensures a permanent solution of the conflict occurred. In short, the study clearly indicates that reconciliation is a way of resolution appropriate to the judicial systems because of the most common crimes of simple criminal cases which are within the scope of reconciliation, resolving the conflict of the victim and offender without waiting for a long time with a pecuniary or non-pecuniary performance, positive effects of this peaceful process on social relations and reducing the workload of the courthouses in the judicial system.

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