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CONFERENCE REVIEW

22ND INTERNATIONAL SCIENTIFIC CONFERENCE ON CAUSING DAMAGES, DAMAGE COMPENSATION AND INSURANCE

The 22nd International Scientific Conference on *Causing Damages, Damage Compensation and Insurance* was held from the 12th to 14th September at the Omni hotel in Valjevo. The Conference was organised by the Association for Damage Compensation Law, the Institute for Comparative Law and the Judicial Academy. As in the previous years, the Conference was contributed by many eminent experts in legal science, case law and insurance, who have shown that theory and practice must go hand in hand in creating, harmonizing and putting into practice new legal solutions. Many international participants from Poland, Austria, Norway, Hungary, Bosnia and Herzegovina, Croatia, Slovenia and Montenegro brought international flair to this event. Based on the examples and experiences of their countries in damage compensation, insurance and EU regulations, participants highlighted possible solutions and ways to harmonize legal provisions and practices.

As in the previous year, this year's Conference was supported by the town of Valjevo. The guests were welcomed by the Mayor of Valjevo, **Slobodan Gvozdenović PhD,** who pointed out that a Conference which, like this one, is dedicated to an interesting area of life, proves the fact that law should serve life, not the other way round.

The director of the Institute for Comparative Law, **Vladimir Čolović PhD**, pointed out that this year's Conference will focus on a number of issues concerning damage compensation and insurance governed by the Law of Contracts and Torts. After the adoption of a new Serbian civil code that is planned to happen this or next year, the expected amendments and supplements to other laws will be completed. This notably concerns the Law on Compulsory Traffic Insurance and the Law on Insurance.

In his keynote speech, the professor of the European Academy of Sciences and Arts, **Wolfgang Rohrbach, PhD** spoke of the importance of the risk prevention relating to the frequent climate changes and catastrophes. He stressed that renewable energy sources can have a significant impact on climate change, as we witness strong winds, typhoons and devastating hurricanes, floods and sudden changes in climate, such as warm days in December and extremely cold days around Easter. In order to minimize damage, it is important to act preventively

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regardless of whether or not the risk is covered by insurance. People should be aware of the need to take preventative measures against possible damages.

Zdravko Petrović PhD, the president of the Association for Damage Compensation Law, spoke about the importance of this Conference on insurance, as it raises awareness of the need for insurance not only in certain categories of people such as farmers, but also among general population. Petrović pointed out that there is a particular number of problems faced in terms of damage compensation, whereas new trends emerged regarding the compensation of notably non-pecuniary damages. The range of damages for which the injured parties seek compensation is expanding (for example, for various forms of discrimination or for rehabilitation of wrongfully convicted persons, etc.). Young people working in judicial institutions are the first to be educated of the foregoing, however, even the older ones should be reminded of what they have already mastered but may have forgotten.

In his speech, the host of the event, **Dragan Obradović PhD**, wished for a continuance of a successful cooperation with the Institute for Comparative Law and the Association for Damage Compensation Law, and hoped that in the coming period he would see more judges participating in the Conference program.

In addition, at the opening of the 22nd International Scientific Conference, **professor Slobodan Stanišić PhD**, a renowned Banjaluka lawyer and professor at the Faculty of Law of the Pan-European University Aperion, was honoured by a Lifetime Achievement Award for his contribution to the development of damage compensation and insurance.

The rest of the Conference was marked by the presentation of the top local and international experts in various fields who shed light on numerous current challenges faced by the legislator and court practice in Serbia and the region. On the second day, the working part of the scientific conference took place in two parallel sessions. One session, chaired by the professor Zdravko Petrović PhD, addressed the topic Causing *Damage, Liability and Damage Compensation*. At the second session, chaired by professor Vladimir Čolović PhD, the insurance-related topics were discussed. On the third day of the Conference, the third session was held entitled *Causing Damage and Damage Compensation Arising Out of Employment*.

In his presentation of *Non-pecuniary Damage and Roman Law*, **Andreja Katančević PhD,** the associate professor at the Faculty of Law, University of Belgrade, provided a historical overview of the recognition of non-pecuniary damage within the right to compensation. He pointed out that the predominant view of the theory is that Roman law knew neither property damage nor its compensation, but it established the rules that protected intangible assets under private law. In his paper, the author examined different legal systems and concluded that historically, different legal systems started from different concepts, travelled different paths, but reached the same goal. The Romans did not recognise the concept of non-pecuniary damage, but they did not need it to attribute similar or same legal consequences of a modern legal system to non-pecuniary property injury.

Adding to the previous presentation, **Duško Medić PhD**, the Judge of the Constitutional Court of Republika Srpska and full professor at the Faculty of Law at Apeiron University in Banjaluka, in his paper N*on-pecuniary Damage in Comparative Law*, gave a comparative overview of non-pecuniary damage in civil laws and of the right to compensation and the conditions under which it is exercised in conformity with the specific features of a particular legal system. Based on the detailed analysis presented in the paper, the author concluded that the practice of the courts had a decisive influence on the tort law development in this area, since most civil laws do not define such damage, but rather leave it to legal theory and case law. In addition to civil law, the economic and social situation in each country has a major impact on the right to compensation for non-pecuniary damage.

The topic *Compensation for Non-pecuniary Damage due to Violations of the Rights of a Person - between Law and Practice* was addressed by **Stefan Andonović,** research associate at the Institute for Comparative Law in Belgrade. Based on the judgment of the Supreme Court of Cassation concerning the compensation for non-pecuniary damage due to the violation of rights of a person, which is analysed in detail in the paper, and based on the judgments of the appellate courts concerning the same matter, the author concluded that the Law of Contracts and Torts did not fully define and regulate all matters that relate to non-pecuniary damage compensation due to violations of personal rights. The vagueness in which this matter was regulated has led to inconsistencies of judgements in the practice of courts of different instances. Accordingly, the author is of the opinion that the current system should modify and accept the objective concept of non-pecuniary damage. Such concept would allow the acceptance of new social tendencies in which personal rights play an increasingly important role, whereas modern technologies bring situations where numerous injuries may not produce direct consequences or such consequences may occur much later, after the possibility to claim compensation ceases to exist.

A detailed analysis of particular provisions of the new Law on Personal Data Protection was provided in the paper entitled *Compensation for Damages under the Law on Personal Data Protection* written by **Vesna Bilbija** PhD, a senior advisor at the Administrative Court of the Republic of Serbia. The author concluded that bearing in mind that the recently adopted law is of a general nature and that it will be necessary to harmonize special laws, a need arises for a whole set of changes that will affect a number of different entities, starting with the authorities, competent bodies, independent and autonomous supervisory authorities such as commissioners for information of public importance and personal data protection, the persons whose personal data are processed, large enterprises and multinational companies, small and medium-sized enterprises, and other persons related to the personal data processing. The paper devoted particular attention to the right to compensation, which is prescribed in Title VII of the Law on Personal Data Protection (Art. 82 through 87), which establishes remedies, liability and penalties and which is one of the most important novelties related to the filing of legal remedies.

István László Gál PhD, head of the Criminal Law Division of PTE-ÁJK, author of the paper B*reach of Trade Secrets in Hungarian Criminal Law and Damage Compensation*, pointed out that information is one of the most valuable assets in today's economy. In the economic literature, they are also called independent production factors. They may be subject to purchase or even embezzlement. The author concludes that increased market competition today also carries the increased interest of certain companies in the information about other, mainly competing companies, which means that certain companies will stop at nothing to obtain such data. Information can be obtained through human intervention or by technical means. A breach of a trade secret may lead to criminal proceedings before a competent court, that is, a procedure for exercising the right to compensation for caused damage.

In the paper entitled *The Necessity of Detention and Compensation in the Practice of the European Court of Human Rights - Guidelines for Serbia*, the author **Milos B. Stanić PhD**, Research Associate at the Institute for Comparative Law, concludes: "Persons wrongfully deprived of liberty must be compensated for both material and non-pecuniary damage inflicted by the state authorities". The author points out that it is necessary for the state to adopt a precise, clear law on the basis of which detention will be ordered, whereas the state authorities will order detention only when necessary, explaining their decision in detail and ensuring that this measure lasts only as long as necessary, that is, as short as possible, which is to be reviewed by a competent court. Serbia has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms thus making it a part of Serbian internal legal system. The paper points out that guidelines on the application of detention can be found in the rich practice of the European Court of Human Rights, which embodies all the principles of the said Convention.

The second session was dedicated to insurance, with an emphasis on valid legal solutions in exercising the right to damage compensation under an insurance contract.

Magdalena Makiela PhD, a lawyer from Krakow, and **Vladimir Čolović PhD** co-authored the paper entitled *Defining Criteria for Determining Jurisdiction in Insurance Disputes with a Foreign Element with Respect to Solutions in Polish Legislation*. The authors give a critical review of the Serbian legislation, which laid down rules for determining jurisdiction of the courts to hear insurance disputes with foreign elements only in liability insurance. Analysing the legal provisions of the Republic of Poland, the section devoted to civil proceedings shows the rules on which the jurisdictions are based and which may be applied in the future legislation of Serbia. Baring in mind that Poland is an EU member and has largely harmonised its laws with the Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters as a possible future solution in this area, positive experiences of the effective Polish law can be applied. The authors conclude that the basis for determining jurisdiction in insurance disputes with a foreign element primarily lies in the contract itself, but also in other facts that may

relate to the relationships arising out of insurance. The most important criteria for establishing jurisdiction are the place of residence or address of the respondent; he place of insurer's business; the place of the wrongful act (notably in liability insurance), the place of finding the object (in the case of clearly defined subject of insurance, namely, whether it is a movable or immovable object) and the jointly established jurisdiction of the parties to dispute. In addition to the above criteria, which have to be taken into account when determining jurisdiction for hearing disputes, the authors point to the indisputable fact that even the EU legislator has not given completely adequate solutions in this field, and that in the future it will be necessary to pay more attention to the relevant legal regulations.

In the paper *Exercising the Right to Healthcare in the Republic of Serbia by the Persons Deprived of Their Liberty – a review of the court practice of the European Court of Human Rights,* the co-authors **Zdravko Petrović PhD**, full professor of the Faculty of Law of the Megatrend University in Belgrade, **Dragan Obradović PhD**, Judge of the High Court in Valjevo, and **Goran Krstajić PhD** of the Ministry of Interior of the Republic of Serbia, addressed the specific issue of legal regulations pertaining to the treatment of persons deprived of liberty at different stages of the procedure, and enabling such persons to exercise their right to healthcare in isolation. The authors concluded that the right to health care of persons deprived of their liberty is regulated in the most important penal laws of the Republic of Serbia, however, in the following period, certain by-laws in this field should be harmonized with the applicable international standards. This is supported by the fact that according to official data, by the end of 2018, the Republic of Serbia did not have a large number of cases or judgments of the European Court of Human Rights relating to the violation of the right to healthcare of persons deprived of their liberty. In addition, there is a need to enhance the implementation of legal solutions starting with educating the police on how to apprehend and imprison individuals, timely drafting a detailed report on health of a person deprived of liberty, informing medical staff and responsible persons in penal institutions about the importance of exercising the healthcare rights by the persons deprived of their liberty, and educating judges and public prosecutors in how to recognize the abuse of persons deprived of liberty by the competent authorities during the judicial process.

Mirjana Glintić MA, a research associate at the Institute for Comparative Law in Belgrade, in the paper *Regulating the Mixed Legal Nature of Voluntary Health Insurance in the Regulations of the Republic of Serbia*, points to the legal nature of this insurance and the applicable laws governing this area. Through a comparative analysis of the legal nature of health insurance as insurance of fixed sums and indemnity, the author concludes that voluntary health insurance is of a mixed character. However, the current legislation - the Law on Insurance and the Law on Health Insurance – which regulates this type of insurance protection, do not fully regulate the issue of legal nature and thus, legal nature remains to be regulated by the provisions of general and special insurance terms and conditions. Based on the interpretation of several general voluntary health insurance terms and conditions in the Republic of Serbia, the author was of the impression that this insurance was fully regarded as indemnity insurance, regardless of the specific content of the insurer's

settlement. In view of the foregoing, it would be important to amend the main source of insurance contracting law in the Republic of Serbia, namely, the Law of Contracts and Torts which does not contain provisions on voluntary health insurance or future civil code. Amendments should be made toward the recognition of indemnity and fixed-sum nature of this insurance, i.e. toward the exercise of indemnity principle and the prevention of excessive damages. The author pointed out that good legal solutions and guidelines should be sought in German insurance contract act.

Starting with the amendments to the Companies Act 2018, and especially with the introduction of new norms relating to the founding of the European Joint Stock Company (*Societas Europen – SE*), which comes into force on 1 January, 2022, the authors **Dragan Mrkšić, PhD**, Full Professor at the Faculty of Technical Sciences, University of Novi Sad, and **Marija Mijatović, PhD** Assistant Professor at the Faculty of Legal and Business Studies "Dr. Lazar Vrkatic" in Novi Sad, in the paper *Current Issues of Defining the Legal Status of European Joint Stock Company Particularly in the Area of Insurance*, analyse the implementation of new legal forms in Serbian legislation and highlight necessary changes in the process of alignment and harmonization with other laws, as well as possible benefits, especially when it comes to changing the ownership structure of an insurance or reinsurance company. In this regard, the authors conclude that insurance companies have their own peculiarities in relation to general commercial companies, especially when it comes to incorporation, scope of work of their bodies, minimum share capital of a joint stock company for certain types of insurance or reinsurance, supervision of the National Bank of Serbia – which implies that the specifics of the European joint stock insurance and reinsurance company should be defined by amendments and supplements to the Insurance Law. Among other things, the paper recommends a model of privatization of domestic insurance companies by affirming the merger of domestic and foreign capital in order to create a European joint stock company, which is certainly a better option than selling domestic capital and making it exclusively foreign majority capital. Among other things, such joint stock companies can operate in different European countries in accordance with the applicable uniform regulations.

This year's Conference in Valjevo continued the tradition of bringing together domestic and foreign scientific researchers and experts engaged in the highest legal institutions, institutes and faculties, and experts in insurance companies. Since it addresses specific and little-known but very important topics in the field of law and insurance, this Conference represents a unique synergy of theory and practice. As a result of scientific analyses of the various applicable legal rules in Serbia and of the European legislation, as well as of the recommended guidelines, the best possible solutions were proposed for introducing novelties to the existing laws and using such novelties in the course of creating new ones. The crown of this international Conference are the Proceedings, where only a small part is laid out in this review, which in no way diminishes the importance and prominence of other authors and their papers. On the contrary, we owe a great deal of gratitude to all participants for their significant scientific contribution to the advancement of insurance law and practice.

Translated by: ***Zorica Simović***