

Review Article

THE INTERVENTION EFFECT OF A VERDICT

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Abstract. *The verdict brought in the litigation in which one litigant was joined by an intervener produces a specific process effect towards a common intervener. This effect of a verdict is called an intervention effect and it appears in the later litigation started against the intervener by the litigant the intervener had joined and who had lost the previous litigation. The author in the paper points to the characteristics and essence of the intervention effect of a verdict, to the conditions for appearance of this effect and a possibility for the intervener to use an objection to eliminate the effect of the verdict brought in the previous litigation. The author analyzes legal decisions in the Republic of Serbia and points to the legislation regarding this process concept in some legal systems in the region.*

Key words: *litigation, litigants, intervener, intervention effect of a verdict, an objection to improper conduct of litigation, going into effect.*

1. A dispute that appears in a material-legal relation is normally solved by litigation. In some litigation there participate precisely defined process subjects which are, as a rule and entirely, interested in the outcome of the very litigation. However, certain third parties can, out of various reasons, be interested in the outcome of the litigation. In case that the outcome of litigation can affect the rights and interests of a third party, they have a right to take part in someone else's litigation, under the legally regulated conditions. Either the participation of a third party is spontaneous, on the call of a litigant, or it is caused by the initiative of the very court,¹ the participation of a third party in the litigation is allowed only in case there is a legal interest of the third party for one of the litigants to succeed.

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¹ Participation of third parties in litigation is spontaneous when the very third party who has found out about

2. One of the third parties that can take place in someone else's litigation is an intervener. That is a person who appears in someone else's litigation by joining one of the litigants. An intervener is a person who possesses a legal interest to take part in someone else's litigation and whose right to take part in someone else's litigation is regulated by law. Namely, the regulation from the article 215 of the Law on Legal Proceedings of the Republic of Serbia² states that a person who has a legal interest for one of the litigants in a litigation between other people to succeed, they can join this litigant. Therefore, there has to exist some legal interest that is usually seen in the fact that the verdict brought in the current litigation concerns the rights and interests of the third person as an intervener.³ When they appear in litigation, the intervener gets the process position of a litigant⁴ and has a right to take all those actions in the litigation that the litigant they have joined is authorized to. When it comes to a common intervener,⁵ they can undertake process activities that can be undertaken by the litigant they have joined. The activities of the intervener must not be in opposition to the activities of the litigant and must not harm them. The litigant the intervener has joined must not oppose to the intervener's taking actions, since in that case the litigant will take the actions in the litigation which will eliminate the effect of the actions having been undertaken by the intervener.

3. In this paper special attention is devoted to the effect of the verdict brought in the litigation a common intervener has taken part in, the effect being produced towards the intervener. This special process effect that a verdict produces towards a common intervener is denoted by different technical terms in the theory of Civil Procedure Law – the intervention effect of a verdict (See: Stanković, 2010, p. 171; Keča, 2011, p. 110 – 111; Palačković, 2004, p. 121; Poznić, – Rakić-Vodinelić, 1999, p. 357), the intervention impact (See: Triva, 1978, p. 353; Triva – Dika, 2004, p. 454; Janevski – Zoroska-Kamilovska, 2012, p. 224 – 225), or only the effect of a verdict on the intervener is mentioned. The term: intervention effect of a verdict has been created by the process theory and the very term has a “completely defined meaning and effect in the process field” (See: Stanković, 2001, p. 11).

The effect of a verdict on a common intervener is the concept of Procedure Law which had not been expressly regulated by law before the LLP 2011. Regardless this fact, a large number of theoreticians of Procedure Law have devoted their attention to this phenomenon in their papers and, this way, created a basis for possible legislative solutions. Some of the authors have emphasized the needs for a legislative arrangement of this concept since numerous civil law regulations planned for situations that can be a motive for the

litigation declares that they get in the litigation as an intervener. Likewise, a litigant can inform the third party by themselves, or they can do it through the court, while the very court can inform the prosecutor that they can intervene in the litigation. (More on this: Stanković, 2010, p. 165)

² See: “*The Official Gazette of the Republic of Serbia*”, no. 72/2011. In the text to follow: LLP 2011.

³ It is emphasized in the literature that the interest must be the personal interest of the intervener and that the legislator does not recognize any other interest of the interferer except the legal one (Petrušić, – Simonović, 2011, p. 445).

⁴ An intervener is not a litigant, but they only acquire the process position of a litigant. An intervener is a person different from litigants - a prosecutor and respondent, and they only join one of them.

⁵ A common intervener is one of the forms of participation of an intervener. In the Legal Proceedings it is possible for an intervener to take part in a case of co-litigation intervention, and also the existence of an intervener sui generis is possible (e.g. a prosecutor).

intervention effect of a verdict (Stanković, 2001, p. 11; Stanković, 2007, p. 180 – 181). Also, the authors have defined the concept of the intervention effect of a verdict and characteristics of the very effect (Stanković, 2007, p. 179 – 181; Palačković, 2004, p. 121; Poznić – Rakić-Vodinelić, p. 357; Triva, p. 353 – 354), and also the conditions for appearing of this effect and a possible way of its elimination, while pointing to the differences between the effect of a verdict on a common intervener and going into effect as a characteristic of a verdict of the trial court (Stanković, 2001, p. 13; Stanković, 2010, p. 173).

4. The intervention effect of a verdict is seen in the process effects that a verdict from the litigation in which the intervener has joined one of the litigants produces in the litigation that has been started against the intervener by the litigant who had been joined by the intervener in the previous litigation and who had lost this litigation. The effect of this verdict is indirect (intervention) because it does not affect the intervener directly, nor is the intervener ordered to act in a certain process way by it (In this way: Keča, 2011, p. 111). When the litigant from the previous litigation having been joined by an intervener loses this litigation, they have a right to start an independent litigation against the intervener. In this case the party who has lost the previous litigation plays the process role of a prosecutor, while the intervener, who had joined the party in the terminated litigation, plays the role of the respondent.

The intervention effect of a verdict is manifested by the fact that the former intervener as a respondent in the new litigation has no right to dispute the facts determined in the previous litigation, nor do they have a right to deny them, since they are considered uncontested. They also do not have a right to deny the legal interpretation of the court. According to the explicit legal regulation (See; article 218, paragraph 1 of the LLP 2011), in litigation between the litigant and the intervener who has joined them, the intervener can deny neither the determined facts nor legal qualifications contained in the explanation of the final verdict. We come to the conclusion that in the new litigation there will not be any discussion on the facts that are the same in both litigations, nor will the court decide upon the conditional relationship that has already been decided on (See: Stanković, 2012, p. 89). The intervener therefore can deny neither the legal nor factual predication, nor the legal interpretation of the court, nor the court decision on the claim or the conditional relationship (Palačković, 2004, p. 121). More accurately, both factual and legal appraisal of the situation are considered uncontested, the court is related to them and, therefore, they represent a basis for the court decision in the new litigation (Triva, 1978, p. 354; Palačković, 2004, p. 121).

Logically, the litigant having been joined by the intervener and playing the role of a prosecutor in the new litigation uses the verdict from the previously completed litigation. They act in such a way since it is in their interest that in the new litigation the subject of dispute is neither the facts nor conditional relationship having been decided on in the previous litigation.

5. In the literature of Procedure Law the conditions which have to be fulfilled in order for the intervention effect of a verdict to appear are discussed. Certain authors put all the conditions under the fulfillment of two basic assumptions – that the intervener has been enabled to perform all those actions that would have helped the litigant they had joined to win the case, and that the litigant having been joined by the intervener loyally conducted the litigation (Triva, 1978, p. 354; Triva – Dika, 2004, p. 455 – 456). On the other hand

certain authors consider that three conditions are necessary to be fulfilled: that the intervener was promptly informed about the litigation, that the intervener promptly answered the invitation of the litigant and entered the litigation, and that the litigant conducted the litigation conscientiously and loyally and that their actions did not eliminate the effect of the intervener's actions (Stanković, 2007, p. 180).

Different definition of the conditions needed for appearing of the intervention effect of a verdict comes down to the fact that it will appear: if the intervener was promptly informed about the litigation, and if this fact enabled them to perform actions in order to help the litigant they had joined; if the litigant conducted their litigation conscientiously and loyally, since only in this case can they use the verdict brought in the previous litigation and activate the intervention effect of the verdict, and if the actions of the litigant having been joined by the intervener did not eliminate the effect of the intervener's actions, since in this case there is a possibility of the intervention effect of a verdict not to appear.

6. The intervener has a possibility to eliminate the effect of the verdict brought in the litigation that they have taken part in. An objection to improper conduct of litigation is available to the intervener as a means for stopping the appearance of the intervention effect of a verdict. This objection of the intervener is a means of material-legal defense which they use in order to make the court reject the litigant's claim in the new litigation.

According to the legislator's enunciation, the litigant who was the intervener in the previous litigation has a right to point out that the legislator from the previous litigation who they had joined conducted the litigation in a wrong way, or that the court had missed to deliver them invitations, requests or decisions (See: article 218, paragraph 2 of the LLP 2011). The legislator has used this general regulation to provide the intervener as a respondent in the new litigation with a possibility to put in an objection to improper conduct of the litigation, and this way try to eliminate the intervention effect of the verdict.

After an objection to improper conduct of the litigation having been put in, the court will consider the objection of the intervener and either sustain or overrule it. The court will sustain the objection if statutory requirements have been fulfilled.

In order for the court to sustain the objection to improper conduct of the litigation put in by the intervener from the previous litigation, the intervener is obliged to provide evidence that: when entering the previous litigation they had not been promptly informed about the previous litigation, and therefore they were prevented from conducting activities that would have resulted in a more favorable outcome of the litigation; that the litigant from the litigation they had joined, either on purpose or by some harsh disregard, missed to undertake procedure activities which would have resulted in a more favorable outcome of the previous litigation, while the intervener did not and could not have any information about the possibility of their undertaking; and that the civil actions of the litigant from the previous litigation prevented the effect of the intervener's actions to appear.⁶

It is evident that the intervener as a litigant in the new litigation will base the objection to improper conduct of the litigation on the fact that they had not been promptly informed about the undergoing litigation, which resulted in the fact that at a certain time and certain stadium of the procedure they could not undertake civil actions the effect of which would

⁶ See article 218, paragraph 3, clause 1-3 of the LLP 2011. More about this: Petrušić – Simonović, 2011, p. 454.

have helped the litigant they had joined in the litigation, and this way affected a more favorable outcome of the litigation. Also, the intervener will claim in the objection that the litigant in the previous litigation, either on purpose or out of a harsh disregard, missed to undertake the civil actions which would have helped them and led to a more favorable outcome of the litigation. Moreover, the intervener themselves did not know about them, nor could they know about them under the circumstances. Finally, the intervener will also claim that they had undertaken civil actions in the previous litigation and provide evidence on this matter for the court accompanying the objection. However, the litigant they had joined prevented the effect of the intervener's actions by undertaking later actions of their own. More precisely, the intervener will state in the objection that the litigant they had joined in the previous litigation lost this litigation entirely due to their own fault, so therefore the appearance of the intervention effect of the verdict is impossible any way. It is also indisputable that the intervener will claim in the objection to improper conduct of the litigation that, in accordance with their possibilities, they have done their best in order for their activities to affect a more favorable outcome of the litigation and help the litigant they had joined.

7. The decision of the court concerning the objection to improper conduct of the litigation is a decision which either eliminates the intervention effect of a verdict or points to the groundlessness of the objection and enables appearance of this specific effect of a verdict on the intervener as a litigant in the new litigation.

If the court establishes that the objection to improper conduct of the litigation is based on statutory reasons, and determines its adequacy, the court will bring a decision by means of which it sustains the objection of the intervener. This way the court will allow the litigants in the new litigation to discuss in court again about the factual and legal issues that had already been discussed and decided on in the previous litigation (See: article 218, paragraph 4 of the LLP 2011). Sustaining the objection to improper conduct of the litigation eliminates the effect of the verdict brought in the previous litigation on the common intervener.

If the court has established that the objection of the intervener is groundless, the intervention effect of the verdict appears. It means that in the new litigation no discussion concerning factual and legal issues will be opened again since they had been determined in the previous litigation, nor will the court be able to decide again on pre-judicial issues that have already been decided on.

8. In the process theory a certain number of authors have dealt with the issue of distinguishing between the terms of going into effect and intervention effect of a verdict. These two terms of Procedure Law differ between themselves, they represent two separate concepts of Procedure Law, and their dissimilitude can be considered from various aspects.

Firstly, the concept of the intervention effect of a verdict is wider than the concept of a verdict going into effect. Going into effect is a property of a decision of the trial court that a verdict acquires under precisely defined circumstances and which provides the verdict with legal power and authority, as well as a possibility to produce certain effects. When it comes to going into effect, the property of going into effect is acquired only by the disposition of the verdict brought in the legal proceedings. On the other hand, the intervention effect of a verdict is a wider concept since it comprises an explanation as an independent and special part of the verdict (Palačković, 2004, p. 121; Poznić – Rakić-Vodinelić, 1999,

p. 357). What is of indisputable significance for the intervention effect of a verdict is that this concept also includes an explanation of the verdict which contains the determined facts and legal views of the court important for the decision in the new litigation (Janevski – Zoroska-Kamilovska, 2012, p. 225).

The second aspect of dissimilitude between the concepts of going into effect and intervention effect of a verdict is seen in the kind of verdict that acquires one of the mentioned properties. All the verdicts issued by the trial court go into effect. In the procedure for providing legal protection the court issues a verdict as a court decision that solves the dispute which had been a cause for the litigation in a final, authoritative and unquestionable way. Each verdict brought in the legal proceedings originated as a result of a syllogistic thought operation – decision, goes into effect under the statutory requirements. On the other hand, the intervention effect of a verdict is a property that only a certain category of verdicts of the trial court acquire. It is only the verdict brought in the procedure an intervener has taken part in that is provided by this effect. Hence, only a verdict brought in the litigation in which an intervener has joined one of the litigants can have the intervention effect.

The third aspect of distinguishing between the concepts of going into effect and the intervention effect of a verdict is seen in the possibility of elimination of one of these effects. Going into effect can be eliminated neither by the litigants nor intervener. The brought verdict that has gone into effect becomes an authoritative regulator of relationships between the litigants and possesses the strength of the law for the litigants from the procedure it has been brought in. The intervention effect of a verdict is, on the other hand, the effect of a verdict that can be eliminated. The effect of the verdict brought in the litigation where an intervener who had joined one of the litigants took part, and which is related to the intervener as a litigant in the new litigation, can be eliminated by putting in an objection to improper conduct of the litigation, the objection being founded on the statutory requirements. Of course, the intervention effect of a verdict can be eliminated only if the court determines that the objection to improper conduct of the litigation is grounded, and if the court has brought a decision by which it sustained the objection.

Although it has been stated that the concept of the intervention effect of a verdict is broader than the concept of a verdict going into effect since it also comprises the explanation of the verdict, it seems possible to conclude that this effect of a verdict is in one segment narrower than the concept of a verdict going into effect. More accurately, going into effect is a property of a verdict denoting that the verdict is *res iudicata*, and that it is no longer possible to decide on this matter, and this property's effect is directed towards the litigants. Conversely, the intervention effect of a verdict is narrower in the sense that it will be valid only for a possible litigation that the intervener who had joined the litigant in the previous litigation is going to take part in, now being a respondent, and the litigant having been joined by the intervener, now being a prosecutor taking part in the very litigation. Hence, the intervention effect of a verdict is of a limited range now and will be activated only in case a new litigation between the mentioned litigants appears.

9. As it has been mentioned before, the intervention effect of a verdict has been regulated by the regulations of the LLP 2011 for the first time in our legislation and in detail and “in accordance with doctrinal attitudes and the attitudes taken by the court practice” (Petrusić – Simonović, 2011, p. 453). A small number of procedure systems of the countries in the region contain regulations on the effect of a verdict on a common intervener.

The intervention effect of a verdict is regulated by an explicit regulation of the Law on Legal Proceedings of the Republic of Croatia.⁷ According to the LLP RC “in relation to the litigant they had joined in the previous litigation, the intervener cannot claim that the dispute, in a way it was exposed to the court during this litigation, was not properly solved. Their objection put in the new litigation that the litigant they had joined conducted the litigation improperly can be sustained only in case they, concerning the stage of the case at the time of their joining the previous litigation, or caused by statement of the litigant, were prevented from taking actions which would have resulted in a more favorable outcome of the litigation, or if such actions, for possibilities of taking of which they did not know, the litigant did not take either on purpose or out of a harsh disregard”.⁸ Since the intervener in the new litigation cannot claim that the case has not been properly solved, it is obvious that they will be able to deny neither the factual nor legal appraisal brought in the decision that the previous litigation has been terminated by (Triva, – Dika, 2004, p. 455). The intervener can eliminate the intervention effect of a verdict if they put in an objection to improper conduct of the litigation which can be sustained only if they prove that either the time of entering the litigation or statements and actions of the litigant prevented the intervener from taking actions which would have lead to a more favorable outcome of the litigation, i.e. if they prove that the litigant, either on purpose or out of a harsh disregard, did not take such actions while the intervener was not informed about the possibilities of their taking. We come to a conclusion that the objection will be ungrounded if the litigant has conducted the litigation loyally and if the intervener has been enabled to take all the actions in the litigation that would have helped the triumph of the litigant they had joined,⁹ and it is now that the intervention effect of a verdict appears.

The Law on Legal Proceedings of the Republic of Montenegro¹⁰ also contains regulations on the intervention effect of a verdict. Although regulations on the intervention effect of a verdict are as a rule located in the part of the Law concerning the participation of third parties in litigation, in the LLP RM the regulation on this special effect of a verdict towards the intervener is situated in the part of the Law concerning verdicts in Legal Proceedings. It is regulated by law that in the later litigation concerning the claim of the litigant against the intervener with whom they had taken part in the previous litigation, the court cannot adjudicate contrary to the previously brought decision, except when it sustains the objection to improper conduct of the litigation.¹¹ A general regulation of the law states that the intervener can neither attack nor deny the factual substratum and legal apprehension of the court from the previous litigation, and the court cannot adjudicate con-

⁷ See: “National Newspapers” no. 148/2011, a refined text. In the text to follow: LLP RC.

⁸ Article 208a of the LLP RC. This regulation entered the LLP RC by the Law on Changes and Amendments of the Law on Legal Proceeding in 2003 (“National Newspapers” no. 117/2003).

⁹ Triva – Dika, 2004, the mentioned opus, p. 455-456. The authors point out that this regulation of the LLP RC has literally been taken from German procedure legislation. Compare the article 68. Zivilprozessordnung, <http://dejure.org/gesetze/ZPO>, visited: 11/15/2012.

¹⁰ See: “The Official Gazette of the Republic of Montenegro” no. 22/2004, 28/2005, 76/2006. In the text to follow: LLP RM.

¹¹ Article 354 of the LLP RM. It should be noted that the legislator in the LLP RM, as well as in the LLP RC, talks about “conducting of a dispute”. This technical term is not adequately used since a dispute cannot be conducted. A dispute is a cause for litigation. Therefore, only litigation, as a regular way for solving a civil law dispute, can be conducted with the aim of solving the dispute brought to the court to be solved.

trary to the previous verdict. The intervention effect of a verdict towards the intervener is manifested this way.

By putting in an objection to improper conduct of the litigation, the intervener can eliminate the effect of the verdict. Although there are no explicit regulations concerning the reasons the intervener can base their objection on, it is indisputable that the intervener will claim that the litigant they had joined in the previous litigation lost the litigation by their fault, that the litigant also annulled the actions the intervener took in their behalf and that the litigant acted disloyally in the very litigation (About that: Stanković – Račić, 2010, p. 160).

If the court sustained the objection, the facts and prejudicial issues that had been discussed and decided on in the previous litigation would be discussed again. Otherwise, in the new litigation the court is related to the determined facts, solved previous questions and legal apprehension of the court taken in the terminated litigation.

10. It is indisputably very significant that the intervention effect of a verdict was regulated by the regulations of the new LLP 2011. This way the legislator reacted to constant requests of theoreticians of Procedure Law for this specific procedure effect of a verdict to be regulated by explicit legislative acts. By stating the rules regarding this concept, the legislator has defined the very notion of the intervention effect of a verdict, has planned for a possibility of elimination of this effect by means of putting in an objection to improper conduct of the litigation, has marked the conditions that have to be fulfilled in order for the court to sustain the objection and has also directed actions of the court in case the objection has been sustained. In comparison to the legislative solutions in the legal systems in the surrounding countries where this concept has been regulated by a deficient number of regulations, the legislator has completely regulated this effect of a verdict in the Republic of Serbia. It is obvious that the new legislative solutions will be useful in everyday court practice.

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INTERVENCIJSKO DEJSTVO PRESUDE

Vladimir Boranijašević

Presuda koja je donesena u parnici u kojoj se jednoj parničnoj stranci pridružio umešač, proizvodi prema običnom umešaču specifično procesno dejstvo. Ovo dejstvo presude se naziva intervencijskim dejstvom i ono nastupa u kasnijoj parnici koju protiv umešača pokreće stranka kojoj se umešač pridružio i koja je prethodnu parnicu izgubila.

Intervencijsko dejstvo presude se manifestuje u činjenici da u novoj parnici između stranke i umešača koji joj se pridružio u ranijoj parnici, umešač ne može da osporava utvrđeno činjenično stanje, kao i pravne kvalifikacije sadržane u obrazloženju pravnosnažne presude. Umešač ne može da ospori pravno ni činjenično tvđenje, niti pravno shvatanje suda, kao ni odluku suda o uslovljavajućem odnosu. I činjenična i pravna ocena stanja stvari se smatraju nespornim, sud je za njih vezan i kao takve one predstavljaju podlogu za sudsku odluku u novoj parnici. Intervencijsko dejstvo presude se može otkloniti isticanjem prigovora rđavog vođenja parnice. Umešač ima pravo da istakne prigovor koji će zasnovati na zakonom predviđenim razlozima. Ukoliko sud usvoji prigovor umešača, otklanja se dejstvo presude donete u prethodnoj parnici i omogućava ponovno raspravljanje o činjeničnim i pravnim pitanjima o kojima je već raspravljano i odlučeno u ranijoj parnici.

Institut intervencijskog dejstva presude nije bio zakonom regulisan sve do donošenja Zakona o parničnom postupku Republike Srbije iz 2011. godine. Autor u radu ukazuje na karakteristike i suštinu intervencijskog dejstva presude, na uslove za nastupanje ovog dejstva te mogućnost za umešača da prigovorom otkloni dejstvo presude donete u prethodnoj parnici. Autor analizira zakonska rešenja u Republici Srbiji i osvrće se na zakonsku regulativu u vezi sa ovim procesnim institutom u pojedinim pravnim sistemima u regionu.

Ključne reči: *parnica, parnične stranke, umešač, intervencijsko dejstvo presude, prigovor rđavog vođenja parnice, pravnosnažnost.*