

## No absolute veto right for private claimants in accelerated criminal proceedings

For the first time, the Swiss Federal Supreme Court has clarified that private claimants may only reject a negotiated indictment prepared in accelerated proceedings on grounds relating to their rights, notably to civil claims or the offences charged.

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### Private claimants' veto right in accelerated criminal proceedings

The characteristic that distinguishes accelerated criminal proceedings (Art. 358 et seq. of the Swiss Code of Criminal Procedure) from ordinary criminal proceedings is the plea bargaining between the defendant and the public prosecutor. This may result in a negotiated indictment, notably as regards charges and sentence.

Private claimants, who can join criminal proceedings, do not partake in these negotiations. However, once the public prosecutor has prepared the draft indictment following such negotiations, private claimants must declare they consent to the same (Art. 360 para. 2 of the Swiss Code of Criminal Procedure). The public prosecutor may only send the negotiated indictment to court for validation with the consent of the private claimant. This is why private claimants were commonly seen as being granted a veto right. Practically, this may have led to scenarios where private claimants used this veto right to exert pressure on the defendant, in particular regarding the acceptance of their civil claims.

### Decision of the Swiss Federal Supreme Court limiting scope of the veto right

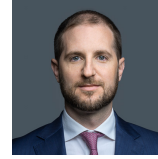
Until recently, the extent of this veto right was subject to scholarly debate. However, in its decision 6B\_170/2024 (dated 15 November 2024), the Swiss Federal Supreme Court considered the scope of the veto right in detail for the first time.

Contrary to the position advocated by various scholars – whereby the veto right is absolute and a rejection by private claimants does not require further reasoning – the Swiss Federal Supreme Court held that a rejection of the negotiated indictment by private claimants can only rely on aspects affecting their own rights, in particular their civil claims or the criminal offences charged in the negotiated indictment.

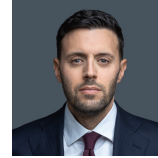
Private claimants *e contrario* cannot reject the negotiated indictment because of:

- the proposed sentence;
- the imposed sanction; or
- the offences deemed committed at the expense of other private claimants (consid. 2.6.6).

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[“The private claimant may only reject the indictment on grounds relating to his or her rights.”](#)

The Swiss Federal Supreme Court reached this conclusion after an extensive interpretation of Art. 360 para. 2 of the Swiss Code of Criminal Procedure from a grammatical, historical, teleological and systematic point of view. Of particular relevance are the considerations of the Swiss Federal Supreme Court on its teleological interpretation (consid. 2.6.4, translated from French):

*“By giving the private claimant a right of rejection, this provision also aims to ensure that his or her rights are respected. The agreement must not be to the detriment of the plaintiff. From a teleological point of view, it should also be noted that accelerated proceedings are a special procedure for expediting ordinary criminal proceedings. One of the foundations of accelerated proceedings is therefore procedural economy and the principle of celerity. Granting an absolute right of veto to the private claimant would therefore run counter to this objective. Moreover, [...] if the theory of free and unreasoned opposition is accepted, it would give immense power to each private claimant, making the outcome of an accelerated proceeding practically illusory, which cannot be followed. From a teleological point of view, it must be remembered that the private claimant’s opposition can only relate to those aspects of the indictment that affect his or her rights, more specifically to civil claims or the offences underlying these claims. Such an interpretation ensures a fair balance between safeguarding the interests of the plaintiff and the goal of procedural economy.”*

Under this systematic interpretation, the Swiss Federal Supreme Court refers to the fact that, in ordinary proceedings, the private claimant may not contest a court decision on an imposed sanction (Art. 382 para. 2 of the Swiss Code of Criminal Procedure), and that it would be contrary to the system to grant a more extensive right to reject the negotiated indictment in accelerated proceedings, for which the private claimant has no legally protected interest in appeal proceedings (consid. 2.6.5).

### **Conclusion and outlook**

This decision rejects the notion of an absolute veto right for private claimants in accelerated proceedings. In future, private claimants will need to provide a reasoning for their rejection, and this must stand in relation to the civil claims or underlying offences. While it remains unclear how detailed the reasoning supporting the rejection must be, this decision restricts the position and influence of private claimants in accelerated proceedings.

Restricting the veto right of private claimants facilitates the successful conclusion of accelerated proceedings by defendants. This is also important for undertakings considering self-reporting a corporate criminal offence (such as failure to prevent bribery or money-laundering), as the Swiss Federal Supreme Court has now clarified that the private claimants’ veto right is limited in scope and can be challenged if the reasoning for the rejection falls beyond this scope.

Defendants – particularly those undertakings considering self-reporting – should consider the limitation of private claimants’ veto right in their overall risk and opportunity assessment.