

Penal transactions will become more transparent

The reform aims to combat how class justice is perceived. However, some practitioners are not convinced by Vincent Van Quickenborne's initiative.

JEAN-PAUL BOMBAERTS

Extended penal transactions or criminal proceeding settlements (*les transactions pénales/minnelijke schikkingen in strafzaken*) between the Public Prosecutor's Office and the accused will now be pronounced at public hearings. In addition, prohibition from holding a management position can be imposed. This is what the government has just decided upon the proposal submitted by the Minister for Justice Vincent Van Quickenborne (Open VLD). The objective of this reform is to increase the system's transparency level.

Penal transactions, which are mainly used in tax fraud cases, make it possible to end the

prosecution in return for payment of the amount of money evaded, plus a fine. This is practical for the State, which receives the money more quickly without exposing itself to the risk of the case being time-barred, and the defendant avoids reputational harm.

Although the parties concerned agree to the settlement, the penal transaction itself has a bad reputation. Some see it as an expression of class justice based on backroom deals. For this reason, the government has decided to make the penal transaction process more publicly known.

Class justice?

Jean-Pierre Buyle, lawyer specialized in criminal and tax matters (Monard Law), believes that penal transactions are not just for the rich. "On the contrary, the risk of impunity is avoided. The reason no one was finally convicted in the Fortis case was that the 10-year limitation period had elapsed.

On the other hand, if we had gone through with the proceedings in the Dominique Leroy case (he was the CEO of Proximus who was accused of insider trading (editor's note), we would have ended up with an acquittal. All modern democracies have such a tool, which is, in any event, preferable to a prison sentence." Jean-Pierre recalls that "penal transactions have been used for decades for traffic offences,

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Van Quickenborne's proposal also provides for a ban on management involvement when an extended penal transaction is being concluded. The accused will not be allowed to hold any corporate representation positions (director, commercial director, etc.) at any legal entity for a period of 3 to 10 years. The idea is to not give the impression that the penal transaction could allow defendants to return to their activities and set up similar methods of doing things.

For Jean-Pierre, this is a bad idea. "This could make the systems much less attractive. Many will prefer to take the risk of going through with the proceedings. Moreover, it will contravene the principles because penal transactions do not imply any admission of guilty."