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EUROPEAN CONVENTION ON COMPULSORY INSURANCE AGAINST CIVIL LIABILITY IN RESPECT OF MOTOR VEHICLES AND EUROPEAN UNION LAW

1. In September 1959, five decades have passed since the European Convention on Compulsory Insurance against Civil Liability in Respect of Motor Vehicles² became effective. This Convention was one of the merits for the competent authorities of the European Economic Community and/or the European Union when drafting regulations on compulsory motor third party liability insurance. The prevailing opinion in the comparative insurance law is that this Convention, for the first time in the international community, exposed the systematic legal institutes of compulsory MTPL insurance. Such an opinion can be seen in the textbook literature, in which this convention is known by its short name – the Strasbourg Convention. The credit for drafting the Convention goes to a team of editors from the western European member states of the Council of Europe that prepared the Convention for signature on April 29, 1959. Nine member states of the Council of Europe signed the Convention on the very same day and these were the representatives of Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, Norway and Sweden.

2. Almost ten years after signing of the Convention, the Secretary General of the Council of Europe (CE) was deposited the ratification instruments by four CE member states: Denmark, Germany, Greece and Norway. Soon after depositing the ratification instruments with the Depositary and the expiration of a further period of 90 days, the Convention entered into force in the international community on 22 September 1969. Long before this, the legal sources in Europe regulated the institutes of compulsory automobile insurance, both in the form of national laws (between the two world wars) and international deeds. The relevant Convention took all of them into account. It addressed primarily the legislative authorities of the member states of the Council of Europe, but also the non-members of this international organization. As the relations between the world blocks gave way to a wider international cooperation, the legal institutes of this Convention became ever more included into the legislation of member and non-member states of the Council of Europe. The legal institutes provided for under the Convention were used as a basis for drafting the regulations on compulsory automobile insurance of the European Economic Community and, later on, the European Union.

3. The title of the Convention begins with the words “European Convention”, common for a number of international treaties or conventions, protocols and

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² Source: Treaty Office on <http://conventions.coe.int>

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other international deeds drafted within the Council of Europe. Starting from the previously known national regulations on compulsory motor insurance and also from the international projects on this subject, the editors of the Convention sought to unify the system of legal institutes in compulsory motor third party liability insurance. For example, the definition of the term motor vehicle in the Convention has not changed through subsequent generations of European Union directives. In other words, the law governing the compulsory motor insurance of the European Union has taken over the concept of a motor vehicle from the Convention and did not change it for the past five decades, since the Convention's first date of validity. There are a few more similar examples relating to other legal institutes of the Convention compared to the compulsory motor insurance law of the European Union. Therefore, the harmonization of legal institutes in the Convention was of considerable assistance later on, in drafting of regulations on compulsory motor insurance of the European Economic Community and/or the European Union.

4. There were other attempts to relativize the significance of this Convention. One of such attempts was noticed with the professional public of Serbia³. It was stated that "due to a small number of ratifications", this Convention never entered into force in the international community. True enough that only four countries deposited the ratification instruments with the Secretary General of the Council of Europe. Nevertheless, it is also true that the Article 15 paragraph 2 in conjunction with paragraph 1 of this Article of the Convention provides that the Convention shall enter into force within 90 days of the date when the four member States shall have deposited their instruments of ratification with the Secretary General of the Council of Europe. The stipulated pre-conditions were fulfilled on September 22, 1969, whereby the Convention became effective within the international community, on the very same day. Therefore, the decisive fact for the entry into force was not a large or small number of states to ratify the Convention in parliaments but the fulfilment of the conditions relating to the Convention. The Convention included the following condition: four states shall deposit their ratification instruments with the Depositary and the period of 90 days from the date of deposit of those four instruments shall expire - which was achieved, so the Convention entered into force in the international community.

5. The SFRY did not ratify this Convention. Yugoslavia applied for membership in the Council of Europe twice (in 1996 and 2000), without any success⁴. The European Council, so named in the science of public international law, changed its name to the current one - the Council of Europe. According to the same source, Serbia became a member state of the Council of Europe only in 2003⁵. Nevertheless, neither Serbia nor any of the former SFRY republics have ratified the

³ Dr Dieter Pscheidl, Nenad R. Terzić, *Avus international: "Open issues of motor third party liability insurance in the European Union"*, Proceedings (2007) *Harmonization of Serbian insurance with the EU insurance system*, p. 278

⁴ Prof. Momir Milojević, PhD., "Yugoslavia and the European Council", *Archives of Legal and Social Sciences* no. 2-3 / 2003, p. 235.

⁵ M. Milojević (2003) pp. 235.

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European Convention on Compulsory Insurance against Civil Liability in Respect of Motor Vehicles. The reasons for such attitude can be looked for in a number of international facts, including the fact that the European Economic Community and/or the European Union imported numerous legal institutes from this Convention in their regulations on compulsory motor insurance.

6. Despite the fact that this Convention was not ratified by the members of the Council of Europe and the signatories of the Convention, numerous European countries began to apply it by passing laws modelled on the legal institutes of compulsory motor insurance included in the Convention. In this sense, the comparative law literature⁶ referred to the entire list of the European countries that introduced compulsory motor third party liability insurance through their laws, on the model of this Convention. According to the order of passing the laws, this list includes Hungary, Poland and Ireland, Sweden, SFRY, Italy, Greece and Portugal (all in the period from 1961 to 1972) and later Romania (1980)⁷. According to the sources for the law on insurance of the SFRY, the first law on compulsory motor insurance was passed in 1965 under the name of the Law on Compulsory Insurance of Property and Persons (Official Gazette of the SFRY⁸ No. 15/1965, amendment -20/1965, 35/1965, 11 / 1966, 7/1967, amendment-11/1967). The law stipulated that the user or owner of a motor vehicle registered in the territory of Yugoslavia is obliged to arrange for the insurance cover against liability for damage, as well as that the registration of a motor vehicle can be performed only after proof of the concluded insurance contract has been submitted to the competent authority. This principle for concluding the contract on compulsory motor insurance before the registration of a motor vehicle has been maintained in the legislation of Serbia until today.

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⁶ Prof. Marijan Ćurković, PhD: *Commentary on the Law on Compulsory Insurance in Transport*, Engineering bureau, Zagreb, November 2013, p. 11.

⁷ M. Ćurković, pp. 11.

⁸ Prof. dr Ivica Jankovec: *Compulsory insurance against motor vehicle damage*, Naučna knjiga, Beograd, 1985, pp. 14.