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CONFERENCE REVIEW

## 2022 LEGAL DAYS IN BUDVA AND INSURANCE

The Associations of Lawyers of Serbia and Republic of Srpska organised the jubilee 25<sup>th</sup> Legal Days in Budva in June 2022. The invitation for submission of papers was announced on the following topics: (1) Novelties in the Preliminary Draft of the Civil Code of the Republic of Serbia; (2) Significant Amendments in Judicial Legislation and Judicial Practice; (3) Current Issues of Enforcement, Bankruptcy and Notarial Law; (4) Evolution of Administrative Law; (5) Innovations in Criminal, Substantive and Procedural Law; (6) Improvement of Labour and Social Insurance Law. This review includes the papers that were published in the Proceedings entitled Current Issues of Contemporary Legislation and Judiciary (Editor-in-Chief Professor Miodrag Orlić, PhD). Papers on insurance or insurance-related topics were reviewed.

**1. Professor Vladimir Čolović, PhD**, a full professor and principal research fellow of the Institute for Comparative Law, prepared a paper entitled *Establishment of a New Insurance Company in the Event of Bankruptcy Proceedings*. The subject of the paper is the establishment of a new insurance company which, in the event of bankruptcy proceedings, would carry on solely life insurance business. In the introduction, the author indicated that the legislator has three possibilities to regulate the establishment of a new life insurance company in case of bankruptcy proceedings. The first possibility envisages that another insurance company takes over the funds and contracts, the second option is the payment of reduced funds to policyholders under individual life contracts. The third option involves the means and intention of the life insurance policyholders to establish a new life insurance company if bankruptcy proceedings are instituted and the funds are sufficient to establish a new insurance company. This topic was inspired by Article 131 of the 1996 Law on Property and Personal Insurance – LoPPI (*Official Gazette of the FRY*, no. 30/1996, 57/1998, 53/1999 and 55/1999). That law, among the three mentioned possibilities, envisaged the third

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one. Namely, the Regulation provided that in the event of bankruptcy proceedings against an insurance and reinsurance organisation, life policyholders may organise themselves to use the life insurance funds remaining from these organisations (affected by the bankruptcy) and establish a new life insurance organisation under the conditions and in the manner prescribed by the LoPPI. In Art. 131-133, the LoPPI prescribed the conditions and methods for the establishment of a new insurance organisation. The LoPPI and its articles, however, ceased to be effective on 29 May, 2004. The author investigated whether a new insurance business may be founded from the remaining assets of life policyholders in the case of bankruptcy proceedings against the insurance company by comparing the legislation (of Montenegro and Croatia). After demonstrating that current (effective) laws do not address that precise possibility, the author reviewed the details of life insurance and provided information on the regulations governing actions taken against insurance companies during bankruptcy. In that context, the provisions of the Law on Liquidation and Bankruptcy of Banks and Insurance Companies and the Law on Bankruptcy in the Republic of Serbia were analysed. Regarding the possibility of establishing a new life insurance company, the author considers the form or shape of a life insurance company and opts for a mutual insurance company. Additionally, the first and second options that were mentioned in the opening of this article were taken into consideration in the event that bankruptcy proceedings were initiated against the insurance company. One of them envisaged the acquisition of the residual assets and contracts of life insurance policyholders by another insurance company. This entailed acquiring a portion of the portfolio of an insurance company that offered life insurance but later declared bankruptcy. Then, another choice was taken into account, which envisaged the payout of the remaining life insurance proceeds via individual contracts. The author concluded by pointing out that, when comparing the LoPPI to later laws (including the Serbian laws), the policyholders of life insurance business enjoyed more protection in the case of bankruptcy proceedings. However, the LoPPI failed to regulate the shape or form of the newly established life insurance company. The future lawmaker was advised by this law to thoroughly review how life insurance policyholders are safeguarded in the case of bankruptcy. The author chose the form of a mutual insurance company for a newly established insurance company that would carry on life insurance and noted that a future legislator should take into account a wide range of circumstances, aspects, and factors in the field of life insurance when weighing a newly established company that would carry on life insurance.

**2. *Regulating the Relationship between Mandatory and Voluntary Health Insurance in the Legislation of the Republic of Serbia*** is the title of the paper authored by **Mirjana Glintić, PhD**, a research fellow at the Institute of Comparative Law in Belgrade. The paper discusses the relationship between social (health) insurance

and premium-based voluntary health insurance. Looking at those relations in the Republic of Serbia, the author covered the following thematic units: the connection between the two insurances, their similarities and differences; benefits from mandatory social (health) insurance and voluntary health insurance; subsidiary relationship of mandatory and voluntary health insurance. In conclusion, the author sought to highlight controversial legal issues and dilemmas in the relationship between mandatory social (health) insurance and voluntary health insurance.

**3. Assistant Professor Vesna Stojanović, PhD** addressed the topic *Analysis and Implementation of Voluntary Pension and Disability Insurance According to Article 15 of the Law on Pension and Disability Insurance of the Republic of Serbia*. She began by describing the purpose of voluntary insurance within the regulation of mandatory pension and disability insurance, outlining the requirements for an individual to be included in voluntary insurance, before covering the issue of termination of the individual's right to the payment of contributions, the return of contributions paid in accordance with Article 15, and the amount that can be paid, noting in the concluding lines that the "purchase of retirement benefits" has no restrictions such as, for example, the one prescribing that retirement benefits may be purchased retroactively, for a maximum of five years.

**4.** The paper *Money Laundering* written by **Iva Đorđević**, a doctoral student at the Faculty of Law, University of Kragujevac, received the most media attention during the 2022 Legal Days in Budva.<sup>2</sup> It is important to deal with that subject since it sheds light on how insurance is effected and how insurers operate. Prevention of money laundering is regulated by the Law on Prevention of Money Laundering and Financing of Terrorism (*Official Gazette of RS* No. 113/2017, 91/2019 and 153/2020).<sup>3</sup> Article 4 of that law, among other things, stipulates that the insurer directly implements that law. Namely, the law was intended to create a list of business entities through which money laundering and financing of terrorism may be carried out, and the insurer was included in that list. For example, the insurer regularly enters into insurance contracts with the insured persons or the policyholders and this is how ill-gotten money or property acquired through the sale of drugs and other criminal activities can be placed through the premium. The characteristics of money laundering are discussed in the paper, along with the significance of the global money laundering network and the part tax havens play in it. The author presented the criminal law regulations of the Republic of Serbia and neighbouring countries on the prevention of money laundering and terrorist financing from the standpoint of prevention. In the conclusion of the paper, it was pointed out that money laundering

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<sup>2</sup> Aleksandra Petrović: „Kriminalne grupe angažuju profesionalne perače novca“, *Politika* daily of 20 June 2022

<sup>3</sup> *Journal Insurance Trends* provided the review of former Law on Prevention of Money Laundering of 2005. See Zoran Radović: Law on the Prevention of Money Laundering and Financing of Terrorism (*Official Gazette RS*, nos. 20/2009, 72/2009 and 91/2010) *Insurance Trends* no-3/2013, 48-49

is a criminal activity, and that ill-gotten money originates from the trade in drugs, gambling and the terrorist financing.

5. A long list of by-laws and regulations enacted by state administration bodies and the Serbian Government serve as legal sources for mandatory insurance. **Boris Mrdović's** paper on *By-laws as Administrative Law Sources* does not include a list of general by-laws of state administration bodies or the Serbian Government that serve as legal sources for mandatory insurance. The paper emphasises the significance of by-laws as a source of administrative law, and thus insurance law. This paper is related to insurance law in the sense that the state administration bodies are the ones who adopt by-laws and general regulations prescribing the elements of mandatory insurance.

6. The 25th Legal Days in Budva were held after the Covid-19 pandemic made it impossible to convene. The 25th Budva Legal Days gathered a large number of lawyers from two associations around the topics offered in the public announcement.

*Translated by: Zorica Simović, Grad. Philol.*