

whether the attempt can be committed by *dolus eventualis*. However, what is clear is that the attempt with *dolus eventualis* cannot be equated with the attempt with direct intent (with purpose). When the person is acting purposely, he/she is choosing best suitable means for this purpose, while if the person is acting recklessly (with *dolus eventualis*), he/she is not adjusting means to the ends and is less dangerous. Thus, reckless conduct and purposeful conduct pose different kinds of risks to legal values and they should not be treated equally. Thus reckless attempt should not be recognized in criminal law and such conduct can be penalized by risk created offences which are less serious in nature.

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SUBSIDIARY LAWSUIT (JUSTIFICATION OR NOT – NORM AND PRACTICE OF THE REPUBLIC OF SERBIA)

One of the key consequences of committing a crime is the initiation and conduct of criminal proceedings against its perpetrator. In this way, not only the goal of the criminal procedure is realized, but also the moral satisfaction of the person injured by the committed criminal act. The practical realization of the goal set in this way is in the hands of the public prosecutor as a state body responsible for prosecuting criminal offenses for which criminal prosecution is undertaken *ex officio*, and this rule also exists in criminal legislations which provide for the category of criminal offenses for which criminal prosecution is undertaken on the basis of a private lawsuit, as is the case with the Republic of Serbia (Stojanović, 2020). However, even in addition to the prescribed obligation of the public prosecutor, and in addition to the obligation to act according to the principle of legality of criminal prosecution, it is possible that the public prosecutor will withdraw from the already undertaken criminal prosecution after undertaking criminal prosecution. In such cases, there is the question of the rights of the person injured by the crime. Should he be allowed the right to take over the prosecution after the withdrawal of the public prosecutor or not? The issue is not only current but also more than justified,

because without giving such a right to a person damaged by a crime, he would be denied, among other things, the right to moral satisfaction whereas the perpetrator would be given the opportunity to avoid criminal responsibility due to possible omissions in the work of public prosecutors. Given this and relevant international legal acts that treat the status of victim – the injured party, the right of the injured party to take measures to review the decision of the public prosecutor to withdraw from prosecution in a particular criminal matter is provided for as an international legal standard. This is the case primarily with the Directive 2012/29/EU of the European Parliament and of the European Council of 25 October 2012 (Bejatović, 2020).

The institute of subsidiary lawsuits, the essence of which is reflected in the right of a person injured by a criminal offense to take over, i.e. continue criminal prosecution in cases when the public prosecutor withdraws from the already undertaken criminal prosecution, is a traditional institute of criminal procedure legislation of Serbia (Bejatović, 2003). There are several reasons that justify this institute. First of all, the injured party is given the opportunity to undertake the criminal prosecution in all situations when he or she doubts the legality of the withdrawal of the public prosecutor from the indictment, which is also in the function of his or her moral satisfaction. Secondly, the institute has a prevailing preventive effect on the legality of the work of the public prosecutor because he is aware that the legality of his work can be re-examined by undertaking the criminal prosecution by the injured party by using the institute of the subsidiary lawsuit in all situations when there is a slightest degree of doubt.

There are several key features of the institute according to the valid text of the CPC of the RS.¹ These are: First, acquiring the status of a subsidiary-injured party as a plaintiff is only an option and not an obligation of the injured party. Secondly, there are two preconditions that must be met in order for the injured party to acquire the status of a subsidiary plaintiff (for the public prosecutor to withdraw the indictment after its confirmation and for the injured party to declare his criminal prosecution within the set deadline). Third, the obligation of the court is to inform the injured party about his right to take over the criminal prosecution after the public prosecutor withdraws from the indictment. Fourth, after taking over the criminal prosecution by the injured party, the court continues, i.e. sets the main trial, which depends on the phase of the procedure of acquiring the status of a subsidiary plaintiff. Fifth, in the undertaken criminal prosecution, the injured party as a plaintiff has all the rights as a public prosecutor except those that the public prosecutor has as a state body (Simović, 2020). Sixth, even despite the withdrawal of the indictment and the taking over of the criminal prosecution by the injured party, the prosecutor has the right to

¹ „Official Gazette of the RS“ No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019 and 27/2021

take over the criminal prosecution from the injured party and represent the indictment before the end of the main trial. Seventh, in the event that the injured party dies within the deadline for giving the statement on taking over the criminal prosecution, i.e. during the proceedings, everyone from the circle of legally determined relatives has the right to give a statement to take over the prosecution within three months after his death and thus replace the deceased injured party.²

In addition to the above, there are two other facts that deserve attention when it comes to this institute. First, they justify the efforts of a large number of the professional public that the right to use the institute should be allowed in all cases of the prosecutor's withdrawal from the indictment, and not only after the confirmation of the indictment (Škulić, 2020), which is now the case. Secondly, the institute exists only symbolically in practice, However, no one disputes the justification of its existence.

The criminal and political justification of the institute of subsidiary lawsuit is complete. It is not only in the function of protecting the rights of the injured party, but it also has a great preventive effect on the legality of the work of the public prosecutor.

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² Article 52 of the Criminal Procedure Code of the RS