THE RIGHT OF THE INJURED PARTIES TO REPRESENT THEMSELVES INSTEAD OF BEING REPRESENTED BY A PROSECUTOR IN THE CRIMINAL PROCEDURE CODE OF HUNGARY

László FAZSI *

ABSTRACT: *Since the general spreading of the institutions of Roman law, one can notice an interaction between the national legislations, which has become more and more intensive during the evolution of European law, especially since the 18th century. And since the birth of the European Union, the significance of getting to know each other's legal systems got a new dimension for the jurists of the Member States, regardless of the degree of autonomy of national legislation. This applies to penal law as well, the regulation of which is still under the scope of national authority. Hereafter, in the spirit of this, I would like to take part in the presentation of the Hungarian law of criminal procedure by shortly introducing its unique institution, the substitute private prosecution. The significance of this legal institute is that it can be considered as a special solution for the question of controlling the activities of prosecution, which has been raised even in the recommendation of the Council of Europe (Reccomendation No. 2000/19.). According to this, one should provide, on the one hand, the organizational conditions for the revision of the negative decisions of the prosecution, on the other, a chance of appeal to the court in case the revision ends up with no results. There are different solutions for this in every country, for example, in the German criminal procedure, the institution of the "Klageerzwingungsverfahren," which enables the court to oblige the prosecutor to indict after a plea from the injured. And the traditional Hungarian solution for this is the substitute private prosecution.*

KEYWORDS: *criminal procedure, prosecution, private prosecution*
JEL CLASSIFICATION: *K00, K23*

1. INTRODUCTION

Since the general spreading of the institutions of Roman law, one can notice an interaction between the national legislations, which has become more and more intensive during the evolution of European law, especially since the 18th century. And since the birth of the European Union, the significance of getting to know each other's legal systems got

* PhD. student, Head of Council Szabolcs-Szatmár-Bereg County Court, Nyíregyháza, HUNGARY.

a new dimension for the jurists of the Member States, regardless of the degree of autonomy of national legislation. This applies to penal law as well, the regulation of which is still under the scope of national authority. Hereafter, in the spirit of this, I would like to take part in the presentation of the Hungarian law of criminal procedure by shortly introducing its unique institution, the substitute private prosecution. The significance of this legal institute is that it can be considered as a special solution for the question of controlling the activities of prosecution, which has been raised even in the recommendation of the Council of Europe (Reccomendation No. 2000/19.). According to this, one should provide, on the one hand, the organizational conditions for the revision of the negative decisions of the prosecution, on the other, a chance of appeal to the court in case the revision ends up with no results. There are different solutions for this in every country, for example, in the German criminal procedure, the institution of the "Klageerzwingungsverfahren," which enables the court to oblige the prosecutor to indict after a plea from the injured. And the traditional Hungarian solution for this is the substitute private prosecution.

2. THE POSITIONS OF THE INJURED DURING CRIMINAL PROCEDURE

For the sake of notional perspicacity, and to be able to organize the rules related to substitute private prosecution, by way of introduction we need to touch upon the position of the injured in the criminal procedure. The Hungarian law of criminal procedure currently in force provides on the one hand a procedural position of general nature, and on the other, certain rights for the injured, depending on what role the injured has in the particular procedure. So the position of the injured currently involves four more procedural roles: 1/ The private party, when the injured wishes to validate a claim of Civil Code, or compensation during criminal procedure. 2/ The private prosecutor, when the injured exercise their right of prosecution independent from the prosecutor. 3/ The substitute private prosecutor, when the injured exercise the right of prosecution instead of the prosecutor. 4/ The witness, when the injured provides evidence in his or her own case. This last position is emphasized because the confession of the injured witness should be treated as a means of verification with marked attention on it, and its position is different from the other witnesses in that it is directly connected to the crime itself.[1]

3. SUBSTITUTE PRIVATE PROSECUTION AND THE DEFINITION OF THE SUBSTITUTE PRIVATE PROSECUTOR

The Hungarian law of criminal procedure, which is based on the dominance of the public prosecution, traditionally provides a right of prosecution also for the injured in their own case in a narrow scope, secondarily and with conditions. This right of prosecution is called comprehensively private prosecution, which has two forms: [main][2] private prosecution, and substitute private prosecution.

[Main] private prosecution is a form of prosecution when the injured can level an accusation in his or her own right, independent from the prosecutor, and is able to represent

[1] Balázs Elek: Influencing testimonies. TKK, Debrecen, 2008, pg. 200

[2] The law in force does not use this attribute that fits the traditional designation, but I consider its use justified to emphasize the difference between the two forms of private prosecution.

it at court in a case of a crime done to his or her injury. But this right of the injured covers only the crimes listed in the law of criminal procedure. According to the legislation in force: assault and battery [with recovery inside of eight days], violation of privacy, violation of private mail, defamation, libel and irreverence belong here.

Contrarily, subjective private prosecution is a form of prosecution which is taken over from the prosecutor by the injured. This has two basic traits compared to the [main] private prosecution: First, the injured may exercise this right over any crime done to his or her injury. Second, in this case the injured may represent the prosecution against the crime done to his or her injury only if the initiation or the conduct of criminal procedure is not considered justified by the appropriate authority and the possibility to turn directly to court is not excluded by law. So the point of the law institution is represented by the right of prosecution for the injured that substitutes the role of the public prosecutor.

It results from the above that we can conceptually consider an injured a substitute private prosecutor who in the cases defined by law takes over the prosecution of a crime which otherwise belongs under the jurisdiction of the public prosecutor. The position of the substitute private prosecutor in the criminal procedure is on the one hand similar to that of the [main] private prosecutor in that he or she exercises the right of prosecution by the right of the injured and not by public function. On the other hand, a significant difference between the two positions is the circumstance that the substitute private prosecutor represents prosecution against a crime of public prosecution.

4. HISTORICAL REGULATION OF SUBSTITUTE PRIVATE PROSECUTION

The institute of the substitute private prosecution had already been included in the first Hungarian Code of Criminal Procedure [CCP.] accepted with the Law XXXIII of 1896, which regulated the conditions of its use in an exemplary way even for the legislators of our time. The legislation of the time considered this law institution as a guarantee against malpractices or mistakes of prosecutors and the political suggestibility of the organization of prosecutors supervised by the Minister of Justice. The CCP. already put it down in its 2nd Paragraph, which belonged to the general provisions, that in cases defined by law the injured might have taken over prosecution from the royal prosecutor. According to the CCP., this could have happened in two cases: 1/ If the public prosecutor denied representation from the beginning or 2/ dropped the charges during the procedure. The high standards of the regulations are palpable from the fact that after the prosecution had denied representation, the injured still had two choices: either he or she took over the role of prosecutor or could force the prosecutor to level an accusation with the help of the superior prosecutor, or if this was of no avail, he or she could still take over the role of prosecutor. So the method of regulation could even satisfy the requirements included in the already cited Recommendation of the Council of Europe, as it provided for the injured the possibility of remedy from both inside and outside of the hierarchy of the prosecution, appreciating the interests of the injured also by not necessarily forcing them to undertake the liabilities of representation if they wanted to enforce their claim of penal law. For that matter, the injured could take over the role of prosecutor by simply announcing their will to do so.

The circumspect regulation can also be otherwise observed, among the provisions regarding the preliminary procedures as well. Namely, contemporary criminal procedure had three main phases: 1/ preliminary procedure, 2/ arraignment procedure and 3/ main hearing. CCP. provided two forms for the preliminary procedure: investigation and examination, and these differed in their conditions of initiation and their conduct, but they had the same goal. According to main regulations, investigation had been initiated by the prosecutor and had been conducted by the police. But the initiation and conduct of the examination belonged under the jurisdiction of the inquisitors operating beside the courts of justice, which could happen in cases defined by law. These include the case of private prosecution, when examination needed to be conducted instead of investigation. The cause of this, which had a nature of being a warranty, is still worthy of attention. Namely because the legislator started from the fact that no effective investigation could be expected from a police force which was under the supervision of the public prosecutor in a case where the prosecutor had earlier denied the representation of the prosecution.

Investigation, or the examination, in case of the handing-in of an indictment, had been followed by the procedure of impeachment, which meant the preliminary examination and consideration of the incidental objections of the accused against the indictment at a hearing public only to the clients – before the appointment of the main hearing itself – by a prosecutor council of three at the court of justice. This also had a role of warranty, as they wanted to assure with this that no one could end up in the prisoner's box without the necessary steps taken. This facultative system of presentments, which was on a par with the then West-European standards, also prevailed in cases of substitute private prosecution, with the difference that in this case the council of prosecution decided over the objection against the indictment not at the court, but *in camera*, so merely the form of procedure had been simpler.

The next phase of the criminal procedure had been the main hearing, where the substitute private prosecutor could, with certain restrictions, exercise the rights of the royal prosecutor while representing prosecution. Regarding the possibility of appeal against the decision made at the main hearing, the right of the substitute private prosecutor differed from that of the prosecutor in that he or she could announce an appeal only against, and not in favor of the accused.

These rules described up until now are related to the typical model of the primary procedure. A regulation slightly different from this applied to the procedures conducted by both the grand jury discussing the most serious crimes and the district court of simpler cases. But a difference worthy of note had only been in the scope of regulation of the procedure of the district court. The most significant difference was that if the prosecutor, who had been commissioned instead of the royal prosecutor, denied the role of representing prosecution, then the district court needed to proceed as if the injured took over the representation of prosecution. So in this case, the takeover of the representation of prosecution happened automatically, without any further declaration, by force of law. But the injured had not been forced by law to represent prosecution even in this situation either, because if he or she had not appeared at the hearing after having been notified about this, then the non-attendance should have meant the withdrawal of the charge, so the automation of legal regulation prevailed in both directions. And if the commissioned

prosecutor had dropped the charge at the court, and neither the injured, nor his or her representative had been present, then it must have been presumed that he or she had not wanted to overtake the representation of the prosecution.

5. ABOLISHMENT OF SUBSTITUTE PRIVATE PROSECUTION

The CCP. that had been then considered a "bourgeois legislation" was relieved by the Code of Criminal Procedure accepted by the Law III of 1951 in Hungary. Its rules had been significantly simpler, accordingly to the terms of the time, but interestingly the institute of the substitute private prosecution remained in force, in fact, the relevant elbow-room of the injured grew even bigger. Namely, at this time had been the law enacted which stated that if the prosecutor had not raised, or later cancelled an appeal against the acquittal of an accused then the injured could have taken the representation of the prosecution over, if he or she had not resigned from this previously. But this legislation had not remained in force for long, because with the modification of the Code of Criminal Procedure on st August, 1954, the institute of substitute private prosecution had been abolished for a long period of time.

6. NEWLY INTRODUCING SUBSTITUTE PRIVATE PROSECUTION

The possibility to newly introduce substitute private prosecution became reality only after the transformation of the political system. The particular possibility was created by the fact that by the beginning of the 1990s the need for the comprehensive reforms of the criminal procedure had become obvious, and this had been supported also by, among other reasons, the recognition of the untenable procedural position of the injured who had been condemned to fulfilling the role of the "number one witness" during the years of the one-party system. The Government Regulation [I. 17. 2002/1994], representing the conception of the new criminal procedure, formulated the widening of the possibilities for claim-validation and the procedural rights of the injured as requirements. According to the Regulation, for the sake of this and with the appropriate restrictions it must be granted that the injured may undertake the role of substitute private prosecutor. This was in accordance with the standpoint that had become more and more accepted by then in legal literature, as many of its contributors had already suggested the necessity of newly introducing substitute private prosecution. Accordingly, the Parliament accepted Law XIX of 1998 about criminal procedure, which has been in force since st July, 2003 in Hungary.

7. THE REGULATION OF SUBSTITUTE PRIVATE PROSECUTION IN FORCE

7.1. The question of the problem raised by the injured

The fundamental question of the institute of substitute private prosecution is to clarify the identity of the injured, the answering of which can be considered a century-old problem of the Hungarian Code of Criminal Procedure, as its definition is basically the same,

albeit its weaknesses stood out already in the 19th century, just in connection with the use of the institute of substitute private prosecution. This relation is of course not a coincidence, as in the case of substitute private prosecution, the legitimacy of the accuser relies on this. CCP. [13. § (6)] considered someone injured, when any of his or her rights had been violated or endangered by the crime perpetrated or attempted. According to Chapter 51, Paragraph 1, a person qualifies as an injured if his or her right or rightful interest was violated or endangered by the crime.

Compact definitions seemingly do not raise any problems, and are capable to satisfy the needs of law enforcement, namely because according to the framework decision [Nr. 2001/220/IB. Chapter 1, Point a] of the Council of the European Union, the injured is a natural person who suffered a damage – including the damage done to his or her bodily or mental wellness, emotional damage or financial loss as well –, the direct cause of which is an act or fault that had been realized by violating the criminal laws of a member state. But this only strengthens even more that we are talking about a notion of procedural right whose relation to substantive right is obvious and impossible to evade, because a definition that is clearly procedural could be connected to the fact of stepping up only as the injured, which would leave the position of the injured incomprehensible, and would more likely be reminiscent of the institute of "action popularis." And, in case of allowing substitute private prosecution, this would by necessity lead to the erosion of the significance of prosecution.

The point of the problem can also be illustrated by the real-life case when during an accident of no personal injury caused by a drunk driver resulted in financial damage done to the guiltless party's vehicle. The encroachment on the latter's rights is obvious, as is the fact that in the particular case the driver responsible for the accident committed the crime of drunk driving, considering his or her level of intoxication. The question is that whether the driver who suffered financial damage could have acted against the drunk driver as substitute private prosecutor if the prosecutor had not brought a charge against the latter. According to Chapter 51, Paragraph 1, this could have happened by all means, but at the same time it is evident that there is no direct relation between the occurrence of the concrete damage and penalizing drunk driving, as in the case of a traffic accident not caused by drunkenness, but with similar consequences, no question would arise about the criminal responsibility of the driver causing said accident.

A solution for the above problem would be to create a definition of the injured that solves the dilemma caused by the difference between the conceptual system of the criminal substantive law and the procedural law, by acknowledging as a notional element the procedural significance of the direct and necessary relation between the procedural position and the violation of law on which that position is based. And regarding the regulation in force, court practice tries to solve this problem with the explanation that according to the opinion of the College of Criminal Justice at the High Court of Justice – which is not compulsory for the courts, but certainly orientates their practice of judgment – the injured may usually validate his or her claim of penal law as a substitute private prosecutor if he or she is the passive subject of the crime persecuted, or the statement of facts contains any results. Usually substitute private prosecution is out of the question when the given crime fundamentally violates or endangers state, social or economic order and the violation of rights affecting the natural person or legal entity occurred only indirectly.

The obvious problem of this understanding may be that the question remains there even in the light of the above: when is the stepping up of the substitute private prosecutor not excluded in the scope of the crimes included in the above circle. One of course cannot get an exact answer for this based on the opinion of the college, because the declaration of the general exclusion of the substitute private prosecution should be considered as legislation, which is not covered by the competence of the use of law. In any case, it is clear what kind of problems may arise from not examining carefully even a legal provision. This is indicated by the fact that for example the High Court of Justice, in consideration of the opposite practice, had to take a stand in the question of the possibility of representing substitute private prosecution in cases of crimes violating the state [provision of the unity of the penal law Nr. 3/2004. UPL], which had been later abolished by the Constitutional Court of the Republic of Hungary [42/2005. (XI. 14) AB provision], after the proposal of the public prosecutor.

It must be noted that the problem could arise also during the practice of the Romanian law of criminal procedure in case of having an institute resembling the substitute private prosecution, as the law in force [Chapter 24 (1)] and the law being put in force this year also point out the relation of the definition of the injured to substantial right as the main element of the definition, as for example according to the new law [Chapter 79[3]] we call the person "injured" who suffered bodily, financial or moral damage as a result of a certain crime.

7.2. The question of succession of title

Paragraph 1 of Chapter 51 settles the question of succession of title regarding all the participants of the procedure concerned by their rights – except for the so called other concerned parties –, but according to different regulating principles. This paragraph employs three different solutions in this circle, according to whether the successors of the title are 1/ the people listed by the law [the succession of the injured and the substitute private prosecutor], 2/ the relatives [the succession of the (main) private prosecutor], 3/ the heirs [the succession of the private party]. It is of course a logical solution that the law regulates the question of the succession of title for both the injured and the substitute private prosecutor. It is less clear however, that why the successors of title are defined in a narrower circle in cases of both procedural positions, than in regard of the [main] private prosecutor. Namely, the result of this is that for example the brother or sister of the injured in a case of life-threatening mayhem cannot replace the deceased as substitute private prosecutor, while if there was only a case of defamation against the deceased brother or sister, a living relative may become a successor and represent the [main] private prosecution. Consequently, the perpetrator of a more serious crime has a greater chance to avoid impeachment in a given case than the perpetrator of a smaller crime. The regulation should thus be improved.

[3] http://www.legex.ro/Lege-Nr.-135-din-01.07.2010-106292.aspx Downloaded at: 21st December, 2010.

7.3. The legal representation of the substitute private prosecutor

The Chapter above obligates the legal representation of the substitute private prosecutor, if he or she is a natural person and does not have a degree in law. Allotting the required legal representation is no doubt justified considering the expertise necessary to prepare the indictment and to represent prosecution, as in practice a professionally written indictment is sometimes still wanting, which would be a typical problem without a legal representative. At the same time, the allotment of the obligatory legal representation can prevent no one from validating their claim of penal law, as a needy injured may request for the allotment of a supporting lawyer.

It is less self-explanatory that the legislator formulates a unique rule in case of a substitute private prosecutor being a natural person with a degree in law. Fundamentally because there is no law that prohibits the substitute private prosecutor to give a witness confession in his or her own case. And this means that the substitute private prosecutor with a degree in law may step up both as his or her own legal representative and as the witness of his or her own prosecution in the same case, in fact, according to the decision of the European Court of Justice [brought about in the Hungarian case C-404/07] it must be provided for the injured also in a procedure of substitute private prosecution that he or she could give a witness confession that can be considered as an evidence [point 50[4]]. And it follows from this that he or she will evaluate his or her own confession in the speech for the prosecution at the end of the procedure. This is by no means a fortunate solution, even so that there is only one reasonable argument for the current regulation that provides an exception to providing an otherwise obligatory legal representation: the fact of having a degree in law. But compared to this the exceptional rule may result in such procedural complications, the consequence of which is not commensurate with the advantage provided to those of the preferred occupational level.

In practice, the question about the possibility of interrogating the legal representative as a witness beside the substitute private prosecutor also arose. According to the Nr. 3/ 2004 UPL provision of the unity of the penal law of the High Court of Justice that had been brought about in consideration of the above, both the substitute private prosecutor and his or her legal representative may be interrogated as a witness during criminal procedure. The reasons for this can be summarized in that the itemized provisions of the above Chapter do not exclude the possibility of this, so there is no object to that. This is of course a dogmatically invulnerable standpoint, but the question still arises, how we can support the justification of the "mixing" of these two positions that could not be brought to a common denominator as far as the nature and significance of their procedural roles are concerned. Namely, the position of the injured is already given, participating in the procedure either as injured, substitute private prosecutor or witness, but this cannot be said about the legal representative, who may naturally even have information in connection with the crime that is the object of the substitute private prosecution, in which case he or she should rather be "in the witness box," without representing substitute private prosecution at the same time.

[4] http://curia.europa.eu/jurisp/cgi-bin/gettext, Downloaded at: 24th November, 2010.

7.4.The problem of the system of regulation

One of the problems of the regulation of substitute private prosecution in force is that the provisions regarding this legal institute can be found not in the same article of above Chapter, but scattered in several articles of it. The result of which is that the provisions of the 37 passages of the Chapter (of 31 articles and within that, 608 passages) discussing substitute private prosecution and substitute private prosecutor got distributed in 18 different articles. This regulating technique does not follow consistently the traditional regulating model of substitute private prosecution, which is not benefit of the current regulation in force. When judging this, there is a consensus between the scholars of law theory and users of law, in spite of which this regulating technique, which renders the transparency of the legal material significantly difficult, remained the same while the above Chapter got modified five times already in the meantime.

This is a problem because at the construction of a regulation that covers the whole system of a given branch of law one should strive primarily for that its construction is transparent to the extent the inner relations of the legal material that is its subject make it possible so that it would ease the use of legal sources. The importance of this can hardly be questioned in relation with today's mass-production of legislations. The solution of the problem would be the regulation of the rules of substitute private prosecution within a separate article, as a separate procedure. For that matter, the above Chapter is familiar with this codifying technique and applies it in other procedures [for example, in procedures against accused that are underage, members of the military, (main) private prosecutors or absent].

7.5.The possibilities of taking over representation of prosecution

According to above Chapter [53, paragraph (1)] the injured may step up as substitute private prosecutor in cases defined by law, when a/ the prosecutor or the investigating authority declined the accusation or abolished investigation; b/ the prosecutor partly ignored impeachment; c/ the prosecutor dropped the charges; d/ the prosecutor did not establish any crime that would fall under the scope of public prosecution as a result of the investigation, so he or she did not bring any charges, or did not take over the representation of prosecution – in a procedure of private prosecution, as a result of ordained investigation.; e/ the prosecutor dropped the charges at the hearing because in his or her judgment the crime did not fall under the scope of public prosecution.

We can see from the list that the possible cases of the injured stepping up as a substitute private prosecutor can be sorted into two main groups: 1/ When it would not even get to impeachment – or 2/ the procedure of prosecution would be abolished after impeachment because of the lack of substitute private prosecution. The first group includes rejection of accusation, the abolishment of investigation and ignoring the taking over of prosecution or the representation of prosecution, and the second group includes the dropping of a charge. The cases defined in the points d/-e/ of the list should be mentioned specially, which mean a practical solution for the problem of the so called opinion difference. This can come up in the case when the opinion of the judge and the prosecutor

are different regarding whether the act subject to impeachment is a crime that falls under the scope of public or (main) private prosecution. This is a problem of the Hungarian system of criminal procedure because if the prosecutor establishes a crime of private prosecution and so declines to take over the prosecution [to what, incidentally, he or she has a discretional right], then not even the court can oblige him or her to do it; but the judge cannot decide based on private prosecution over such a crime that falls, in his or her opinion, under the scope of public prosecution, as that could only be represented by a public prosecutor. Consequently, the difference between the opinion of the judge and the prosecutor would result in that there were no lawful charges and so, no criminal procedure could be conducted. In this case would it be a solution for the injured to take over the representation of the prosecution from the prosecutor. This is why in this case there should be no doubts about the justification of substitute private prosecution by law.

On the contrary, the validity of the substitute private prosecution may be questionable in case the impeachment is partly ignored – the prosecutor has a right to do this in case of a crime which has less significance than the more serious crime that is the subject of prosecution, as far as impeachment is concerned. It stands without doubt that the right of the injured for substitute private prosecution is more compatible with the Hungarian system of criminal procedure that is based on the principle of legality – which is the embodiment of an ideal crime-fighting of no compromise –, than with the model of criminal procedure based on opportunity. But making it possible to partly ignore impeachment also shows that just like the tendencies go all around the world, this Chapter, although in a limited way, allows the principle of opportunity to prevail. But considering this, we must establish that when validating the rights for prosecution provided for the injured at the time when the validation of the state penal claims had been called off for practical reasons, the advantages, for the sake of which the legislator made it possible to partly ignore impeachment, are lost. At the same time it can also be said that originally the substitute private prosecution had been introduced as a means of warranty, which made it possible for the injured to validate his or her claims of penal law even when the prosecutor had been "idle." And in the current case, there are obviously no instances of prosecutor idleness.

Maybe it is worth mentioning that the modification of the Criminal Procedure (originally based on strict legality), accepted with the Law XXXIV of 1930, already introduced the possibility of ignoring impeachment for such a crime, the neglecting of which did not really influence the gravity of the punishment. And when investigating and deciding over such a crime after a judgment would significantly hinder the criminal procedure against a more serious crime committed by the same accused, it even ordered the ignorance of impeachment. But in the case of the impeachment being ignored, the law also excluded the possibility of substitute private prosecution, with the remarkable justification that it would not reach its goal: sparing unnecessary work for the authorities and speeding up the procedure itself.

7.6. Limits of taking over the representation of prosecution

It follows from the essence of the definition of substitute private prosecution that it is limited, and it stands for a right of prosecution representation which may be exercised

even between limitations of law and depends on the coming about of predetermined conditions. These limitations are manifold. On the one hand, they manifest in that the injured can step up as a substitute private prosecutor even in the acts of procedure already listed in the legal provision cited above only when the itemized provisions of law allow this. So this can happen only in the determined cases of rejecting an impeachment or abolishing an investigation. So for example it is not allowed to reject an impeachment or abolish an investigation to the disadvantage of an undercover detective or a cooperative suspect. It is a further limitation that substitute private prosecution does not lie against an underage person, and in a case of military crime, it can be used only when the injured is a natural person. We must point out the regrettable fact that youthful offenders commit specifically serious, and even more brutal crimes than adults more and more often, which does not really justify the exclusion of the possibility of substitute private prosecution against them, which may result in an unprofessional decision of the prosecution that would save them from being impeached even after committing a serious crime. So it would worth considering the abolishment of the restraint on substitute private prosecution against a youthful offender. And last, we may add the below regulations of the acceptance of the indictment by the court.

7.7. The indictment

Following from the prosecution principle defined in the circle of the fundamental provisions of above Chapter [2, Paragraph (1)], the central element of the substitute private prosecution procedure is also the prosecution, the institutional form of which is in this case the indictment. In case of the procedural act opening the possibility of taking over the representation of prosecution, the proceeding authority must call the attention of the injured in its provision (brought about in this matter) to that he or she may hand in via his or her legal representative an indictment at the public prosecutor's office familiar with the case in 60 days, or in the case of dropping a charge, at the court.

The law determines the content requisites of the indictment, partly with reference to the regulation regarding the indictment of the prosecution. A special content element of the indictment is the setting forth of the reasons, based on which the substitute private prosecutor proposes to conduct the court procedure in spite of the rejection of the impeachment, the abolishment of the investigation or the impeachment being partly ignored. But prescribing this cannot really be considered a reasonable requirement, as the handing in of the indictment itself already formulates the disagreement of the injured with the decision of the authorities and that he or she shall not put up with it. Furthermore, the cause of the lack of agreement cannot be always defined in an exact way either. Naturally, this is the reason why judges do not always throw back indictments with no such extra justification, if otherwise they meet all the requirements of law.

7.8. Accepting and declining indictments

Following the announcement of taking over the representation of prosecution, it is being realized by handing in the indictment. According to the general rules, the court does

not have to examine the acceptability of the prosecution separately, but during a procedure of substitute private prosecution, it has. In this regard, the question arose during practice that whether the court needs to make a resolution about accepting indictment or not. The prevailing opinion is that it is not necessary, so most of the judges consider the acceptance of indictment as a measure that does not require any further form of resolution, although the court procedure starts with this against the person who is the subject of the indictment, he or she becomes an accused after the acceptance, and this should be made known to him or her irrespectively of the fact that later he or she would learn about this anyway.

According to the above chapter, the court accepts the indictment if its rejection does not lie, consequently we take great interest in the causes for rejection. The court rejects the indictment if a/ the substitute private prosecutor handed it in after deadline; b/ the substitute private prosecutor does not have a legal representative; c/ the indictment was not handed in by an authorized person; d/ the prosecution is not lawful of the indictment does not include all the content requisites prescribed by law. From the causes for rejection, the lack of lawful prosecution is worthy of some special attention. According to the above Chapter [2, Paragraph 2], the prosecution is lawful when the person entitled to impeach initiates the conduct of a court procedure because of a closely defined, unlawful act committed by another person, who is defined in the indictment forwarded to the court. From this definition, the question of being entitled to impeach should be emphasized, as it is a self-sufficient reason for rejecting an indictment if it was not handed in by an authorized person. This is more likely to happen (as practice shows) in case of a substitute private prosecution than in case of a public prosecution, so the re-definition of the reason for rejection based on lack of prosecution legitimacy should be considered necessary. Consequently, it is not necessary to qualify the lack of lawful prosecution as a reason for rejection, as the concrete judgment over the further notional elements of the lawful prosecution already means the substantive examination of prosecution, which may occur implicitly only after accepting the indictment and preparing the court hearing itself.

7.9. Licenses of the substitute private prosecutor

According to the regulation regarding his or her circle of procedural rights, the substitute private prosecutor, if the law does not command otherwise, exercises the rights of the prosecutor, including the initiation of the enactment of forced measures revoking or restricting the personal freedom of the accused. However, the substitute private prosecutor cannot initiate the abolishment of the accused's right of parental supervision. After the indictment had been accepted, the law formulates only slight differences regarding the procedure of substitute private prosecution, so the preparation and conducting of the hearing basically follows the regulation of the cases of public prosecution. Compared to that a circumstance makes a significant difference, namely, that it is obligatory for a defender to participate in a procedure based on substitute private prosecution. It is also important that in case of the acquittal of the accused or the abolishment of procedure, not the state, but the substitute private prosecutor meets the part of the expenses that arose after stepping up as a substitute private prosecutor.

8. WHAT THE NUMBERS SHOW

Regarding the newly introduced substitute private prosecution, even the opinion of the lawyers is divided about the justification of this institute of law, which can only be judged reliably when being familiar with it in practice. We do not have a nationwide summary of how many cases were there in the past seven years where an indictment was handed in and to what result, but in 2009, a nationwide examination had been conducted by the Metropolitan Court and all the county courts according to viewpoints accepted by the Penal College of the High Court of Justice of the Republic of Hungary regarding the domain of judgmental practice in cases initiated by substitute private prosecution and covering the cases that were closed with a legal bind in 2007-2008 – the result of which provides a comprehensive cross-section of the practice of employing this institute of law from the examined tract of time.

One of the most important assessments that resulted from this examination that touched upon a total of 1073 cases may be that the practice did not justify the fears about the introduction of the legal institute that prognosticated a significant rise in the workload of the courts. Based on what the case statistics of the examined time period show, it can be established that compared to the whole of the number of cases, the rate of substitute private prosecution cases were usually around 1 percent.

It can also be established that only a little more than one third of the indictments handed in at the examined period were accepted by the courts on average, so the number of rejections was exceptionally high. 52 percent of the cases had been rejected because of the lack of prosecution requisites prescribed by the above Chapter or the unlawfulness of prosecution, which means that the work of the lawyers preparing the indictments had not been up to standard, so assuring workmanship, a goal of the legislators who wanted to reach this by prescribing obligatory legal representation, is still not realized in practice.

It can also be established that even as the result of the criminal procedures, that were conducted based on indictments that had been found feasible for consideration by the courts, in 80 percent of the cases the court decided to abolish the procedure or to acquit the accused. But we cannot jump to conclusions regarding the justification of the institute of law from all this, because the usual reason for abolishing procedures was the dropping of the charges, which does not necessarily mean that the institute of substitute private prosecution is something redundant and superfluous. This could not be established also because at the same time, in the examined period, the courts established the criminal responsibility of at least 51 accused people nationwide, who would have escaped impeachment forever if the monopoly of the public prosecution had retained its position. So in these cases the validation of the obligations following from the principle of legality would not have been fulfilled, if the criminal procedure had been conducted only based on the consideration of the public prosecutor.

9. SUMMARY

As a summary, we may establish that the new introduction of the traditional institution of law is justified, regardless of the significant changes happening in the public rights status of the prosecution, because the substitute private prosecution may become an

appropriate means for validating the rights of the injured, satisfying even the requirements formulated in the Recommendation of the Council of Europe. That said, its validity in the 21st century can obviously not be measured on how many cases it has been used in and to what result, and not even on the many practical occurrences of abusing the possibility of taking over the right of prosecution [for example, the accused handing in a baseless indictment against the judges deciding over his or her case], but on its efficiency in providing the necessary legal warranty. Such warranty must be provided today for the injured naturally not because of the danger of the independent prosecutors being politically suggestible, but to be able to correct an incidental mistake of the prosecutor. Beside the evaluation of the activities of the prosecutor based on effectiveness and the ability to keep to procedural deadlines, so from only statistical and administrative points of view, we cannot exclude the possibility of miscalculation in deciding over the justification of impeachment, especially considering the 51 cases of conviction following from injured prosecution that had been the result of examining two years' legal activity. And the injured is obviously interested primarily not in compelling statistics of prosecution, but in how his or her case is being dealt with, and if there is no result, he or she is entitled to expect the state to help in creating the appropriate legal background and the conditions of jurisdiction so that he or she may try to bring, between the confines of law, criminal responsibility to the person about whom he or she thinks that committed a crime against him or her, undertaking the risk of payment in case of false charges or an unsuccessful indictment. But the effectiveness of the substitute private prosecution is clearly not up to standards yet. But in the opinion of the author of current paper, we can reach it with consistent regulations and with the improvement of the application culture of this institute of law.