

**Failure to comply with the criminal transaction and its****effects** *Breach of the criminal transaction and its effects*José Carlos Ruiz Filho<sup>14</sup>Prof. Me. Raphael Hernandes Parra Filho<sup>15</sup>

Submitted on: 06/28/2022

Approved on: 06/28/2022

Published on: 06/30/2022 v. 2, no. 1, Jan-Jun. 2022

DOI: 10.51473/rcmos.v2i1.321

**SUMMARY**

This article analyzed the effects resulting from the decriminalizing institute of criminal transactions, bringing the idea that Special Criminal Courts have great relevance in society. To achieve this objective, an analysis was carried out on the legal and social relevance of Special Criminal Courts for resolving demands arising from the criminal field, presenting their guiding principles and discussing their competence. Furthermore, the institute of criminal transaction was presented, bringing its concept, its applicability and its impact to the demands of the Special Criminal Court. Furthermore, it was studied the consequences arising from non-compliance with the criminal transaction and the possibility of converting the sentence restricting rights into a sentence depriving one of liberty, as well as the execution of the fine and the offering of a complaint upon resumption of the procedure. As for the methodological options, the Literary Review was used, with works by scholars, legislation, magazines and scientific articles published on the central subject, carrying out a written reading and interpretation, preserving its context and referencing it. The research results demonstrated that there is great debate about the consequences of non-compliance with the criminal transaction, but the Federal Supreme Court made it clear that, if the agent fails to comply with the penalty imposed on him at the time of the transaction, the benefit will be revoked and the process, which had previously been interrupted, will continue normally, returning to the same state as it was previously.

**Key words:** Special Criminal Courts. Jecrim. Criminal Transaction. Non-compliance with the Criminal Transaction**ABSTRACT**

*This article analyzed the effects arising from the decriminalizing institute of the criminal transaction, bringing the idea that the Special Criminal Courts have great relevance to society. To achieve this objective, an analysis was carried out on the legal and social relevance of the Special Criminal Courts for the resolution of demands arising from the criminal field, presenting their guiding principles and discussing their competence. In addition, the criminal transaction institute was presented, bringing its concept, its applicability and its impact on the demands of the Special Criminal Court. Furthermore, it was studied about the consequences arising from non-compliance with the criminal transaction and about the possibility of converting the restrictive penalty of rights into deprivation of liberty, as well as about the execution of the fine and the offering of the complaint from the summary of the procedure. As for the methodological options, the Literary Review was used, with works by scholars, legislation, journals and scientific articles published on the central subject, carrying out a reading and written interpretation, conserving its context and referencing it. The research results showed that there is great debate about the consequences of non-compliance with the criminal transaction, but the Federal Supreme Court made it clear that, if the agent fails to comply with the sentence imposed on him at the time of the transaction, the benefit will be revoked and the process, which was interrupted before, will continue normally, returning to the same state in which it was previously.*

**Keywords:** SPECIAL CRIMINAL COURTS. JECRIM CRIMINAL TRANSACTION. BREACH OF THE CRIMINAL TRANSACTION

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**INTRODUCTION**

The main objective of this work was to discuss issues relating to Law No. 9,099/1995, especially with regard to the effects resulting from the decriminalizing institute of criminal transactions, bringing the idea that Special Criminal Courts have great relevance to society, a since it has sought to offer alternative means

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to repress crimes of lesser offensive potential that are committed.

The choice of the topic is justified by the fact that Criminal Law, despite being an institute focused on the punishment of crimes, whenever possible, should prioritize common sense, proportionality and speed in negotiations between the parties, aiming to ensure that the Judiciary is capable of offering, in a quick, efficient and financially accessible manner, a satisfactory resolution to the conflict being debated.

The sections of this article were dedicated to the study of the consequences arising from non-compliance with the criminal transaction, analyzing the doctrinal currents that have long discussed the subject, dividing opinions on the effects of the sentence ratifying the criminal transaction and on the continuation of the case in case of non-compliance with the agreement drawn up between the author of the facts and the Public Prosecutor's Office.

In addition, there was a brief discussion on the possibility of converting the penalty restricting rights into a sentence depriving one of liberty, as well as the execution of the fine and the offering of a complaint upon resumption of the procedure.

Finally, the final considerations were brought in a separate section, reserved for the conclusion, whose main objective was to reaffirm the already existing understanding about the importance of special criminal courts in resolving criminal conflicts, as well as bringing to light doctrinal and jurisprudential discussions on the possible non-compliance with the criminal transaction, which, according to the understanding of the Federal Supreme Court, will lead to the resumption of the procedure by the Public Prosecutor's Office, which may file the complaint.

## 1 SPECIAL CRIMINAL COURTS: LEGAL AND SOCIAL RELEVANCE

One of the factors that always motivated the search for peaceful and, consequently, faster solutions, was the slowness of the judicial system, which was not always able to respond to all the demands presented to it. For this reason, the tendency has always been towards directing disputes to conciliatory means.

Therefore, one cannot deny the fact that the advent of Law No. 9,099/1995 represented a major advance in the Brazilian legal system, both in the civil and criminal spheres, providing due support to individuals, who began to enjoy justice simplified, faster, more economically accessible and easily accessible.

It is necessary to understand that the special court, specifically in the scope of Criminal Law, values state intervention, but with the exercise of its role as a punitive agent only in cases where it is not possible to present a resolution based on a friendly composition, such as as Ada Pellegrini Grinover says:

[...] the idea that the State can and should criminally pursue any and all infractions, without admitting, under any circumstances, a certain amount of availability of public criminal action, had demonstrated, with all evidence, its fallacy and hypocrisy. At the same time, it had been realized that the solution of criminal disputes in certain infractions, especially when minor, could be achieved by consensual method (GRINOVER, 2005, p. 35).

In the same sense, Daniela Christina Klemz Eller discusses the State's stance and the desires of society, which has always sought accessible justice that provides effective responses to disputes:

[...] Regarding specifically the criminal part, its peculiarity is subordinated by the minimum intervention of the State with the maximum guarantee of the fundamental rights of the citizen. In this conception, the new State stance was reaffirmed, whose mission is to defend human rights in opposition to the traditional punitive model which, based on psychological coercion and resocializing treatment, proved to be expensive, ineffective and unfair. It is undeniable that society demanded a faster position from the State in resolving minor problems, and it is true that dissatisfaction with the way disputes were resolved was quite significant. Due to the complexity of the procedures and the existing procedural complications, many offenders ended up being graced with the prescription of punitive claims, while the victim was devastated by the injustice due to the impunity of the aggression suffered [...] (ELLER, 2007, p. 26).

For clarification purposes, it is observed that the Court's procedure, the object of this work, does not seek to bring upon itself the responsibility of covering all crimes in the legal system, but rather those considered to have less offensive potential, among which are including criminal misdemeanors, in addition to crimes whose penalty is a fine or those punished with a maximum penalty of 02 (two) years of imprisonment or detention, as provided for

of article 61 of Law 9,099/95 (BRASIL, 1995).

When dealing with crimes with less offensive potential, common sense, proportionality and speed in negotiations between the parties are now prioritized. In this sense, instead of contradictory and broad defense, the opportunity is given for the litigants to reach an agreement, with the aim of making it possible, quickly, efficiently and financially accessible, to offer a resolution to the dispute that is being debated.

This new space for consensus, replacing the space for conflict, does not violate the Constitution, as it itself authorizes it for infractions with less offensive potential. Therefore, there is no need to speak of a violation of due legal process and broad defense, which are replaced by the incessant search for conciliation (CAPEZ, 2013, p. 427).

Therefore, there is no need to talk about violation of the rights of the possible author in the transactions of the Special Criminal Court, considering that the principle of innocence is respected in the procedures, as provided for in the Federal Constitution, in its article 5, item LVII, providing that “no one will be considered guilty until the final and unappealable criminal sentence” (BRASIL, 1988).

Resuming the debate about the relevance of Special Criminal Courts, it is highlighted that, until their emergence, Criminal Law directed all its demands to a single jurisdiction, normally to specifically criminal courts (SILVA, 2010, p. 261). As a result, this generated a high demand for cases for the Judiciary, which consequently meant that plaintiffs had to wait for a long period of time until a resolution could be reached.

With regard to the decisions that were presented within the scope of criminal justice, the victims' desire was often motivated not by the feeling of justice, but rather by the desire for possible “revenge”, seen as a response to the damage that the alleged aggressor/perpetrator of the incident had caused him.

Regarding the application of punishments before Law No. 9,099/1995, José Afonso da Silva makes the following note:

Until the advent of the Law on Special Criminal Courts, the only way of applying objective criminal law was through a conflict jurisdiction, which demands the establishment of a contentious process, placing opposing accusations and defenses aside, whose main objective is, in rule, the imposition of a custodial sentence (SILVA, 2010, p. 261).

In this sense, the evolution of law, especially that of Criminal Law, demonstrated the legislator's concern in disentangling the idea of justice and physical punishment, abandoning the retrograde understanding applied in the past, that the most efficient and fair form of reprimand would be to punish physically or through deprivation of liberty. Little by little, the idea of imposing a measure that combined the victim's desire for justice with the need to re-educate the perpetrator gained prominence and opened space for the Special Criminal Courts to act actively in the face of crimes with less offensive potential.

## 2 CRIMINAL TRANSACTION

It is evident that alternative means of conflict resolution emerged as a response to social concerns, seeking to bring faster, more accessible and less inquisitorial justice, especially in the demands arising from the Special Criminal Court.

In this sense, the decriminalizing measure known as the “criminal transaction institute” gains prominence due to its facilitating nature, since it aims to repair the damages suffered by the victim and, at the same time, seeks to relieve the Judiciary by offering means other than custodial sentences (BITENCOURT, 2003, p. 578).

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The Federal Constitution authorizes the applicability of the depenalizing measure in its article 98, item I, providing in its final part that “the transaction and judgment of appeals by groups of first-degree judges will be allowed, in the cases provided for by law” (BRASIL, 1988).

The legal basis of the criminal transaction is found in article 76 of Law No. 9,099/1995, listing its requirements, hypotheses of non-compliance and other relevant aspects.

Regarding the advantages of the institute, professor and writer Humberto Dalla Bernardina de Pinho explains:

[...] criminal transaction is a decriminalizing institute, through which the accused is offered the opportunity to negotiate about the sentence received, enabling a quick outcome of the procedure, without recognition of guilt (PINHO *apud* ZANATTA, 2001, p. 49-50).

It can be said, therefore, that the criminal transaction is the means by which possible obligations are extinguished, using reciprocal concessions between the prosecution and the defense. Once the requirements have been met, it will be the exclusive responsibility of the Public Prosecutor's Office to prepare the proposal and it will be up to the Judge alone to immediately apply the duly specified alternative penalty (ZANATTA, 2001, p. 50).

There is some doctrinal debate regarding the punitive nature of the agreement made in the criminal transaction. Under current legislation, this agreement does not have a punitive bias nor will its acceptance imply that the individual acquires the status of guilty, which is why there is no offense to constitutional principles.

The principle of due legal process is not violated because the constitution itself provides for the institute, not requiring a formal process, but an oral and very summary procedure (art. 98, I, CF/88) for the Special Criminal Court and, under the law, the lawyer's constitutional guarantees of broad defense are present, consisting of the mandatory consensus and the possibility of non-acceptance of the transaction (MIRABETE, 2018, p. 185).

However, there is disagreement on the subject, given that part of the doctrine considers the criminal transaction as a means of violating fundamental rights and guarantees, in addition to disrespecting principles such as the presumption of innocence and due legal process:

What stands out in this system, without any doubt, is the conflict between advantages that are clear and risks that are brutal. On the one hand, it allows greater speed in the decision-making process, avoiding several inconveniences of procrastinating procedural acts, especially in cases where the accused is in custody [...]. In contrast, and with unequivocally greater provenance in my eyes, there is an army of disadvantages such as the sacrifice of the principle of presumption of innocence (which acquires a Pharisaic character in the current North American system), of the real truth, of the contradictory, of due legal process, there is, in addition, the risk of injustice, of blatant inequality of parties, lack of publicity and procedural loyalty, among many others (FIGUEIRA JUNIOR, 1995, p. 342 apud ALENCAR, 2007, p. 28-29).

The jurist Damásio Evangelista de Jesus left the understanding that, despite there being discussions about the violation of constitutional guarantees, the criminal transaction appears as an extremely relevant measure for the solution of various problems faced within the scope of the Judiciary, which is why these guarantees must be considered as relative:

[...] principles of the state of innocence, contradiction, the search for real truth and the breadth of defense. The institution of the transaction is included in the "consensus space". Therefore, these principles should not be considered absolute but relative, opening space for the adoption of measures that, at a given moment, are of capital importance for the legislator in solving problems, such as crime, procedural economy, cost of crime, prison overcrowding, etc. The acceptance, by the accused, of a less severe sentence, ending the episode, is justified as an expression of the autonomy of his will and as a free expression of defense. He voluntarily renounces his constitutional guarantees (JESUS, 2010, p. 75).

The criminal transaction is, therefore, a type of negotiation, a decriminalizing institute that, even in the face of conflicting positions, brings great benefits to the alleged accused, since it avoids the initiation of criminal proceedings, which, consequently, exempts him from eventual sentencing sentence.

It is also necessary to consider the fact that there will be no civil or criminal effects, being registered only as a circumstance preventing a new agreement for the legal period of 05 (five) years. However, if the proposal presented by the Public Prosecutor's Office is rejected by the individual intended to benefit, the respective criminal action will then be initiated with all the guarantees and obligations of due legal process.

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If the Public Prosecutor's Office does not make the proposal, it must justify its statement, and it will be up to the Judge, in case of disagreement, forward the case for consideration by the Attorney General of Justice, following the provisions of article 28 of the Brazilian Penal Code (MIRABETE, 2002, p. 129).

Given this context, it is worth noting that the predominant understanding is that the transaction is a subjective right of the author of the fact, assuring him that, as long as the requirements for granting the proposal are met, the Public Prosecutor's Office will be obliged to present -there.

## 13 NON-COMPLIANCE WITH THE CRIMINAL TRANSACTION

**It is extremely important to highlight the fact that there will be consequences for any failure to comply with the measure. These consequences are not only related to the formal issues of the transaction, leaving room for discussion about its execution or not, but also with regard to the social environment, significantly impacting crime rates, which could increase given the feeling of impunity, if non-compliance with the criminal transaction is not punished.**

This is the understanding expressed by Sônia Maria Medeiros Bandeira, which brings a parallel to the impacts that could be generated in a scenario of non-compliance:

We are extremely concerned about the consequences arising from cases of non-compliance with the criminal transaction, among them, **increasing the feeling of impunity in society, including among lawbreakers, thereby increasing the crime rate, as it generates a domino effect, simply spreading the word to offenders that failure to comply with the agreed sentence will not bring them any consequences. more severe legal consequence**, without a doubt that the percentage only tends to increase, compromising, over time, the scope and effectiveness of the law, increasingly encouraging the practice of crimes with greater offensive potential, as they will feel fearless and strengthened, true owners of the laws and capable of forming a parallel power (BANDEIRA, 2010, p. 38, emphasis added).

Likewise, the author Cezar Roberto Bitencourt brings the understanding that non-compliance with the measure must be punished so that its purpose can be preserved:

The successful use of criminal transactions will depend, to a large extent, on the self-discipline and sense of responsibility of the perpetrator. And for this, nothing better than the possibility of converting them into a custodial sentence. The purpose of conversion, in other words, is to guarantee the success of alternative sentences - preventively with the threat of the custodial sentence and, repressively, with the effective conversion in the specific case (BITENCOURT, 2002, p. 115).

Until 2014, there was much discussion in the Brazilian legal system regarding the possible consequences of non-compliance with the criminal transaction after its approval. Doctrine and jurisprudence differed on whether or not the ratifying sentence generates material *res judicata* effects.

The discussions were divided as follows: the minority group defended the idea that, in the event of non-compliance with the agreement, it would be appropriate to convert the penalty established in the criminal transaction to a custodial sentence, using as a basis the wording of article 85 of the Law n° 9,099/1995. This position was considered to be completely opposed to the idea of Law No. 9,099/1995, which seeks, as much as possible, to avoid custodial sentences.

Otherwise, there was also the understanding that the sentence ratifying the criminal transaction generated material *res judicata*, which is why any agreement that was eventually breached could only be reviewed in favor of the defendant and not to harm him, with the only possibility being the execution of the sentence, which created obstacles in cases of penalties restricting rights.

The following is an example of an excerpt from a ruling that was handed down by the Court of Justice of Rio Grande do Sul in 2001, when the issue was still being discussed:

APPEAL – REJECTION OF THE COMPLAINT – ARTICLE 593, II, OF THE CPP – ATYPICAL FACT – ART. 306 OF LAW 9,503/97 – CONCRETE DANGER OF DAMAGE – EVIDENCE INSTRUCTION – CRIMINAL TRANSACTION – ARTICLE 76 OF LAW 9099/95 – JUDGMENT – BREACH OF THE AGREEMENT – DISCLAIMER IS INCAPABLE. [...] Criminal transaction (article 76, Law 9099/95) accepted is of a definitive nature, makes *res judicata* formal and material. **If the author fails to comply with the agreement, it is impossible for the Public Prosecutor's Office to resume the process denouncing, when its attribution and jurisdiction has ended with approval, even if not expressly.** The law does not provide for a conditional transaction, and the judge cannot create it in case of non-compliance. Improvised appeal” (Criminal Appeal n° 70002145100, Special Criminal Chamber, Reporting Judge Elba Aparecida Nicolli Bastos, judged on 05/23/01, emphasis added).

third existing current, if the agent who accepted the Public Prosecutor's proposal fails to comply with the penalty imposed upon him at the time of the transaction, the benefit will be revoked and the process, which had previously been interrupted, will continue normally and return to the same state as in which was previously found, making it clear that the next step after non-compliance will be the filing of a complaint (FARIA, 2021, p. 14).

HABEAS CORPUS - PERSONAL INJURY - CRIMINAL TRANSACTION - NON-COMPLIANCE - PROVISION OF THE COMPLAINT - ABSENCE OF JUST CAUSE - CRIMINAL ACTION LOCKED - INFLUENCE. **Failure to comply with the conditions of the criminal transaction results in the process being subject to its previous state**, and the Public Prosecutor's Office must be given the opportunity to file a criminal action (TJ-MG - HC: 10000170818355000 MG, Rapporteur: Alexandre Victor de Carvalho, Judgment Date: 10/31/2017, Criminal Chambers / 5th CRIMINAL CHAMBER, Publication Date: 11/13/2017, emphasis added).

In this sense, decisions after 2014 are based on the legal provision on the subject, which can be found in binding Precedent No. 35 of the Federal Supreme Court, with the following wording:

BINDING SUMMARY No. 35: The approval of the criminal transaction provided for in article 76 of Law 9,099/1995 does not make material res judicata and, if its clauses are not complied with, the previous situation is resumed, enabling the Public Prosecutor's Office to continue the criminal prosecution through an offer complaint or request for a police investigation (BRASIL, 2014).

With regard to the approval of the criminal transaction, it must be clarified that its sentence does not constitute material res judicata. Therefore, there is no need to talk about conviction at the time of said sentence, considering that, if non-compliance with the imposed measure is proven, there will be a change in the content of the previously written sentence. Therefore, it is clear that the ratifying decision may be withdrawn in cases of non-compliance, with the subsequent offering of a complaint (BRASIL, 1995). In the case of a penalty restricting rights, there will be no compulsory execution. However, if the penalty is a fine and the beneficiary does not make the payment, failure to comply will result in the debt being included in the active debt.

### 3.1 Conversion of the Restrictive Rights Penalty into a Deprivation of Liberty

The majority understanding found in Brazilian doctrine and jurisprudence states that, when a finding of non-compliance with the criminal transaction is made, it will not be admissible to convert the sentence restricting rights into a sentence depriving one of liberty, considering that said attitude would be in complete disagreement with constitutional principles, especially due legal process and contradictory and broad defense, in addition to impacting the guarantee of the fundamental rights of the author of the facts.

In this sense, the Federal Supreme Court, through rapporteur Carlos Velloso, granted a Habeas Corpus (transcribed below) in 2005:

CRIMINAL. CRIMINAL PROCEDURE. HABEAS CORPUS. SPECIAL COURT. DISCOMPLISHED CRIMINAL TRANSACTION. CONVERSION OF THE RIGHTS RESTRICTIVE PENALTY INTO DEPRIVATION OF FREEDOM. ILLEGALITY. Law 9,099/95, art. 76. I. **The conversion of the penalty restricting rights, the object of a criminal transaction, into a penalty depriving freedom, offends the principles of due legal process, adversarial proceedings and broad defense**, according to the jurisprudence of the Federal Supreme Court. II. HC granted (STF, HC 84775/RO, Rel. Min. Carlos Velloso, j. 06/21/2005, emphasis added).

Taking into account the date on which the trial took place, it can be said that the discussion on the matter is long-standing and the law, the object of this analysis, is still considered by the doctrine, in a certain way, to be silent as to what the consequence would be for non-compliance with restrictive legal penalties, as its article 86 only provides that "the execution of sentences depriving liberty and restricting rights, or fines combined with these, will be processed before the competent body, in accordance with the law" (BRASIL, 1995).

Even if a possible omission in Law No. 9,099/1995 is pointed out, it would not be possible to even consider filling such gaps with interpretations that would cause harm to the author, under penalty of a clear affront to the principle of legality. Therefore, it is necessary to take into account the fact that in the criminal transaction there is no conviction as such, which is why it would be inconsistent to assign a custodial sentence to an individual who has not even gone through all the stages of a

judicial process.

Therefore, in order for the constitutional order to be maintained and with a view to giving due compliance with the principles of presumption of innocence, as well as due legal process, enabling contradictory and broad defense, it cannot be assumed that there will be a conversion of the penalty restricting rights in prison. In fact, the most sensible and legally acceptable path will be to revoke the agreement and the initiative of the Public Prosecutor's Office, which will resume the role of accuser and gather as many elements as are sufficient to file the complaint.

It is stated that the discussion remains only within the doctrinal scope, as in terms of the legal system, the understanding has already been reached that, even with non-compliance with the criminal transaction, it will not be possible to convert the measure to a penalty that takes away from the author his freedom.

### 3.2 Execution of the Fine

Pursuant to article 76, § 4 of Law No. 9,099/1995, after the perpetrator expresses his consent to the agreement proposed by the Public Prosecutor's Office, the judge will determine the application of a penalty restricting rights or a fine. The law also provides, in its article 85, that, in the case of a fine, if the individual fails to pay, said penalty will be converted into a sentence depriving one of liberty or a sentence restricting rights.

However, it is necessary to emphasize that article 85 of the law in question was tacitly revoked, given the incompatibility of its text in comparison to the wording introduced by article 51 of the Penal Code after the advent of Law nº 9,268/1996. Thus, the current wording brought to light a new definition of what a fine would be, treating it as follows: the fine will be considered a debt of value, applying the rules of legislation relating to active debt of the Public Treasury" (BRAZIL, 1996).

When it comes to a fine, even with severe criticism to the contrary, its execution could be admitted in civil court, a hypothesis in which the accused would be given the opportunity to attempt to deconstitute the executive title with the means of defense inherent to the process. civilist (BIRK, 2018, p. 32).

Another noteworthy point related to the fine penalty is the fact that the judge may reduce it by up to half, if he deems it viable. This decision will be taken in accordance with the text of article 76, more specifically in paragraph 1 of Law No. 9,099/1995.

Next, a specific case related to the subject is presented, in which non-compliance with the criminal settlement agreement was found. According to the history, the author of the incident had committed to planting native tree seedlings, however, out of mere liberality, he changed the seedlings, planting trees different from those stipulated in the agreement. Given the non-compliance with the sentence, the Public Prosecutor's Office requested the setting of a fine with the aim of penalizing the individual. On appeal, the judgment was that compliance with the agreement in a manner different from that previously established was sufficient reason for the imposition of a fine. However, it was decided that the value of the fine would be reduced to an amount that was fair and sufficient for the sanction:

CIVIL APPEAL - Embargoes on execution for a certain amount - Daily fine for non-compliance with an agreement approved in a criminal transaction, which provided for the planting of 160 native tree seedlings in 12 months [...] 2) Intended removal of the fine - Not applicable - Obligation fulfilled in a different way, with the planting of 380 exotic seedlings - Obligation to plant 160 seedlings of native species not fulfilled within 12 months - Compliance with the agreement only after the filing of the execution of the obligation to do so. 3) Reduction in the value of the fine - Possibility - Amount that must be reasonable, observing the specificities of the specific case and the magnitude of the damage - Debtor who, cited in the execution of the obligation to do so, promoted the planting of 160 native seedlings, in addition to the 380 previously planted exotics - Fine reduced to R\$ 10,000.00 - Amount that is reasonable to sanction the defendant for the delay in fulfilling the obligation under the terms assumed in the agreement [...] (TJ-SP - APL: 00121320620118260099 SP 0012132-06.2011.8.26.0099, Rapporteur: Eutálio Porto, Date of Judgment: 03/05/2015, 2nd Chamber Reserved for the Environment, Publication Date: 03/10/2015).

After fixing, it is determined that the payment of the fine will be made at the Special Criminal Court secretariat, as provided for in article 84 of the Law on Courts. Once payment has been made in full, the author's punishment will be declared extinct and, through the Court's determination, there will be no conviction in the criminal record certificates, with access only being made possible for judicial request, so that one can have science

if the author has already benefited previously, in which case he will not be able to use the benefit before the period of 05 (five) years.

### 3.3 Offering the Complaint

As one of the consequences brought about by non-compliance with the criminal transaction, which has effectively been applied in practice, it is possible to mention the possibility of the Public Prosecutor's Office continuing the criminal prosecution by offering the Complaint or, if necessary, by taking measures that are essential for the progress of the action (DEMERCIAN; MALULY, 1996, p. 65).

[...] non-compliance with the transaction implies the continuation of the procedure, giving the Public Prosecutor's Office the opportunity to request necessary measures or the filing of criminal action; in this case, the sentence has the effect of formal *res judicata*, given that there is no discussion on the merits of criminal action [...] (BOMFIM, 2009, p. 569).

When it comes to the continuation of the case, there are cases in which the author of the facts does not accept the terms of the Public Ministry's proposal, resulting in the normal procedure.

Therefore, with regard to the consequences generated by non-compliance with the criminal transaction, the possibility of resuming the procedure by the Public Prosecutor's Office is the most viable and constitutionally accepted measure, as, by resuming control of the demand with the filing of the complaint, the author of the facts now has the right to express themselves in the case, bringing their defense and having their procedural rights all guaranteed.

**It is true that the institution of criminal transactions has always been (and still is) the target of conflicting opinions and different points of attention regarding the doctrine. One of the controversial issues that remained demonstrated was that there are not many alternatives for cases in which the perpetrator fails to comply with the terms of the agreement agreed between him and the Public Prosecutor's Office. In this line of reasoning, it is relevant to bring up Guilherme de Souza Nucci's position:**

**There is nothing to do but do what is possible.** If a fine is established, once it is not paid, it is up to the Public Prosecutor's Office, within the scope of JECRIM, to promote the execution, in accordance with art. 164 et seq. of the Criminal Execution Law, **without any possibility of conversion into prison**, since the wording of art. 51 of the Penal Code, from where this possibility emanated. If the perpetrator has no assets, he will not be punished. It is also unfeasible to convert the fine into a penalty restricting rights, if such a measure has not been expressly agreed in the transaction term. On the other hand, non-compliance with any of the rights-restricting penalties is even worse. **There's nothing to do**[...] Even worse, would be to consider the solution to convert the sentence that restricts rights into one that deprives liberty, as this **would be a severe punishment applied without due process**!. There is a gap, which would need to be resolved by law, indicating a plausible path for this non-compliance. For now, there is nothing to do. **All that remains is to wait for the prescription of the penalty imposed and not complied with.**(NUCCI, 2006, p. 389, emphasis added).

In view of all the above, it remains clear that Law No. 9,099/1995 still requires some gaps to be filled in order for its objective to be fully fulfilled, offering reprimands with an educational bias to crimes with less offensive potential, moving away from the purely accusatory and rigorously excessive without, however, allowing impunity to become a culture for the perpetrators of such crimes.

### FINAL CONSIDERATIONS

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This article brought as its main conclusion the idea that the evolution of law, especially that of Criminal Law, demonstrated the legislator's concern in no longer treating justice as synonymous with physical punishment, abandoning the retrograde understanding applied in the past, that The most efficient and fair form of reprimand would be physical punishment or deprivation of liberty.

Therefore, little by little, the idea of imposing a measure that combined the victim's desire for justice with the need to re-educate the perpetrator gained prominence and opened space for the Special Criminal Courts to act actively in the face of crimes with less offensive potential.

Regarding the jurisdiction of the Courts, it is understood that it is considered to be of a relative nature and that the jurisdiction

territorial is delimited based on the place where the criminal offense was committed, which means that the activity theory is adopted.

Regarding the institution of the criminal transaction, it can be said that it gains prominence due to its facilitating nature, as it aims to repair the damages suffered by the victim and, at the same time, seeks to relieve the Judiciary by offering different means of custodial sentences. Furthermore, it can be concluded that the criminal transaction is the means by which possible obligations are extinguished, using, for this, reciprocal concessions between the prosecution and the defense.

It was clear that there is some doctrinal debate regarding the punitive nature of the agreement made in the criminal transaction. Under current legislation, this agreement does not have a punitive bias nor will its acceptance imply that the individual acquires the status of guilty, which is why there is no offense to constitutional principles.

It is worth noting that the conclusions point to the fact that the predominant understanding is that the transaction is a subjective right of the author of the fact, assuring him that, as long as the requirements for granting the proposal are met, the Public Prosecutor's Office will have the obligation to present it.

Finally, after drafting this article, it was concluded that there is a great debate about the consequences of non-compliance with the criminal transaction, but the Federal Supreme Court, through Binding Precedent No. 35, made it clear that, if the agent who accepted the proposal fails to comply with the penalty imposed upon him at the time of the transaction, the benefit will be revoked and the process, which had previously been interrupted, will continue normally, returning to the same state in which it was previously, making it clear that the next The next step after non-compliance is the filing of a complaint.

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