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Forms of prosecuting in the Polish criminal trial

ABSTRACT: *The subject of this article is to analyse forms of prosecuting in the Polish criminal trial. The author discusses the following issues related to the title issue: the essence of prosecuting, type of criminal offence and manner of prosecuting versus choice of prosecuting option, public prosecution, private prosecution, and Auxiliary prosecution. Discussion of statistical data is also part of the analysis. The article is built around the thesis that the functioning of the three options of prosecution in Polish criminal proceedings depends, as can be seen, on the type of offence committed. Whether the crime is public or private depends on the choice of the appropriate prosecution option.*

KEYWORDS: *criminal procedure, criminal trial, indictment, prosecution, judiciary.*

1. Introductory remarks

Every criminal proceeding has specific grounds for its commencement and continuation. There are also strictly designated entities involved in the criminal proceedings. In Poland, the basic legal instruments that form the principal basis for incurring criminal liability are the 1997 Criminal Code (substantive criminal law), providing for the rules for criminal liability, the 1997 Criminal Procedure Code (formal criminal law/procedural criminal law/criminal procedure), providing for the mechanisms of public authorities to proceed in criminal cases, the rules for their commencement and conduct, the manner and forms of carrying out individual procedural steps, and providing a list of rights and duties that procedural authorities have. Most criminal proceedings are essentially made up of two stages of proceedings, with the *first* stage being pre-trial proceedings, and the *second* stage being judicial proceedings.

The main purpose of pre-trial proceedings in Poland is to determine whether a prohibited act has been committed and whether it constitutes a criminal offence, to detect and, if necessary, to apprehend the perpetrator, to collect data about the

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perpetrator's character, data about the perpetrator's criminal record, to clarify the circumstances of the case, including identifying the aggrieved parties and the extent of the damage, to collect, secure and, to the extent necessary, record evidence for the court. Therefore, the most important role of pre-trial proceedings is to issue decisions to initiate or refuse pre-trial proceedings.

On the other hand, judicial proceedings are the final part of criminal proceedings as a whole. At this stage of the proceedings, the leading authority here is the court, whose role is to definitively determine, based on the evidence before it, the extent of criminal liability of the accused person, and as such, in principle, either to find the person guilty and sentence him or her accordingly, or to acquit the person.

A special moment in criminal proceedings is the moment between the end of pre-trial proceedings and the beginning of judicial proceedings. The link between the end of pretrial proceedings and the beginning of judicial proceedings is precisely the moment of drafting and filing an indictment with the court. This is a very delicate moment with many interesting consequences. Therefore, it is worthwhile to learn about the options for bringing charges to examples of criminal proceedings in Poland.

2. The essence of prosecuting

The act of prosecuting itself is not only the aforementioned link between the two stages of criminal proceedings (pre-trial and judicial proceedings), but also one of the functions pursued in criminal proceedings. As such, the act of prosecuting as a function of criminal proceedings consists of initiating criminal proceedings, gathering evidence, drafting, filing, and supporting an indictment before the court. The next function is defence, which is contrary to prosecution and consists of gathering and presenting facts and evidence that are favourable to the accused. The next and final function is that of judging, which in the Polish legal order always belongs to the judicial authorities and consists of examining and evaluating the facts and evidence presented by the parties to criminal proceedings, and finally determining the extent of the criminal liability of the accused.¹ All these functions are performed in the area of criminal procedures, which undoubtedly fall under public law in the broad sense of the word, where the obligation of law enforcement agencies to undertake certain operations in the event of conduct which is inconsistent with the legal norm contained in the provisions of criminal law, that is, in the event of a commission of a criminal offence, is very strongly exposed.²

In this context, prosecution is the element that *first*; closes pretrial proceedings and *second*; opens judicial proceedings. Prosecution contains a direction to conduct

1 Kalinowski, 1981, p. 7.

2 Pohl, 2019, p. 23.

judicial proceedings, as the drafting of indictments follows pre-trial proceedings, which has made it possible to identify the accused as well as the type of criminal offence committed. Prosecution is a recapitulation of operations carried out at the pre-trial stage, or more precisely, a result of these operations. Therefore, the prosecution becomes more specific when an indictment is drafted. It is an indictment, as a request of an eligible prosecutor, to initiate judicial proceedings and punish the accused for the criminal offence charged to him or her, which provides the basis for continuing criminal proceedings at the judicial stage, where the main focus is on examining the extent of criminal liability.³ For the court, an indictment determines the object, that is, the act involved (the so-called legal qualification of the act) and the subject, that is, the perpetrator (the accused), against whom the proceedings will be conducted.

As a rule, an indictment may be drafted and filed with the court by, *first*; an entity with the authority to appear before the court as a public prosecutor and, *second*; under certain conditions, the victim himself/herself or the victim's relative or partner as a private prosecutor.⁴

Simultaneously, there are three types of indictment in Polish criminal proceedings. This depends on who is bringing the indictment and in what case the indictment is brought. Therefore, in the Polish system of criminal proceedings, there is first a public indictment, then a private indictment, and finally a subsidiary indictment. The exception to this is the so-called subsidiary (autonomous) indictment, which will be discussed below, as this is a rather complicated mechanism in which it is possible to bring an indictment by the victim himself/herself, but in cases where it is always brought directly by the public prosecutor.⁵

In this context, in cases of criminal offences prosecuted on public indictment, the public prosecutor is, as a rule, the state attorney. For criminal offences prosecuted in private indictments, the indictment is brought about by the victim as a private prosecutor.

3. Type of criminal offence and manner of prosecuting *versus* choice of prosecuting option

The above-mentioned choice of prosecution from the very beginning depends on the provisions of substantive criminal law, and therefore, on the type of criminal offence in question. The type of criminal offence determines the manner in which the prosecution is conducted.

3 Bieńkowska et al., 2003, p. 337.

4 Skorupka, 2017, p. 568

5 Boratyńska, Chojniak, Jasiński, 2016, p. 163.

In Poland, substantive criminal law was recompiled as the basic legal instrument for criminal law—that is, the 1997 Criminal Code. It introduces a division into types of criminal offences distinguished in terms of how criminal proceedings are commenced and conducted.

The first group is public charge criminal offences, also known as crimes prosecuted by public indictment, or crimes prosecuted *ex officio*.⁶ This was the most numerous group of criminal offences listed in the provisions of the Criminal Code. If the Criminal Code does not expressly state in which manner a criminal offence is prosecuted, it is always a criminal offence prosecuted by a public indictment. Criminal offences classified in this group are characterised by the fact that the commission of a publicly charged criminal offence is a violation of the public interest, and therefore, the infliction of harm on the general public, since a criminal offence is an action directed against the state and its citizens, and the punishment is the response of the state to the violation of the general public peace and order by this criminal offence.⁷ Thus, the prosecution of public offences traditionally involves the initiation and conduct of pre-trial proceedings by a competent authority—most often the public prosecutor's office—followed by the drafting and filing of a public indictment with the court, thereby commencing the aforementioned stage of judicial proceedings. In this type of criminal offence, an indictment is filed in the public interest by a state authority authorised to act as a public prosecutor. Pursuant to Article 45 of the Polish Criminal Procedure Code (hereinafter: CPC), a state attorney acts as a public prosecutor before all courts.⁸

The second group of criminal offences are private charge crimes, otherwise known as criminal offences prosecuted on private indictments.⁹ In this case, the provisions of the Criminal Code must clearly indicate this and not any other manner of prosecution. For example, Article 212 of the Polish Criminal Code (CC) provides for the crime of defamation as follows: Pursuant to Article 212 of the CC, whoever slanders another person, a group of persons, an institution, a legal person, or an unincorporated entity about conduct or qualities that may bring him or her into disrepute in public opinion or expose him or her to the loss of confidence necessary for a given position, profession, or type of activity shall be liable to a fine or community sentence. Nevertheless, this provision clearly states that this crime was prosecuted on private indictments.¹⁰ Other types of private criminal offences under the Polish Criminal Code include the crime of insult¹¹ or violation of bodily integrity.¹² In the

6 Gardocki, 2013, p. 29.

7 Makarewicz, 1924, p. 68.

8 Bieńkowska 1994, p. 57.

9 Gil, 2011, p. 50.

10 Stefanski 2017, p. 1376.

11 Article 216 of the Polish Criminal Code.. Kodeks Karny- 1. Act of 6.6.1997.

12 Article 217 of the Polish Criminal Code.. Kodeks Karny- 1. Act of 6.6.1997.

case of offences prosecuted under private indictments, unlike offences prosecuted under public indictments, no pre-trial proceedings are conducted. This is a simplified approach to prosecution. It generally begins with judicial proceedings upon the filing of a private indictment by the victim.

It is worth noting that there is a group of criminal offences that, depending on whether certain prerequisites are met, will become offences prosecuted under public indictment. This is a very small group of criminal offences, which in Poland's criminal law system are called crimes prosecuted by the victim's complaint.¹³ In the case of this type of criminal offence, which is about initiating and continuing criminal proceedings, the prosecution authorities (such as the state attorney and police) must necessarily obtain from the victim consent (in the form of a complaint) expressing his or her wish to initiate and continue prosecution.¹⁴ An example of this type of criminal offence is theft against a relative or partner.¹⁵ Article 278 of the CC provides for the classical offence of theft, stipulating that whoever takes away another person's movable property for the purpose of appropriating shall be liable to imprisonment for a term between three months and five years. However, this provision clearly states that if theft is committed to the detriment of the perpetrator's relative or partner, prosecution shall take place upon the victim's complaint. The consequence of this is that after such a complaint is filed, the proceedings are conducted in the same manner as in a case conducted on a public indictment, so the effect here is that the public prosecutor will eventually file a public indictment. This situation is regulated by Article 12 of the CPC which provides that in the case of criminal offences prosecuted upon the victim's complaint, the proceedings are conducted *ex officio* as soon as the complaint is filed.¹⁶ The law enforcement authority instructs the person entitled to file a complaint about his or her rights. The public prosecutor must obtain a criminal complaint from the victim.

4. Public prosecution

The first was public prosecution (PP). This type of prosecution is related to the initiation and conduct of criminal proceedings in cases of criminal offences prosecuted on public indictment (public charge offences, offences prosecuted *ex officio*).

Public prosecution is brought in and represented by the public prosecutor before the court. As a rule, it is always the state attorney who acts as the public prosecutor before all courts in Poland.

13 Mozgawa – Saj, 2020 r., p. 113.

14 Grajewski, 1992, p. 56.

15 Gardocka, 1980, p. 73.

16 Grzeszczyk, 2016, p. 35.

Public prosecution always precedes the initiation and conduct of the first stage of criminal proceedings, the pre-trial stage. Pre-trial proceedings are distinguished by two phases: the *in rem* phase which involves only the issuance of a decision to initiate pre-trial proceedings without specifically identifying a suspect, and *in personam* phase which involves further operations, that is, identifying a specific perpetrator by issuing a decision to present charges.¹⁷

Pretrial proceedings have their own stages, as they are divided into investigation, which is the basic form of pretrial proceedings and is conducted in the case of more serious offences, and summary investigation, which is a simplified form of pretrial proceedings that is conducted in the case of less serious offences.¹⁸

The state attorney is the primary authority for pretrial proceedings. He conducted and supervised the pretrial proceedings. The main tasks of a state attorney in pre-trial proceedings involve initiating and conducting pretrial proceedings, directing another competent authority to initiate or conduct such proceedings, and acting as a public prosecutor before the court.

The police and other authorities, such as the Border Guard, the Internal Security Agency, the National Revenue Administration, the Central Anti-Corruption Bureau, and the Military Police, among others, perform the role of either authorities conducting pre-trial proceedings under the supervision of the state attorney in the form of a summary investigation or assisting the state attorney in conducting pre-trial proceedings in the form of an investigation. Their main operations include checking, recording, and detecting activities, or evidentiary activities.

The culminating and final moment of the pre-trial proceedings is, if evidence permits, the drafting of a public indictment by the public prosecutor, that is, the state attorney.

It is an indictment that takes the form of a pleading, which provides the basis for continuing criminal proceedings. It specifies the subjective scope, identifying the accused and the objective scope, specifying the act charged.

An indictment in cases prosecuted on public indictment should contain, among others, *first*; full name of the accused, other details of the accused, including telephone number, fax number, and e-mail address, or information that the accused does not have these or that these cannot be established, data on the application of a preventive measure, and bail; *second*; a precise definition of the act charged against the accused with an indication of the time, place, manner, and circumstances of its commission and the consequences, especially the extent of damage caused; *third*; an indication of whether the act was committed under conditions of recidivism; *fourth*;

¹⁷ Waltos, 2017, p. 463.

¹⁸ Wiliński, 2017, p. 454.

an indication of the provisions of the criminal law under which the alleged act falls; *and fifth*; an indication of the court with jurisdiction to hear the case.¹⁹

An indictment shall be accompanied by a statement of reason, setting out the facts and evidence on which the charges are based, and where necessary, explaining the legal basis for the charges and discussing the circumstances relied on by the accused in his defence. The indictment should also include attachments and additional elements, such as a list of persons to be summoned at the prosecutor's request, or a list of other evidence that the prosecutor requests to be taken at the main trial.

If an indictment complies with the formal conditions, the president of the court or court clerks immediately orders that a copy thereof be served on the accused, calling for evidence to be tendered within seven days of the indictment being served on the accused. The accused has the right to file a written reply to the indictment within seven days of the indictment being served on the same, wherein the accused must be informed.

5. Private prosecution

The second option is private prosecution. A private prosecutor, that is, a victim, is directly responsible for this type of prosecution. *Vicicide* is defined broadly in Polish criminal proceedings. According to Article 49 of the CPC, a victim is a natural or legal person whose legal interests are directly violated or threatened by a criminal offence. A victim may also be an unincorporated state, a local government institution, or another organisational entity to which separate regulations grant legal capacity. An insurance company is also considered a victim to the extent that it has compensated or is liable to compensate the victim for the damage caused by a criminal offence. Sometimes, in cases involving offences against employee rights, the authorities of the State Labour Inspectorate may exercise the victim's rights if, while acting within the scope of their competences, they have detected the crime or requested the initiation of the proceedings.²⁰

Pursuant to Article 59 of the CPC, the victim, as a private prosecutor, may bring and support charges for criminal offences prosecuted in private indictments. Therefore, the victim may independently file and support a private indictment in a private complaint. Another victim of the same act may join the pending proceedings until the fact-finding stage commences in the main trial.

An interesting situation is one in which despite the fact that the proceedings are initiated on private indictments, it is possible for the state attorney to take over these

¹⁹ Grzeszczyk, 1998, p. 125.

²⁰ Kulesza, 1995, p. 17.

proceedings.²¹ This is because the state attorney's office in the Polish legal system is intended to serve as an advocate of the public interest.²² This gives the state attorney's office the opportunity to participate in criminal proceedings in Poland, such as civil or administrative proceedings, but only to a certain extent. The position of the state attorney as an advocate of the public interest also provides the opportunity to interfere with criminal proceedings conducted on private indictments.²³ The point is that, in cases of offences prosecuted on private indictment, the state attorney initiates proceedings or joins proceedings already initiated if the public interest is required.²⁴ Proceedings are then conducted *ex officio*, and the victim who filed a private indictment beforehand enjoys the rights of a subsidiary auxiliary prosecutor (more details below). If the state attorney who joined the proceedings subsequently withdraws charges, the victim regains the rights of the private prosecutor in further proceedings. A victim who has not filed an indictment may, within a strict time limit of 14 days of being notified that the state attorney has withdrawn charges, file an indictment or a statement that he or she upholds the indictment as a private prosecutor; if he or she does not file such a statement, the court or court clerks discontinue the proceedings. There are several procedural guarantees. In the event of a private prosecutor's death, the proceedings remain and the deceased's relatives, partners, or dependents may step into the rights of the deceased. If the eligible person does not step into the rights of the deceased within the strict time limit of three months from the date of the private prosecutor's death, the court or court registrar discontinues the proceedings.

An indictment in privately prosecuted cases is much simpler in terms of structure. The requirements for this type of indictment are set out in Chapter 52 of the CPC, where the minimum elements of an indictment are envisaged pursuant to Article 487 of the CPC.²⁵ In this case, an indictment may be limited to identifying the accused, the alleged act, and the evidence on which the charges are based. A private prosecution may also be filed orally because the police, at the victim's request, will accept an oral or written complaint and, if necessary, secure evidence and will thereafter send the complaint to the competent court. Subsequently, under the court's direction, the police conduct evidentiary operations specified by the court, after which they pass on their results to the court.

Thus, it can be seen that in proceedings conducted on private indictment there is no pre-trial stage as in proceedings conducted *ex officio*. The entire criminal procedure conducted in relation to an offence prosecuted under a private indictment

21 Matusiak, 2013, p. 147.

22 Misztal – Konecka, 2017, p. 24.

23 Czarnecki, 2014, p. 271.

24 Nowikowski, 2010, pp. 150-163.

25 Kruk, 2012, p. 78.

is much simpler than that for offences prosecuted under a public indictment.²⁶ Proceedings conducted on private indictments began immediately at the judicial stage. Nevertheless, the main trial is preceded by a conciliation hearing conducted by a judge or court clerk.²⁷ Upon application, or with the consent of the parties, the court may set a suitable date for mediation proceedings in lieu of conciliation meetings. The conciliation hearing begins with the parties summoned for reconciliation. A record of a conciliation hearing should indicate the parties' responses to the summons for conciliation and the results of the conciliation hearing. Unexcused failure of the private prosecutor and his or her counsel to appear at the conciliation hearing is considered a withdrawal from charges; in such cases, the presiding judge discontinues the proceedings. In the event of an unexcused failure by the accused to appear, the conciliation authority refers to the main trial and, if possible, immediately sets a date for the same. If the parties were reconciled, the proceedings were discontinued. Reconciliation between parties is achieved through mediation. During a conciliation hearing or as a result of mediation, reconciliation may also extend to other cases of private indictments pending between the same parties.

Simultaneously, the parties may conclude a settlement agreement, the subject matter of which may also be claims related to the charges. In the absence of reconciliation, this case is referred to as the main trial. Proceedings in cases brought on by a private indictment are discontinued with the consent of the accused if the private prosecutor withdraws the charges before the proceedings are terminated with a final and non-appealable decision. The accused's consent is not required if the private prosecutor withdraws charges before the commencement of the fact-finding stage in the first main trial. The unexcused failure of the private prosecutor and his or her counsel to appear in the main trial is considered the withdrawal of charges.

An interesting institution in proceedings conducted on private indictments is the counter indictment. It is assumed that, in this situation, there is a merger of procedural roles in the form of an aggrieved accused.²⁸ Until the beginning of the fact-finding stage in the main trial, the accused may file a counter-indictment against the private prosecutor, who is the aggrieved party for an act prosecuted on a private indictment, in connection with the act charged to him or her. The court then hears both cases jointly. The withdrawal of charges by a private prosecutor results in the proceedings being discontinued only in part because of the charges brought by that prosecutor. Both private prosecutors enjoyed the rights of the accused. Priority to ask questions and give speeches was granted to the private prosecutor, who was the first to file an indictment. In its judgment, the court noted that the proceedings were

²⁶ Markiewicz, 2018r, p. 98.

²⁷ Banasiak, 2010, p. 223.

²⁸ Olszewski, 2014, p. 51.

pending on a counter-indictment. A counter-indictment is inadmissible if the state attorney has previously initiated or joined the proceedings.

6. Auxiliary prosecution

The third option is auxiliary prosecution. There is an auxiliary prosecutor in the Polish criminal proceedings. This aggrieved party can act alongside or in lieu of the state attorney in criminal proceedings conducted for public indictment offences.

Hence, two types of auxiliary prosecutors can be distinguished. *The first* type is the one that acts alongside the public prosecutor in criminal proceedings. Thus, it is a situation in which there are simultaneously two prosecutors in one proceeding, that is, a public prosecutor (state attorney) representing the state and an auxiliary prosecutor, that is, a victim (harmed party), who acts in parallel alongside this prosecutor. In this case it is a collateral auxiliary prosecutor, and in order to become a collateral auxiliary prosecutor, the aggrieved party must make a statement to the court before which the case will be pending that he or she will act in this capacity. This is a very simple statement in terms of its structure, which must be made within the period from the filing of the indictment with the court until the same is read out in the main trial. If made late, the statement is ineffective and the time limit cannot be reinstated.²⁹

The second is the subsidiary auxiliary prosecutor, also known as an autonomous prosecutor. This is a very interesting institution because, in this case, the aggrieved party acts independently, completely replacing the public prosecutor in a situation where the latter refuses to initiate proceedings or discontinue proceedings without referring the case to court.³⁰

However, this is possible after the completion of a complicated procedure. In order to become an auxiliary subsidiary prosecutor, the following prerequisites must be met: *first*; the state attorney must at the outset refuse to initiate pre-trial proceedings or discontinue previously initiated proceedings by issuing an appropriate decision, *second*; this decision must be challenged by the aggrieved party with an appropriate complaint to the court, *third*; the court must allow this complaint and, as a result, cancel the challenged decision of the state attorney, providing the reasons for such cancellation, possibly also the circumstances that need to be clarified or the actions that need to be carried out, *fourth*; the state attorney conducting the proceedings again must continue to find no grounds for initiating the proceedings or again discontinue the previously initiated proceedings, which he also does by means

²⁹ Papke-Olszauskas, 2000, p. 42.

³⁰ Zagrodnik, 2005, p. 280.

of an appropriate decision, *fifth*; then the victim should challenge this decision by a complaint to the state attorney superior to that who issued the order, and *sixth*; the superior state attorney must affirm the latter decision.

Therefore, this procedure is rather difficult and lengthy. Only after this procedure has been exhausted can the aggrieved party, within one month of being served a notification of the state attorney's recent decision, file a subsidiary indictment, thereby becoming a subsidiary (autonomous) auxiliary prosecutor.³¹ However, there is another important constraint: this subsidiary indictment must be drafted, signed, and brought to court by a professional attorney (i.e. an advocate or attorney-at-law). This is the 'obligatory representation by a professional attorney', which exists in Polish criminal proceedings. It consists of the fact that certain actions required by a party for criminal proceedings must necessarily be conducted by a professional attorney, who in the Polish legal system can be either an advocate or an attorney-at-law. The essence of obligatory representation by a professional attorney is to guarantee the best possible care from a professional tasked with drafting a pleading that requires expertise that, naturally, a party to criminal proceedings is lacking. It should be pointed out, however, that the obligatory representation by a professional attorney is not the rule, since in Polish criminal proceedings it only extends to certain actions – such as, among others, a subsidiary indictment discussed above.

7. Statistical data

Persons tried in district courts in Poland (excluding criminal fiscal cases).

	2017	2018	2019	2020	2021
Persons tried in Poland	291,881	307,616	316,907	275,926	315,973
Including on the basis of a private indictment (private prosecutor)	7,210	6,899	6,877	5,284	7,320
Including on the basis of a subsidiary indictment (subsidiary prosecutor)	1,489	1,282	1,359	1,031	851
Including on the basis of a public indictment (public prosecutor)	283,182	299,435	308,671	269,611	307,802

Compiled based on reports from the Polish Ministry of Justice³² on persons tried in the first instance as per the subject matter's jurisdiction.

31 Całkiewicz, 2015, p. 35.

32 Report of the Polish Ministry of Justice, n. S6r.

8. Conclusions

The functioning of the three options of prosecution in Polish criminal proceedings depends, as can be seen, on the type of offence committed. Whether a crime is public or private depends on the choice of appropriate prosecution.

Insofar as there is no controversy over the functioning of public or private prosecution, here the very line of division and distinction between offences prosecuted under public indictment and those prosecuted under private indictment is clearly drawn. On the other hand, an interesting institution is subsidiary prosecution, especially auxiliary subsidiary prosecution.

It would be interesting to see what kind of interest or motivation for the action was presented by the auxiliary subsidiary prosecutor.³³ The public prosecutor, as an advocate of the public interest, represents the state, and as such, his role is to prosecute and charge. A private prosecutor is the victim of an offence prosecuted under a private indictment. He represented both an interest and motivation closely related to his well-being, which was violated by the offence prosecuted on a private indictment. Conversely, a collateral auxiliary prosecutor is similar to a private prosecutor in that, by joining the proceedings and acting alongside the public prosecutor, represents his interest and point of view on the proceedings pending public indictment, while assisting the public prosecutor.

However, it is not clear what the motivation of the subsidiary auxiliary prosecutor is, for he is the sole and main prosecutor in the case, as he is, after all, substituting for the public prosecutor in a case brought on by public indictment, in which the public prosecutor always has a monopoly on prosecution. However, in this type of prosecution, he represents his own interests and is motivated by personal motives. The subsidiary auxiliary prosecutor, despite the fact that he himself brings a subsidiary indictment in cases prosecuted on public indictment, is certainly not a prosecutor primarily pursuing the public interest. Therefore, an auxiliary subsidiary prosecutor joins the proceedings only when the public prosecutor is passive in that he, by refusing to initiate pre-trial proceedings or discontinuing these proceedings, prevents the aggrieved party from giving effect to one of the most important values of criminal proceedings: justice.³⁴ Thus, the filing of a subsidiary indictment by a subsidiary auxiliary prosecutor is an example of the pursuit of justice in criminal proceedings in a situation in which the state authority, acting through the public prosecutor, that is, the state attorney's office, is passive.

³³ S.M. Przyjemski 2005, No. 3, p. 5; Dziergawka, 2019, p. 152; Zagrodnik, 2017, p. 5.

³⁴ Wielec, 2017, p. 201.

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