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Ljiljana J. Lazarević Davidović, law graduate[1]

TWENTY-FIRST ANNUAL CONFERENCE OF THE ASSOCIATION FOR INSURANCE LAW OF SERBIA

MODERN ASPECTS OF THE LEGAL AND REGULATORY INSURANCE CONCEPT

The 21st annual conference organised by the International Association for Insurance Law and the Association of Serbian Insurers entitled "Modern Aspects of the Legal and Regulatory Insurance Concept" was held in Šabac from September 25 to 27. This year about sixty participants from our country attended the conference, since the pandemic of coronavirus prevented the arrival of lecturers from abroad. However, they participated via Skype or by video presentations shown at the conference. Thus, attendees did not miss interesting lectures and valuable experiences from the EU countries, and on this occasion from China and the United States of America.

Participants from various insurance companies, universities, the Association of Serbian Insurers and other institutions were greeted by **Slobodan Jovanović, PhD,** the President of the International Association for Insurance Law.

– This year's conference organised by the International Association for Insurance Law of Serbia is held in the circumstances of legal and regulatory dynamics in insurance law and adjustment to increasingly extensive legal framework that creates a greater number of obligations for participants in the insurance market. Regulations concerning protection of financial service consumers also affect the insurance business in terms of its relationship with insureds and other persons with legal interest in insurance. On the other hand, technical and technological development imposes the need to create new insurance services, which inevitably opens numerous questions regarding civil liability in general, and in insurance brings dilemmas regarding the manner and scope of coverage – said professor Slobodan Jovanović, PhD.

[1] Author of the review is a senior specialist for development of publishing in the Center for Corporate Marketing and Customer Care, "Dunav Insurance Company" j.s.c.

– All of the above stated continuously affects the study of theoretical issues and practical effects of certain solutions in the supervisory and regulatory, and contractual domain of insurance business. In terms of the solution from the Preliminary Draft of the Civil Code of the RS presented in May 2019, it seems that the reform of the insurance contract law will ignore some useful proposals made by members of the International Association for Insurance Law regarding legal regulation of insurance contracts. Having in mind the insurance dynamics and the need for occasional improvement and modernization of the contractual insurance law, I believe that our initiatives from 2004 and 2005 should be considered so that the contractual insurance law becomes the subject of a special law on insurance contracts - said professor Jovanović and thanked the organisers, sponsors, friends of the Association, as well as everyone who took the time to attend and participate in the conference.

Dragica Janković, PhD, a member of the Executive Board of Dunav Insurance Company, was honoured to open the Conference with an introductory speech on the topic "Current issues and trends in the Serbian insurance market". Firstly, she presented data on the situation and results on the Serbian insurance market, pointing to the growth of the premium of less than 4 percent, which was achieved in the first half of this year, despite the coronavirus pandemic. However, she emphasized that in order to reach the premium of one billion Euros, it is necessary to achieve growth of nearly 9 percent, which is a difficult goal to achieve this year, having in mind all the obstacles faced by the economy and individuals affected by the coronavirus pandemic.

– Situation on the insurance market has not changed for many years. With the share of a bit over 27 percent in the total premium, the leader is Dunav Insurance Company followed by Generali with 20.39 percent, then by DDOR "Novi Sad" with 12.24 percent and Wiener Städtische with 11.79 percent. Non-life insurance premium increased by 4.15 percent, while in 2019 the growth was 8.23 percent compared to 2018. In non-life insurance, Dunav leads with the share of 31.5 percent, followed by Generali with 18.13 percent and DDOR "Novi Sad" with 13.51 percent. Growth of life insurance in relation to last year's first half of the year amounted to 3.38 percent, and in 2019, compared to the previous year, was 5.36 percent. Four companies have as much as 75.18 percent share in the total life insurance premium, and leaders are foreign-owned companies - Generali with 28.56 percent, Wiener Städtische with 21.39 percent and Grawe with 14.12 percent, while Dunav is slowly but surely progressing, reaching a share of 11.11 percent – said Dragica Janković, PhD.

Dragica Janković, PhD, believes that the reason for such market schedule in life insurance was a broken trust of insureds in national companies at the time of hyperinflation.

– At the beginning of 1994, prices grew by an average of 62.2 percent per day, that is, 2 percent per hour, we had a banknote of 500 billion Dinars, and in one

day as many as 16 zeros were erased. Life insurance premiums paid for several years disappeared. They disappeared for insureds who experienced it as theft, and in fact they also disappeared for the insurers. Insureds who used to insure their lives turned to foreign companies that emerged on the national market with new services and thus made a step forward that was difficult to achieve until recently – explained Dragica Janković, PhD.

In the period from 2005 to 2019, since the National Bank of Serbia took over the supervision of the insurance market, life insurance had tendency to grow steadily. Starting with 38.58 million it reached 213.14 million Euros, i.e. five and a half time bigger than 15 years ago. Contrary to that, non-life insurance recorded ups and downs. From 2005 to 2008, non-life insurance was on the rise, and then global economic crisis affected the reduction of non-life insurance premium, which only in 2016 exceeded the level reached in 2008. In 15 years, non-life insurance increased only by 1.9 times.

– Despite that, what is particularly good and achieved in the mentioned fifteen-year period, is the strengthening of technical reserves, which were 264 million and reached the amount of one billion and six hundred million Euros, that is, they increased more than six times. Technical reserves of non-life insurance increased from 217.71 to 706.18 million Euros or over 3.2 times, while technical reserves of life insurance increased from 46.84 million to as much as 900.66 million Euros or 19.23 times, which is a consequence of different manner of calculating technical reserves for life and non-life insurance, but also the increase in life insurance – Dragica Janković, PhD, explained.

Despite the reported growth, data from the report of the National Bank of Serbia indicate insufficient development of the Serbian insurance market compared to European countries. This is primarily evidenced by the premium share in gross domestic product, and premium per capita, where data have been unchanged for several years or have changed slightly. Nevertheless, the insurance sector in Serbia employs more than 10,000 people; 17 banks, 7 financial leasing providers, a public postal operator, 95 legal entities - brokerage and agency companies, 80 representatives – natural persons and entrepreneurs and 4,696 active authorised persons participate in the sale of insurance services, i.e. insurance representation or brokerage.

Dragica Janković, PhD, then quoted Čedomilj Mijatović, a founder of the National Bank of Serbia, a diplomat and the Minister of Finance and Foreign Affairs of the Principality of Serbia and then the Kingdom of Serbia, the president of the Serbian Royal Academy, a man who named our current currency the Dinar, and who is credited with the establishment of the Insurance Department within the Belgrade Cooperative, which is considered the first Serbian insurance company. In his paper "Opinions on Insurance", published in the "Trade Gazette" exactly 123 years ago, he expressed hope that one day, in the 20th century, everyone in Serbia would realise

the importance of insurance and insure themselves, members of their family, their property. Dragica Janković, PhD, pointed out that hopes of Čedomilj Mijatović did not come true, not only because people did not understand the importance of insurance, but also because of numerous wars and socio-economic upheavals that left a deep mark on the living standard of our population.

In addition to education that is important for raising awareness of the population about the importance of insurance, Dragica Janković, PhD, pointed out the importance of trust in insurance companies, which was shaken at the time of inflation. Apart from the collapse of the national currency, at the time, due to a very low initial capital, the number of insurance companies in our market grew uncontrollably. At the end of 1996, there were 82 companies with extremely poor financial and personnel potential. They collected the premium, soon after the incorporation they wound up and left insureds without the option to recover damages or with the option to recover damages with great complications.

– Gradual regulation of the market came with the adoption of the Law on Insurance of Property and Persons in 1996, and it continued in 2004, when the supervision of insurance companies was taken over by the National Bank of Serbia. Number of insurance companies has been reduced to 16 up to the present time – said Dragica Janković, PhD, pointing out that market regulation continued with the adoption of the Insurance Law in 2014, which entered into force in 2016 and which introduced elements of European regulations in our insurance.

– In 2018, guidelines on minimum standards of conduct and good practice of insurance market participants were adopted in connection with the Insurance Distribution Directive, which aimed to protect insureds, and the Law on Personal Data Protection passed in compliance with the General Data Protection Regulation of the European Union (GDPR - General Data Protection Regulation) is significant for insurance – said Dragica Janković, PhD.

She also said that preparations for the implementation of the International Accounting Standard (IFRS 17) are being carried out in the EU, which should come into force in 2021. It is believed that it will start in a new era in the accounting practices of insurance companies.

The National Bank of Serbia adopted a strategy for the implementation of the Solvency 2 Directive, which consists of three pillars - quantitative, qualitative and transparency. It conducted a GAP analysis that confirmed the readiness of insurance companies in our country to implement the Directive. Preparation for the first pillar of Solvency 2, which refers to technical reserves and capital adequacy, was carried out in 2016 and 2017 through two stress tests made in accordance with the EIOP methodology and the Solvency 2 Directive. They included a scenario of unmarketable investments, a retrocession scenario, an actuarial scenario, and natural catastrophe scenarios - earthquakes and floods. Results of stress tests showed that

the insurance sector in Serbia is stable and that it would remain stable even in case of extreme and unlikely shocks that would not jeopardize capital adequacy. In 2018 and 2019 two quantitative impact studies were conducted, QIS 1 and QIS 2, and this year consolidated balance sheets of Dunav Insurance Company were planned to be done, and QIS 3 was prepared and planned to be conducted by the NBS, but due to the epidemic of Covid-19 everything was stopped. Quantitative studies are conducted to determine the solvency ratio under the Solvency 2 Directive and the weaknesses of insurance companies in order to address them during preparations for the introduction of the Directive, and to ensure an adequate ratio. These are rather complex actuarial calculations that should quantify the total risk for an insurance company as the sum of many risks and sub-risks, such as non-life insurance risks, life insurance risks, voluntary health insurance risks, all market risks, risk of counterparty default and many others. Based on that, the amount of capital an insurance company needs to provide in order to be able to bear the risk is calculated, i.e. solvency capital requirement is calculated. On the other hand, available adequate funds of a company are determined in order to cover the capital requirement. The ratio between these two quantities is the solvency ratio. In the EU, in 2018 the solvency ratio was 236%, Slovenia had 237%, while Germany with 337% had the maximum solvency ratio. The solvency ratio is a counterpart to the capital adequacy that we have in Serbia under the Solvency 1 Directive, which is 218% for life insurance and 263% for non-life insurance. QIS 2 showed that the solvency ratio of Dunav Insurance Company is at 60 percent in relation to the capital adequacy that is good – said Dragica Janković, PhD.

Noting that due to requirements imposed by the Solvency 2 Directive, companies are forced to have bigger capital than needed if realistic scenario and projection models are taken into account, Dragica Janković concluded that there is never sufficient premium or sufficient technical reserves, and that the higher the level of solvency ratio of a company, the greater the possibilities for its development. Insureds are more certain that the company will be able to fulfil any obligations regardless of any unexpected scenario, i.e. realisation of risk.

The company was also represented at the conference by **Sarita Olević,** a Master of Law, a Senior Advisor in the Property and Legal Relations Service and a member of the Supervisory Board of Dunav Insurance Company, who presented a paper on "Legal aspects of protection of financial service consumers and personal data protection in distance contracts". She presented and analysed provisions of current regulations governing these contracts through a number of current issues related to the need and importance of protection of financial service consumers in distance contracts, which are increasingly present in our daily lives,

– Legal framework of distance contracts in the Republic of Serbia is regulated by the Law on Protection of Financial Service Consumers in Distance Contracts, the Law on Consumer Protection, and bylaws passed by the NBS. Provisions of the

Insurance Law, as well as the Law on Contracts and Torts, apply to insurance contracts concluded at a distance. These are contracts concluded without the direct presence of a provider and consumer of insurance services at the same place and at the same time. Directive 2002/65/EC defines distance contracts as contracts that are negotiated at a distance and involve the use of means of distance communication used as part of a distance sales or service-provision scheme not involving the simultaneous presence of the supplier and the consumer. Therefore, distance contracts are those the offer, negotiation and conclusion of which are carried out at a distance – said Sarita Olević, explaining that the Law on Consumer Protection prescribes stricter formal conditions for concluding distance contracts, which imply that the service consumer or user within a reasonable time, and at the latest at the time of service provision, must be handed the contract, the notice and the waiver form on a data carrier.

Sarita Olević pointed out that the National Bank of Serbia, which supervises operations of insurance companies, based on the Insurance Law, passed a Decision on the manner of protecting the rights and interests of insurance service consumers. The decision prescribes the right of insureds to be informed, as well as that the NBS, in order to protect the rights and interests of insureds and other insurance beneficiaries, inter alia, mediates in resolving claims for damages to prevent disputes, acts on complaints of insurance service consumers and protects the rights and interests of such persons. Obligation to inform a service consumer implies that a service provider, i.e. an insurance company, before concluding a distance contract, is obliged to provide a consumer with information on a service provider, financial service, distance contract and the manner of resolving disputes, which are clear and understandable so that the insurance service consumer is not misled. The stated obligation was established in order to eliminate the danger of depriving a service consumer of insurance coverage due to insufficient information. Therefore, it is important that the information is understandable, precise and clear, and that it indicates the essential characteristics of a service from the offer.

– One of the basic measures of consumer protection is the right to waive a contract. A consumer or an insured has the right to change his mind and waive a contract without additional costs or penalties. In case of distance insurance contracts, a policyholder has the right to waiver within 14 days from the day of concluding the contract. If the subject of a distance contract is life insurance, the deadline for waiver is 30 days from the day of delivery of the notification on a concluded contract, which also applies to contracts on voluntary pension insurance – said Sarita Olević.

She also added that legal theory and practice, taking into account the fact that insurance is a complex legal business, indicate that internet is not a suitable channel for selling all types of insurance services, but only some, and therefore it is less represented in insurance than other financial services. She particularly emphasised legal aspects of personal data protection and the obligation of insurance companies

to inform the insured that they process personal data exclusively for the purpose of fulfilling contractual obligations, as well as that the company is not able to meet them without collecting and processing data. The company must keep the collected data as a business secret, and if it is established that the data processing was not legal, a service consumer has the right to revoke the consent to data processing that he gave when concluding the contract.

The Conference included thematic round tables dedicated to insurance contracts, life insurance contracts, non-life insurance contracts, MTPL insurance contracts, insurance management and competition, sale of insurance services and consumer protection, which were followed by our experts from the Legal Affairs Function, the Function for Actuarial Science and Solvency Risks Management and the Insurance Sales and Indemnity Department.

Professor Slobodan Jovanović, PhD, presented a paper "*Contra proferentem* Rule in Insurance Law and some Aspects of Interpretation of the Unclear Provisions in Insurance Policy" in a round table dedicated to insurance contracts. He pointed out the fact that an increasing number of contracts in legal transactions are concluded according to the content prepared in advance by the seller or service provider, and the other contracting party is usually not in a position to negotiate it, in order to make some contractual obligations more favourable. Uncertainty regarding rights and obligations of a policyholder may be manifested when applying insurance conditions stipulated by the insurer in advance for all potential policyholders. Therefore, the general rule of interpretation of clauses in formal contracts - *contra proferentem* - applies to ambiguous provisions of special written clauses drawn up by the insurer and clauses in formal insurance terms and conditions. The term originates from Latin and means that in case of any doubts when interpreting ambiguous clauses that are unilaterally formed, one should choose a meaning that is to the detriment of a party that formulated them, and in favour of the other contracting party. In other words, they are interpreted in the manner that is most favourable for a consumer. This rule applies only in case when the court, applying the usual rules of interpretation, is not able to decide which of the two meanings is correct.

– Its primary purpose is not to protect policyholders, but it is an auxiliary tool that should facilitate the courts' decision-making and, as a rule of the civil law, to encourage party drawing up contractual conditions to draw them in a manner that leaves no doubt concerning their meaning or manner and scope of application – explained professor Jovanović, PhD, and added that before applying the *contra proferentem* rule, it may be helpful to interpret the declared wills in the appropriate context. Contextual method of interpreting a contract is envisaged by the Preliminary Draft of the Civil Code of the RS, which is a step in the right direction that will enable a comprehensive view of contractual relations when determining the actual will of contracting parties.

During the revision of the Solvency II Directive, special attention was paid to improving the implementation of the proportionality principle in practice, and this topic was dealt with by **Marta Ostrowska, LLM,** from the School of Law, University of Warsaw. In the paper "The Principle of Proportionality in the EU Insurance Regulation", she presented theoretical views that were the basis for the discussion that proportionality from the Directive should not be equated with the principle of proportionality provided by the EU Treaty. Meaning of proportionality in insurance, i.e. the Solvency II Directive reflects the argument that what is required of a (re)insurance company must always be proportionate to the risks it assumes, and therefore when the standard is applied, it must take into account the nature, size and complexity of the risk taken by the (re)insurance company, regardless of its size. Contrary to that, proportionality in insurance does not present a separate type of proportionality that is different from the general one. It can be said that proportionality in insurance originates from general proportionality and that it complements it, i.e. that it is a special element of general proportionality that serves to reduce the burden of implementing a certain measure, i.e. certain insurance standards.

Kristina Žagar from the Legal Affairs Department in DDOR Novi Sad submitted a paper on the topic "Annulment of a Life Insurance Contract with a Review of Case Law". After a review of the significance of a life insurance contract and reasons for its annulment she analysed the specifics of the term of the annulment of a life insurance contract due to implied circumstances relevant to risk assessment. In addition, she analysed some examples from recent case law, concluding that it is necessary to have a uniform interpretation of legal norms and unification of case law in order to achieve legal certainty and the development of insurance business. She pointed out that a very small number of insurers institute legal proceedings for annulment of life insurance contracts, and as possible reasons she stated insufficient and uneven case law, insufficient precision of the provisions of the Law on Contracts and Torts, insurers' assessment that acting against an unscrupulous policyholder could negatively affect business, taking into account reputational business risk.

– Annulment of a contract is correlated with the unscrupulousness of a policyholder, so a large number of cases end with a judgement based on a defendant's confession, that most often knowingly risk the annulment of a contract since the prescribed sanction is not applied adequately and equally, and in great number of cases is omitted – said Kristina Žagar and concluded that more precise, more comprehensive and applicable legal regulation of the said matter is necessary, which is expected with the adoption of the Civil Code of the RS. Until then, progress in this area can be achieved through a uniform interpretation of existing statutory provisions and harmonization of case law.

In the paper "Legal Nature of the Precontractual Information Duty Towards the Insurance Service User", **Nenad Grujić, PhD**, from Generali Insurance Co. Serbia,

pointed out that in the current practice that obligation in our country did not meet its basic function, i.e. did not contribute to better protection of insurance service users. The author partly blames its legal nature, which, due to its complexity, is often not considered comprehensively. Nenad Grujić analysed the elements of the legal nature of this obligation one by one, starting from its civil law aspect, continuing with administrative law and criminal law aspects, and finishing with its protective function and the element of public law.

– Obligation of precontractual information duty towards the insurance service users is of a very complex legal nature and it is wrong to observe it from only one aspect. Its legal nature is *sui generis*, and among other things, it has an emphasized moral component – said Nenad Grujić.

– One of the unexpected obstacles is that it is regulated by the Insurance Law, which as a status law emphasizes the administrative law and criminal law aspects of the legal nature of precontractual information duty, while its civil law and public law aspects remain neglected. Therefore, there is a need to regulate all aspects of the legal nature of precontractual information duty by more accurate and precise regulation – Nenad Grujić pointed out.

In his opinion, given the urgency of the need for legislative intervention, the most acceptable solution is to amend the Insurance Law or adopt a special Law on Insurance Contracts in which the existing wording of Articles 82-84 of the Insurance Law would be improved in terms of emphasizing civil law and public law elements of precontractual information duty.

Jasmina Labudović Stanković, PhD, a professor at the Faculty of Law, University of Kragujevac, presented a paper on "Insurance-based Investment Products" where she presented its basic forms – unit-linked, index-linked and variable annuity insurance. She highlighted differences between these contracts in relation to traditional life insurance, as well as that they are riskier for insureds, who, as a rule, bear the investment risk, although it is possible to contract and share it with the insurer.

– These contracts are the result of insurers' efforts to meet the needs of increasingly demanding insureds, but the competition of other institutional investors imposed the need to create such services which are on the one hand insurance contracts and on the other investment – said professor Labudović Stanković. – Payments for unit-linked insurance depend on the situation on the financial market, the value of investment units, the trends of indices, so that low values of investment units and the fall of indices will reduce the value of policies and all contracts at the same time. Therefore, the law of large numbers can be applied only in the part referring to the sum insured that is paid in case of death or survival, but only under condition that that part is guaranteed to the insured by the contract. If that part is also made dependent on the value of indices or investment units, then there is no place for the application of the law of large numbers.

In unit-linked insurance actuaries should resolve several issues, namely the amount of premium to be calculated for the insured, the amount of required capital of the insurer and the issue of capital investment.

Nebojša Žarković, PhD, a professor at the Faculty of Social Sciences in Belgrade, spoke about the increasingly pronounced cyber risks and insurance as a form of protection against property damage caused by a violation of information security. In the paper "Cyber Insurance" he stated that in the Report of the World Economic Forum for 2020, data fraud, i.e. data theft and cyber-attacks are classified as two biggest technological dangers that threaten the economy and society as a whole, and cyber insurance is one of the options available to build security and protect against those threats, and the ability to recover quickly if realized. Information security includes the security of personal data, the security of all other data and the security of the system. Cyber insurance emerged in the second half of the 1990s in the USA, and developed from occupational liability insurance. In Europe and Asia, cyber insurance has been on sale in this decade, starting from 2011, and the focus is not, as in the USA on liability to third parties, but on covering the insured's own claims. Regarding the beneficiaries of insurance protection, professor Žarković points out that certain activities are more endangered by cyber-attacks, and that category includes those companies that are subject to stricter supervisory requirements and have higher average costs caused by the misuse of personal data. In the USA these are health care, financial services, energy and pharmaceuticals, while the state administration is in the last place due to the low probability that a large number of parties will leave after a cyber-attack.

– Projected accelerated growth of cyber insurance will be achieved depending on the availability of funds, as well as the knowledge and skills of underwriters and managers in insurance companies, while the awareness of the need for cyber insurance and information on the scope of cover will be crucial for the insured – said professor Žarković and warned of the danger of over-ambitious growth goals in the initial years, which, with a lack of expertise in taking risks to cover, could lead to a new case of asbestos claims that had severe consequences for insurers.

Zoran Ilkić, PhD, a Research Fellow and a Law Agent in damages, "DDOR Novi Sad", dedicated the paper to the specifics of motor vehicle insurance and the obligation to compensate damages in Great Britain. Ilkić pointed out that the law of Great Britain, as a classic representative of the common law system, differs from European continental rights concerning motor vehicle liability insurance and tort law related to compensation for damages caused in traffic accidents. Case law played a crucial role in determining compensation to injured parties and over time created widely accepted standards and amounts of compensation awarded in identical or similar situations. Ilkić pointed out that in Great Britain, despite a high degree of harmonization, inappropriately low amounts of compensation for non-pecuniary

damages are still awarded, which is not analogous to the economic strength of insurance companies, and deviates from the case law and business practice of neighbouring countries. Nevertheless, various packages and levels of insurance coverage offered by insurers provide an enviable degree of different options when choosing additional risks against which insureds want to protect themselves financially. Combinations of insured risks against consequences of an accident and motor hull insurance with basic motor third-party liability insurance provide sufficiently acceptable insurance protection of both third parties and motor vehicle owners and their associated persons. As for the legal regulations in the traffic law, they changed relatively slowly, but adopted innovative solutions from European directives in order to bring the normative framework closer to the EU regulations.

Can Luo, PhD, an Associate Professor at the Southwest University of Political Science and Law, Chongqing, China, presented the participants with Chinese conditions of insurance of autonomous vehicle according to applicable legislation in the market and the theoretical views.

– As a country that gives great importance to AI technology, China has been developing rapidly in the field of autonomous vehicles in recent years. However, relevant legal framework has not yet been adopted and has been lagging behind in technological development. The only Chinese national regulation on autonomous vehicles is the "Autonomous Vehicles Road Testing Management Standard – China 2018". Certain articles of that regulation are similar to the American ones, but they are considered too simple and relative – said professor Can Luo.

Currently, there are different insurance products in China for different levels of vehicles. For vehicles available on the market, and those are L1 and L2 vehicles, there are four insurance types – Compulsory Traffic Accident Liability Insurance for Motor Vehicles (CTALIMV), Commercial Liability Insurance for Motor Vehicles, Comprehensive Physical Damage Insurance for Motor Vehicles, and Autonomous Parking Liability Insurance that only applies to L2 vehicles produced by the company Changan. For vehicles still in testing stage like L4, the Standard 2018 only requires companies participating in tests to conclude compulsory insurance for traffic accident liability not less than 5 million RMB per vehicle. However, many theorists also regard that insurance type as a product liability insurance.

Professor Can Luo believes that a classic product liability insurance cannot cover all risks arising from autonomous driving. In her opinion, it is best to apply the CTALIMV and Commercial Liability Insurance model to L3 and higher-level vehicles, because the legal limits for compulsory motor third party liability insurance in China are too low and usually cover only a small portion of the actual damage.

In the paper "The Use of Event Data Recorders (black boxes) in Motor Liability Insurance: a Legal Perspective" **professor Pierpaolo Marano, PhD,** from the Department of Legal Sciences, Catholic University of the Sacred Heart, Milan,

discusses legal issues in Italy, the country with the largest number of these devices in the world. Their purpose is to record and store important parameters related to a traffic accident, and information immediately before, during and immediately after a traffic accident. All new motor vehicles would have to be equipped with these devices, and Italy established a legal framework that encouraged their use. Therefore, an analysis of the Italian legal system is useful for understanding what the EU Member States would have to regulate concerning issues arising from the use of these devices.

By presenting data on the number of motor vehicles and the premium that is realized annually, professor Marano pointed out the relevance of the Italian insurance market.

– There were 41.4 million motor vehicles in Italy in 2017, of which 38 million were passenger vehicles that bring a premium of 10.5 billion euros. In the same year, trucks segment recorded a premium of two billion euros, followed by motorcycles with 702 million euros, and motor bicycles with 142 million euros. At the end of 2018, 22.2 percent of contracts were concluded, which envisaged the use of black boxes – Marano pointed out.

He explained that the Italian legal framework promoted the use of black boxes by adopting the following rules: compulsory discounts when installing black boxes (insurance companies are obliged to approve a significant discount to clients who, upon their proposal, install a black box or if a vehicle already has a black box that records the activity of a vehicle, i.e. a driver); aspect of probative value of data from such devices (data from a device constitute full evidence in civil proceedings of the facts to which they refer); and interoperability and portability of black boxes when an insured concludes an insurance contract with a different insurance company that did not install an electronic device (operators, i.e. telematics providers and insurance companies must guarantee quality of telematics service even when an insured concludes a contract with an insurance company that did not install such device). Although mass use of black boxes brought balance in reduction of premiums and prevention of fraud, some legal issues emerged. Certain issues refer to the constitutionality of the probative value of data from black boxes, while other refer to the lock-in effect defined in certain combined insurance services on the market. Namely, provisions on contractual penalties and unfair contractual provisions are often applied and they mainly refer to the discrepancy between the duration of an insurance contract and the duration of service provision related to the black box, despite the principle of portability of these devices to another insurer.

International general acts on motor third party liability insurance, including the EU Directives, have as their primary objective fair compensation for damages to injured parties, and the rule on default interest for compensation contained in the Directive 2009/103/EU of 16 September 2009 is a mandatory standard that should

be met by the EU Member States and countries aspiring to membership. **Miloš Radovanović, PhD**, considered how this issue is resolved in our legislation and case law in the paper "Default Interest on Compensation for Damage from Motor Third Party Liability Insurance".

– Law on Compulsory Traffic Insurance does not regulate default interest on compensation for damages toward an insurance company, and national case law still adheres to legal views on default interest on compensation for damages established by the highest courts of former SFRY in 1987. Unlike the EU regulation stipulating that a motor third party liability insurer, which failed to indemnify an insured within the prescribed period in an out-of-court proceeding, is obliged to pay the insured default interest in addition to damages. Under the national law an insured acquires the right to default interest which begins to be effective only from the day of passing the first instance judgement, except in certain cases – said Radovanović. – Directive protects an injured party from an insurer that acted unprofessionally (after the expiration of prescribed deadlines), improperly (without a factual or legal basis refused to pay compensation) or negligently (when failed to respond to a claim).

In national legislation, the exception are adverse consequences in terms of reduction of funds of injured parties, i.e. in case of monetary damage. Then the injured party will be entitled to default interest from the moment the loss occurred, i.e. when the non-monetary material damage turned into monetary damage. In case of monetary material damage, the position of injured parties in terms of default interest is in accordance with the standard from the EU Directive.

Radovanović pointed out that the Republic of Croatia changed its regulations and adopted the European rule on default interest on damages based on motor third party liability insurance, which led to a change in case law, and that the Serbian legislator and the judiciary should follow the same path.

In countries in transition, like the Republic of Serbia, without establishing a stable legal system, which includes clearly defined obligations and responsibilities of all participants in the system of internal and external control of insurance companies, there is no stability and sustainable development of insurance industry. The level of protection of financial service users and financial stability of insurance companies is not measured by the volume of legislation, but by the effectiveness of supervision, speed and quality of legal and judicial protection. That should be taken into account during harmonisation of the RS regulations with the EU law, said **Ljiljana Stojković, PhD,** an Attorney at Law in Belgrade. In the paper "Prudential Supervision as an Integrative Management Component in an Insurance Company", Stojković pointed out that when conducting supervision, one must take into account the specifics of each business entity and its risk preferences, and the effective implementation of regulations in practice. She emphasised the fact that the scope, efficiency and knowledge of risk are becoming increasingly important in insurance industry, and

that the use of a large amount of available information and data is a challenge, but also an obligation and responsibility, both for insurance market participants and supervision authority. Knowledge of risk requires the use of technology and implementation of innovations, as well as possession of knowledge and adequate resources, so Stojković points to the need to invest in research and development with continuous education of human resources. Concluding her presentation, she underlined that the supervisory authority, when defining the general framework as a means of risk assessment, should encourage the insurance company management to conduct its own risk assessment to ensure adequate risk management in order to protect insurance users and maintain solvency.

Professor Simon Grima, PhD, Head of the Department of Insurance at the Faculty of Economics, Management and Accounting, University of Malta, presented to the participants the essence of the proportionality principle provided by the EU Treaty 2007, which is also the key principle of Solvency II Directive. In the paper "Proportionality in the Application of Insurance Solvency Requirements: the Case of Small EU Jurisdiction" professor Grima considered how this principle worked in practice. He started from the proposal of the Insurance Europe, as well as from a survey conducted among twenty-nine directors in charge of legality of insurance companies in small member states. Proportionality principle serves to protect insurers from unnecessary costs, which are ultimately borne by the insurance company's clients. National supervisory authorities often deem that the law does not allow them to approve application of this principle, so smaller insurance companies may be excluded from business due to excessive regulatory obligations. Professor Grima pointed out that insurance companies in the EU require clarification, consistency and objectivity in the application of the proportionality principle. The main recommendations are that the proportionality principle should be based on the relevant risk, insurance type or services, and not on the size of a company, and that there should be an indicative list of pre-defined simplified measures, disclaimers and guidelines for automatic application of the proportionality principle and ensuring consistency in its application (a set of methods on proportionality with objective criteria proposed by the Insurance Europe and the Dutch Association of Insurers). Application of the proportionality principle should be simple and automatic, so that insurance companies are not compromised or discouraged by costs. In addition, fulfilling the obligation to submit a request should be facilitated, which may consist of a brief explanation of why they require the application of the proportionality principle (without the obligation to prove), and waiting for a response from the national supervisory authority should not take long.

Professor Andre Farrugia, PhD, from the Department of Insurance Faculty of Economics, Management and Accounting, University of Malta, joined the conference and presented the paper "GDPR and Modern Insurance Underwriting Practice: Analysis of the Success or Failure from an Industry Perspective". Professor Farrugia stated that

the insurance industry, which until recently was left to operate on a voluntary basis with little intervention by state authorities, has become trapped in a network of laws, regulations and rules, which seek to ensure that insurance companies operate fairly and conscientiously and protect interests of their shareholders. One of these regulations is the General Data Protection Regulation of the EU concerning the protection of consumers as data owners. There are strict rules on how information can be collected, processed, stored and kept, which makes it even more difficult to perform the already complicated insurance business. Professor Farrugia presented the results of a research conducted in Malta on how GDPR affects the insurance industry.

– Personal data undoubtedly deserves to be handled so that insurance market participants must become responsible for protecting the data belonging to their owner. This obliges insurers to issue clear and understandable notices of their data protection policies and to ensure that all their procedures, systems and documents are in line with the GDPR. Companies no longer ignore their data protection obligations because fines for breach of these obligations amount to up to 20 million euros or four percent of their total turnover. Unilateral contractual positions in which a client is not familiar with the legal and technical formalities of a contract were replaced by complete equality of the contracting parties. A client is required to give a consent and clients are informed of the data protection rights including their right to withdraw once given consent and the right to be forgotten. They also enjoy the freedom to easily transfer data from one organization to another with a guaranteed right to privacy – Farrugia emphasized.

Data collection and processing have taken a different form, new technologies such as AI, genomics, block chain technology are being used more and more, and the list of employees in insurance companies is including experts in charge of business legality who supplement the team in charge of business techniques. Professor Farrugia concluded that data control inevitably affects insurance companies from a business and technical point of view and additionally burdens the underwriting business, but at the same time makes insurance business fairer.

Nikola Filipović, MA, an associate in the law firm Živković Samardžić, presented a paper on "Supervision of Market Conduct Rules" in which he reviewed the novelties and problems imposed by the Insurance Distribution Directive and new rules of market conduct in the field of supervision. The European Insurance and Occupational Pensions Authority (EIOPA) recognizes that in the EU single market there are supervisory authorities with different experience in monitoring and supervising market conduct, i.e. some supervisory authorities have enviable experience and significant resources, while other have only begun to focus on this segment of insurance companies with the adoption and implementation of the Directive, which may result in different approaches to the same problems in different EU national markets.

– The main problem for supervisory authorities that are in the initial stages of developing a model for monitoring market conduct is the capacity and competencies of employees in this area. Supervision of market conduct requires a different set of knowledge and skills than prudential supervision, and especially requires a good knowledge of all aspects of insurance law, both contract law and regulatory framework for insurance, knowledge of laws and practices in consumer protection, knowledge of business models, practices and insurance services, and adequate understanding of the regulatory goals that are to be achieved by the rules of market conduct – stressed Filipović.

He explained that different supervision strategies require different knowledge, and that intensive supervision, accompanied by frequent direct controls, requires staff who are well acquainted with services, activities and business models, while preventive and strategic supervision, accompanied by analysis and thematic reports, requires staff who are acquainted with regulations and also has relevant economic knowledge and analytical skills that enable them to identify potential market risks and dangers to insureds even before they manifest. These two approaches are not mutually exclusive but complementary.

Filipović concluded that the supervisory authorities should provide an adequate training for their employees and strengthen their capacities, either through partnerships with the academic, economic, non-governmental sector and professional associations, or through temporary engagement of advisors and continuous communication with external experts, especially during drafting documents and taking official views.

Vuk Leković, MA, spoke on the topic "Individual Exemptions of Restrictive Agreements from Prohibition between Insurance Companies in the Republic of Serbia".

– In insurance sector, it is common for insurance companies to jointly underwrite risks through coinsurance, which is a necessity in case of coverage of large risks that insurance companies are not able to underwrite on their own. Nevertheless, coinsurance contracts may be restrictive agreements in terms of competition law. The Law on Protection of Competition prescribes that restrictive agreements are prohibited and void, but provides the option for them to exist in the legal system through exemptions from prohibition – said Leković, citing four cumulative conditions necessary for them to be exempted from prohibition. Restrictive agreements may be exempted from the prohibition if they contribute to the improvement of production and trade, or incite technical or economic progress, while providing consumers with a fair share of benefits, provided that they do not impose restrictions on companies that are not necessary for achieving objectives of the agreement, that is, do not exclude competition in the relevant market or in its substantial part. In the EU, the practice of submitting individual requests for exemption changed with the adoption of the Commission Regulation no. 3932/92 which automatically exempts from prohibition

agreements that determine risk premiums on the basis of collectively determined statistics or number of claims, determine common conditions of a standard insurance policy, jointly cover certain types of risks (coinsurance), settle claims, record information on increased risks provided that keeping of such records and handling of information are subject to the protection of confidential data. In case that the European Commission takes an initiative or start a process to establish a breach of competition due to conclusion of coinsurance contracts, insurance companies may provide an adequate explanation as to why such an agreement is not restrictive. In the Republic of Serbia, a notification system is in force, which means that market participants are obliged to report a restrictive agreement for exemption to the Commission for Protection of Competition. In its instructions for submission of requests for individual exemption, the Commission concluded that it was not possible to suspend ex officio infringement proceedings, even if the parties against whom it was initiated could prove that the conditions for individual exemption from the restrictive agreement from prohibition were met. Therefore, the author of the paper suggests to insurance companies to be careful when entering into cooperation with competitors through joint participation in public procurement, and advises to first address the Commission with a request to exempt a restrictive agreement.

Kathleen M. Defever, LLM, an attorney in the Defever Law, Tiburon, California spoke about consumer protection in the USA and experiences that may be useful for European legislators, and especially for the legislator in the Republic of Serbia, which although not a member of the EU works on adoption of the EU applicable regulations. In the paper "Lessons from American Insurance Consumers: what to avoid and what to adopt when building consumer protection", she explained the historical development of the insurance market in the USA from mutual to joint-stock insurance companies, as well as the manner in which insurance industry is legally regulated. She pointed out that the current legal insurance system in the USA generally does not protect consumers. The National Bank of Serbia is monitoring the adoption of regulations in the EU, such as the Solvency II Directive, and is already working on its implementation. Starting from the fact that three quarters of insurance companies in Serbia are foreign-owned, they are familiar with the existing EU insurance legal framework, so Defever believes that the implementation of new directives in insurance industry, once adopted, will not be a problem or cause big expenses.

However, she drew attention to the prudence that the legislator should show according to the requirements of joint-stock insurance companies.

– Joint stock insurance companies operate in some kind of conflict of interest. On one hand, their obligation is to compensate insureds fully and fairly, and on the other to provide as much profit as possible to their shareholders. In the Serbian insurance market, more than 75% of the shareholders of insurance companies are foreign nationals. It should bear in mind that the outflow of funds from Serbian

insurance companies into the pockets of foreign shareholders could disrupt Serbia's financial stability. In the years to come, Serbia must be oriented towards its own progress, and the refusal of joint stock companies to compensate Serbia's insureds will lead to a reduction in the overall wealth of the entire nation. You have to succeed where American legislators failed. Create efficient methods of consumer protection and dispute resolution and prevent potential outflow of financial funds from Serbian society – Kathleen Defever emphasized.

Due to increase in the number of complaints from insurance service consumers, Serbia will probably have to expand the mediation program currently led by the National Bank of Serbia, Defever said, proposing the creation of an independent body that would be competent exclusively to resolve complaints from insurance service consumers.

Success on the market is no longer measured only by profitability but also by business ethics and the ethical market is economically more efficient, is the thesis of the paper "Unfair Business Practice in Insurance" which was presented at the conference by **professor Katarina Ivančević, PhD**, from the Law Faculty, Union University in Belgrade. Unethical conduct is not supported but sanctioned for the protection of consumers, and the rules prescribed by the Law on Consumer Protection, which prohibits unfair business practice apply to insurance.

– Business ethics is expressed in situations when it is not easy to separate the good from the bad, and this most often happens in crises. Researches have shown that at the global level, consumer confidence in insurers is at a low level, and the reason for this is undoubtedly the great financial crisis that has dealt a serious blow to both banking sector and insurance. However, while trust in banks returns and reaches the level of 82 percent, the opinion of consumers about the insurance is still at a low level of 70 percent, and the main objection refers to insufficient frequency of communication between insurers and clients – said professor Katarina Ivančević.

In Serbia, provisions of the Law on Consumer Protection apply to insurance. Insurance Law determines business principles that must be observed by companies subject to supervision and obliges them to protect the rights and interests of insurance users. The National Bank of Serbia adopted Guidelines on minimum standards of conduct and good business practice of insurance market participants, which contain provisions of the Insurance Distribution Directive (IDD) and the EC Regulation on Supplementation and Enforcement of IDD. The Directive anticipated two categories of unfair business practice, namely misleading and aggressive business practices, which we also recognize in insurance in Serbia. Professor Ivančević believes that a higher level of protection of Serbian consumers would be ensured by adopting a Code of Business Ethics that would be applied to the entire insurance industry and contain a list of specific prohibited procedures and conducts that are considered unethical and present unfair business practice specific for insurance industry.

This year, members of the International Association for Insurance Law of Serbia and insurance experts gave their proposals for modernization and improvement of the legal framework of insurance through papers published in the Proceedings, which bore the same title as the general topic of this year's conference.

Translated by: ***Jelena Rajković***