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KIDNAP, RANSOM AND EXTORTION INSURANCE IN SERBIAN INSURANCE MARKET

SHORT COMMUNICATION PAPER

Abstract

After kidnapping of the Serbian embassy staffers in Libya, the subject of kidnapping, ransom or extortion occurring in high-risk areas all over the world, has become quite a topical issue. Another question is what high-risk areas are. From the aspect of occurrence of kidnap risk, these are not just war-ravaged countries, but also the countries with under-developed rule of law, high levels of corruption, poverty, etc. An interesting fact is that none of the various theories about the way and motives for kidnapping Serbian diplomats proposed by the government officials, journalists and analysts, including the conspiracy theories, touched upon the issue of kidnap insurance. Just how aware is our professional and general public of the possibility to insure a person against the risk of kidnap, ransom or extortion? That is the central focus of this paper. Who is the insured, what is the insured risk, what is the legal nature of kidnap insurance contract, what are the moral and legal principles of this insurance – are the questions to be considered in order to fully clarify the notion of kidnap insurance.

Key words: *kidnap insurance, ransom and extortion insurance, fronting insurance, insurance parties, insured risk.*

1. Introduction

The kidnapping of Serbian embassy diplomats in Libya² has just reminded us of the fact that kidnapping is a global issue. Kidnaps are present in Serbia too,

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having in mind the recent kidnaps of businessmen and their family members. Countries with high kidnapping threat level are not just those engulfed in wars, revolutions and disturbances or poor countries with high levels of corruption, but also countries with the established rule of law. The risk of kidnap and similar acts is certainly higher in poorly regulated societies, however, it also occurs to a lesser or modified extent in the countries adhering to the rule of law.

Historically speaking, this concept occurs as early as in the 16th century in Russia, when the state of Moscow regulated the ransom of prisoners. There were three forms of ransom. The prisoners could pay ransom for themselves, the imperial governors could pay the ransom for the prisoners or they could redeem them from intermediaries in Moscow, paying for their way out of captivity. The emperor Aleksey Mihailovich (1629–1676) passed the code on establishing the fund for redemption of prisoners, thus establishing the initial form of compulsory insurance.³ In Western Europe insurance of life was banned under the influence of the Catholic Church, so in 1570 king Philip II of France issued a decree thereon establishing insurance of ransom that the captives paid for their freedom.⁴ The beginning of the new millennium put an end to the ransom of prisoners as these issues have fallen within the scope of international conventions, but new times have brought new risks such as kidnappings, extortions and threats to individuals and companies.

Kidnap and ransom insurance is a payment of ransom for a kidnapped person, and insurers in developed countries started offering it as early as in the fourth decade of the past century.⁵ Today, the kidnappings are mostly aimed at obtaining ransom or some other interest to the detriment of the kidnapped. The kidnap and ransom risks are not solely restricted to global companies, since every company of any size whatsoever can be a target of a kidnapper or extortioner, whether in the country or abroad. For the purpose of minimizing negative effects of the kidnapping, the insurers have offered the coverage for the above mentioned risks. The insurers in Serbia do not offer insurance against kidnap, ransom or extortion. However, in the countries with developed insurance market there is a large number of insurers specialized in those types of risk. In some countries such insurance is illegal as it is assumed it could instigate kidnappings and hostage-taking. In any case, stipulation of this insurance implies observing the confidentiality rules, i.e. the insured must not disclose that he holds this type of insurance.⁶

At the very beginning we are facing the question of how to contract the risk the insurers in Serbia do not cover. Insurance Act defines the obligation of the

³ Zdravko Petrović, Vladimir Čolović, Duško Knežević, *Istorija osiguranja u Srbiji, Crnoj Gori i Jugoslaviji do 1941. godine*, Beograd, 2013. p. 21.

⁴ Z. Petrović, V. Čolović, D. Knežević, p. 27.

⁵ Nebojša Žarković, *Pojmovnik osiguranja*, Novi Sad, 2013. p. 316.

⁶ N. Žarković, p. 316.

policyholder to conclude an insurance contract only with domestic insurer, i.e. with the insurer in Serbia that is registered for transacting insurance business and is granted license by the regulatory body. That insurance can be concluded by fronting⁷ and through domestic insurance brokers. Brokers will find the insurer in the foreign insurance market who will bear the kidnap risk, after which they will engage a domestic insurer that will conclude with the insured an insurance policy covering this risk, and by means of reinsurance program cede the whole or the biggest part of the risk to the reinsurer who is actually a foreign insurer who has accepted to bear the stated risk. Domestic insurer will receive a part of the premium on account of commission for contracting the insurance. Having in mind the fact that not only a large number of insurance brokers operate in the Serbian insurance market but also insurance companies founded by foreign brokers or insurers, transacting fronting insurance should not pose an obstacle.

2. Insurance Parties

Since kidnap insurance in Serbia can be concluded through fronting, the number of parties involved in the insurance process increases. Just like in any other insurance, the parties are policyholder, insured, beneficiary and insurer. The policyholder is an enterprise, a company or a legal entity that wants to protect its employees against the risk of possible kidnapping, ransom or extortion. The insured is a physical person who is insured against the kidnap risk. The insured can be defined by his/her name and surname or by function he/she performs in the company. The extended definition of the insured includes the company and its directors, officers, employees, including seasonal and part-time employees, volunteers, students, employees' relatives or persons visiting the company. The insured can be any person who can be kidnapped and for whom the ransom is demanded. In kidnap insurance, the insurance beneficiary is the kidnapper because that is the person to whom the sum insured is paid. The insurer is an insurance company that concluded an insurance policy as well as the domestic reinsurer and the foreign insurer that bears the agreed risk.

The policyholder contacts the insurer with the request to conclude insurance. That request is submitted through a form, and the policyholder must fully answer each question. The stated form must be typed or filled out in ink and signed and certified by the policyholder. In this kind of insurance, the form of the request is very important. All material facts that are submitted must be complete and true. The completeness and truthfulness of data affect the insured's risk assessment, which reflects on the amount of premium or the decision about the assumption of risk.

⁷ Milovan Jovanović, „Fronting osiguranje i njegov uticaj na razvoj osiguranja u Srbiji“, *Evropska revija za pravo osiguranja* br. 3. Beograd, 2013, p. 34.

It follows that the completed form submitted to the insurer by the policyholder does not oblige the insurer to offer the policyholder an insurance contract, which is expressly stated in the form itself.

The information submitted by the policyholder to the insurer are significant for risk assumption and they concern ownership of vessels, total turnover, continuous business activities abroad, the number of persons permanently engaged on these activities and the list of countries where those activities are being carried out. The policyholder himself specifies the sum insured as well as the choice of possible extensions of cover.

3. Insured Risk

The event for which insurance is concluded must be any future and uncertain event independent of the sole will of the policyholder.⁸

The basic characteristic of the kidnap, ransom or extortion insurance is in the very risk that is being covered. Basic cover relates to the payment of demanded ransom, transfer of money to the location designated by the kidnappers, consultancy fee, additional costs of an independent security consultant and insurance of company's legal liability. The insurance cover also includes the security consulting company that coordinates activities in case of kidnap, negotiations with kidnappers, effects payment of ransom, advises the insured on how to behave in crisis situations etc. Legal liability covers the company's liability in legal claims of the injured party and his family when they bring charges against the company for what has happened to them. Insurance cover also includes coverage in case of injury or death as a result of the kidnap. The stated insurance includes costs of repatriation, that is, returning to the country of residence or relocation, i.e. moving to another, safer, location. The cover provided under such insurance also includes salary compensation to the insured while being prevented to work.

Kidnap, ransom or extortion insurance also covers the insured as a passenger, when the kidnapping is not directed towards him personally, but towards the group of people he is a part of, such as in case of hijacking of planes, buses etc. Kidnap, ransom or extortion insurance also includes the cover in case of expression of threat. The nature of threat can vary from personal threat to the insured, through the threat against the company, such as threat from hackers to install computer virus, to the threat of contaminating or poisoning of stocks or products of a company and the like. This insurance also covers costs that the insured has incurred due to threat, however, the stated costs are time-limited, very often to 30 days from receiving threat.⁹ Special risk of kidnapping covered under this policy is so-called "quick kidnap",

⁸ Law on Contracts and Torts, *Official Gazette of the FRY no. 29/78* and *Official Gazette of FRY no. 31/93*, Art. 898, para 1.

⁹ Refer to <http://www.aspen-apj.com>

when the insured is kidnapped without a ransom demand. In these situations the kidnapper himself takes some goods from the insured, e.g. when an insured person is forced to withdraw money from an ATM machine to give it to the kidnapper. The insurance policy will cover the incurred loss and any possible injuries to the insured person during kidnapping. The insurance coverage also includes a separate risk of sudden disappearance, when the insured person suddenly disappears and neither his location is known nor there is a ransom demand. In such a situation the agreed sum insured will be used for covering the costs of conducting a thorough investigation and search for the missing insured person. In this insurance, there is a time deductible of 48 hours from the moment the insured person is missing.¹⁰

4. Insurance Indemnity

Insurance indemnity can be paid out, depending on the circumstances, to the kidnapper, the insured, security agency or the insured's heirs. The amount of insurance indemnity depends on the kidnapper's demand, and the insurer's maximum liability is the agreed sum insured. Sum insured is agreed per one occurrence and in aggregate for the entire insurance period. Besides the basic sum insured, sub-limits for particular insured risks that are the consequence of the basic kidnap risk or are arising thereof are concluded.

Payment of insurance indemnity to the kidnapper or extortioner is the most disputable issue arising from this insurance. Here, the kidnapper or extortioner with his act directly contributes to the occurrence of the insured event, hence the indemnity he receives.

5. Legal Nature of Kidnap Insurance Contract

Our legislation prescribes that under the insurance contract the policyholder is obliged to pay a particular amount to the insurer, and the insurer is obliged to pay indemnity, i.e. agreed sum, in case of an occurrence considered an insured event, to the insured or some third party.¹¹

Conclusion of a kidnap insurance contract is similar to the notion of conclusion of an insurance contract for account of a third party without his authorization. We mentioned that a company as the policyholder can insure its employees not just by their name but by function they perform. However, for that insurance contract to be valid, it is not necessary for the person on whose behalf it has been concluded to authorize it. The policyholder owes the premium to the insurer regardless of whether

¹⁰ Refer to <http://www.hiscox.com/brokers/kidnap-ransom>

¹¹ Law on Contracts and Torts, *Official Gazette FRY* no. 29/78 and *Official Gazette* no. 31/93 Art. 897.

the interested party, in this case the insured, authorizes it or not. The similar situation is with the insurance for account of third parties or to whom it may concern, the policyholder is obliged to meet obligations from the contract, but he is not entitled to preferential collection of outstanding amount from the unpaid indemnity directly from the insurer on account of the premium paid to the insurer.

Legal nature of this insurance is closest to the notion of life assurance for account of third party, where the third party acquires a direct and independent right against the insurer.¹² The policyholder may designate in an insurance contract a party who will acquire the right from the insurance contract. If the insurance relates to the life of some other party, designation of the beneficiary is conditional upon his/her consent. The insurance beneficiary does not have to be designated by name, in fact, only data necessary for his/her designation must be known. Kidnap insurance contract stipulates that the person to whom insurance indemnity is paid is the person who kidnapped the insured demanding a certain amount of money for his/her release.

Kidnap is a criminal act and falls within the scope of criminal acts against freedoms and rights of man and citizen. Criminal Code of Serbia¹³ defines kidnapping as a use of force, threat, deception, leading in or detainment of a person with the intention to extort money or some other pecuniary advantage from him/her or some other person, or to force that person to do something, not do something or suffer. If during the kidnapping, the kidnapped person is threatened with death or serious bodily injury, detained more than six days, treated cruelly, his/her health was severely impaired, or the kidnapped person is minor, longer term of imprisonment is stipulated.

The notion similar to kidnap which includes kidnap insurance contract is an extortion. An extortion is a criminal act against the property and its purpose is to obtain illegal pecuniary advantage for oneself or another, to coerce other person by use of force or threat to do something or not do something to the detriment of that person's or another person's property.¹⁴ Elements like the amount of obtained advantage and if the extortion was carried out by a group or an organized criminal group may increase the envisaged sentence of imprisonment.

6. Conclusion

Kidnappings, occurring each day all over the world, happen in Serbia as well. Not so long ago, business people and members of their families were being kidnapped in Serbia. Countries with a high kidnap risk are not only those engulfed in war, turmoils and riots or poor countries with high levels of corruption, but also

¹² Predrag Šulejić, *Pravo osiguranja*, Beograd, 2005, p. 486.

¹³ Criminal Code of the Republic of Serbia, *Official Gazette of RS* no. 85/05, 88/05, 107/05, Art. 134.

¹⁴ Criminal Code of the Republic of Serbia, *Official Gazette of the RS* no. 85/05, 88/05, 107/05, Art. 214.

countries with established rule of law. The risk of kidnap and similar acts is certainly higher in non-regulated countries, however, it also occurs in legally regulated countries to a lesser or modified extent.

Historically, this issue occurs as early as in the 16th century in Russia, where the state of Moscow regulated the ransom of prisoners. Also in the 16th century, king Philip II of France established insurance of ransom for prisoners. Today, the purpose of kidnappings is to obtain ransom or other interest to the detriment of the kidnapping. The risks of kidnap and extortion are not limited only to global companies since every single business of any size whatsoever can be a target of kidnapers, whether in the country or abroad. In order to minimize negative effects of kidnap, insurance companies have offered the insurance cover for the stated risks. Insurers in Serbia do not insure against kidnap, ransom or extortion. In the countries with developed insurance market there is a significant number of insurers specialized in these kinds of risk. Having in mind that Serbian legislation does not allow direct stipulation of insurance with foreign insurers, this insurance can be provided through fronting insurance.

Just like in any other insurance, insurance parties are policyholder, insured, beneficiary and insurer. The policyholder is a business, company or other legal entity that wants to protect its employees against the risk of possible kidnap, ransom or extortion. The insured is a physical person covered against the risk of kidnap. The insured can be designated by his name or by function he performs in the company. Extended definition of the insured includes the company and its directors, officers, employees including seasonal and temporary employees, volunteers, students, relatives of employees or persons visiting the company.

When transacting this insurance, information provided by the policyholder to the insurer are relevant for risk assumption and relate to possession of ships, total turnover, continuous business activities abroad, as well as the number of persons permanently engaged in those activities and the list of countries where business activities are carried out. The policyholder himself states the sum insured and chooses any possible cover extensions.

Basic cover includes payment of demanded ransom, transfer of money to location designated by the kidnapper, consultancy fee and additional costs of independent security consultant as well as insurance of the company's legal liability. Outside the basic cover, insurance covers a number of other circumstances arising from or connected to kidnap or extortion. Depending on circumstances, insurance indemnity can be paid to the kidnapper, the insured, security agency or the insured's heirs.

Legal nature of kidnap, ransom and extortion insurance contract is still insufficiently clarified. Stipulation of this insurance contract is similar to the notion of conclusion of insurance contract for account of third party without his authorization.

Also, legal nature of this insurance is similar to the notion of life assurance for account of third party. According to the Criminal Code of Serbia, kidnap is a criminal act and falls within the scope of criminal acts against freedoms and rights of man and citizen.

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