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CONFERENCE REVIEW

INSURANCE AT THE 29TH CONFERENCE OF JURISTS OF THE KOPAONIK SCHOOL OF NATURAL LAW

1) The 29th Conference of jurists of the Kopaonik School of natural law was held in December 2016. The main topic of the conference was Law and Social Imperatives. Many papers have arrived from the country and abroad and 185 papers were published in four volumes of the conference proceedings. However, this review shall include papers directly referring to the insurance law or papers that are related to certain institutes and issues concerning insurance.

2) Most papers in the Insurance Department were characterised by considerations of the working text of the Serbian Civil Code, which was prepared by the Commission of the Government of the Republic of Serbia responsible for that code, for the public debate with alternative proposals, and it was published on 29th May 2015 in Belgrade (hereinafter referred to as the Civil Code draft).

2.1. Organiser decided to put in the first place the paper written by the honorary president of the Association for Insurance Law of Serbia **professor Jovan Slavnić, PhD**, with the topic "Insured's obligation to report insured event to insurer". The paper started with consideration of two issues: firstly, insured's obligation to report insured event to insurer; secondly, cover of costs incurred by the insured regarding occurrence of such event. Consideration of such current issues included comments on provisions of German, Austrian, Swiss and French law on insurance

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contracts, as well as provisions of the Draft Common Frame of Reference that was previously prepared in the EU. Such approach enabled the author to propose in the end of the paper formulations of new provisions of Articles 1432 and 1446a of the Civil Code draft. Also, a possibility of changes in some other provisions was also stressed. Undoubtedly, paper written by this author presents a significant contribution to the public discussion regarding the Civil Code draft but also an open invitation to other insurers to participate in the discussion with regard to provisions relating to insurance.

2.2. **Zoran Radović, PhD**, an advisor in the Institute of Comparative Law in Belgrade, submitted a paper with the topic "The principle of good faith in insurance in the Serbian Civil Code". The paper covers numerous legal issues from insurance that should be or have already become subject of the Civil Code draft. First of all, several principal legal issues from the EU law framework were emphasised that are important so that the editor of that legal document has access to insurance contracts. Firstly, when regulating contractual relationship in insurance and applying good faith principles, the EU legislator required from both parties to be open, honest and reliable so that the author ensured it was embedded adequately in the Civil Code draft. Secondly, the author drew attention to contradictories when regulating issues of reporting all circumstances to an insurer. Explanation of such thesis in the paper started with the effects of the Directive concerning unfair business-to-consumer commercial practices in the internal market from 2005 and the Directive on consumer rights from 2011, after which the author precisely stated that these directives essentially change current relationship between an insured person and an insurer during conclusion of an insurance contract. The paper emphasised that pursuant to the stated directives an insured would no longer be liable to provide to an insurer any circumstances that may have influence on terms and conditions under which an insurance contract would be concluded by an insurer. According to the author that situation would be a trap for an insured because the insured's obligation to provide to an insurer any circumstances relevant for terms and conditions of an insurance contract to be concluded would remain unchanged. Thirdly, editors of the Civil Code draft were recommended to take into consideration one of proposals made by the Insurance Europe. Namely, that association advocated with the EU bodies to enable insurers to professionally assess risks concerning life assurances and not to primarily require from insurers protection of insured's personal data, which would leave that protection above insurers' needs to assess risks and professionally performs business operations. The next level of consideration in the paper referred to objections made to the Civil Code draft in terms that some important legal issues in insurance were not regulated. Firstly, it was concluded that the Civil Code draft lacked the term explaining the insurance

contract. In order to eliminate such deficiency, the author formulated his proposal of provisions regarding the term explaining insurance contracts. He stressed in the explanation that along with the premium, the term of the contract contained the word "contribution" – considering the nature of mutual insurance. Secondly, it was concluded that editors of the Civil Code draft opted for a consensual form when writing an insurance contract, but, with reserves to such contract form, an objection was raised stating that such form was insufficiently clear. Certain opposition to provisions of the Civil Code draft regarding a consensual form when writing insurance contracts was illustrated in the paper by showing examples from insurance practice as well as by analysis of current phases during conclusion of an insurance contract. Thirdly, it was concluded that the Civil Code draft failed to regulate brokerage contracts. The author proposed regulation of such contract and therefore formulated some of its provisions, including the most sensitive issue – brokerage fee. In the next level of consideration of provisions of the Civil Code draft the author advocated that provisions regarding the cover list were deleted with an explanation that contents of the cover list should be left to business practices. The author then advocated that formulation on general and special insurance terms and conditions should be changed so that the insurer should only be obliged to inform the insured on general and special insurance terms and conditions. The paper presents objections to some other provisions of the Civil Code draft (provisions on obligations to report to the insurer, on insured's obligations to report to the insurer increase of risk, and on obligation to inform about occurrence of an insured event). In most stated objections the author tried to formulate his proposals for provisions. Finally, the author proposed new formulations for provisions of the Civil Code draft regarding insurance interest, for provisions on claims caused by war operations and rebellions and for provisions on coinsurance.

2.3. **Slobodan Ilijić, LLM**, member of Presidency of the Association of Serbian Jurists, submitted the paper with the topic "Suggestions on regulation of certain issues in the working text of the Serbian Civil Code". First, the author dealt with provisions of the Civil Code draft (Article 330 to 332) regulating liability for claim in case of a car accident and proposed acceptance of solutions stated in provisions of those four articles, and not to accept an alternative in relation to those Articles of the Civil Code draft. Regarding the term of a motor vehicle (Article 330 of the Civil Code draft) the paper concluded that the editor of that article undoubtedly had in mind a definition of that term from the Directive 72/166 dated 24th April 1972, but that directive excluded some of important elements from the definition of the source term of a motor vehicle. Upon inspection of the provision of the stated directive, the author recommended, in conclusion of the paper, that a corresponding legal editing of the Article 330 of the Civil Code draft

should be done and to include omitted elements stated in the paper. Since the paper concluded that the term of a car accident was a common denominator of all provisions of Article 330 to 332 of the Civil Code draft, and that definition of that legal term was excluded from provisions of the Civil Code draft, the proposal was to include that legal term in the stated provisions. Conclusion of the paper proposed that definition of the missing legal term of a car accident should be taken from the ratified international multilateral convention. Namely, that convention existed since 1976 in the legal system of Serbia as one of the key international legal sources of insurance law. Basis of this proposal from the paper was the fact that the Civil Code draft took the term of a motor vehicle from the EU insurance law so there were no constitutional and legal obstructions to take the legal term of a car accident from the ratified international convention.

2.4. PhD student of the Faculty of Law, University of Niš, **Jelena Janković**, was the author of the paper with the topic "Unemployment insurance system as an instrument for a fair eco-transition". The paper dealt with aspects of rights from insurance and their availability to unemployed persons, then so-called green industry as well as integration of education and work by learning based on work.

3) We could single out many papers from the four volumes of published papers for the purpose of this review, which do not directly belong to the insurance law, but which due to considerations of certain institutes or issues are related to the insurance law. For the purpose of this review, the following three papers were selected.

3.1. President of the Commission responsible for making of the Civil Code of the Republic of Serbia, **professor Slobodan Perović, PhD**, submitted a paper with the topic "Draft of the Civil Code of the Republic of Serbia". After stating a set of principles of future contract law of Serbia, the author extracted from 2.838 Articles of the Civil Code draft definitions of the most important legal principles that are significant for regular insurance business operations. Employees in insurance industry can find in this paper answers to practical problems regarding any contractual relations in insurance.

3.2. **Professor Nataša Tomić Petrović, PhD**, Faculty of Transport and Traffic Engineering, University of Belgrade, prepared a paper with the topic "Risks and protection of the right to life in traffic". Starting with the meaning of a car accident, the paper analytically and comprehensively examined international legal and applicable national sources of the traffic law that regulate risks, legal instruments and types of protection in traffic.

3.3. Teaching Assistant at the Faculty of Law in Belgrade, **Svetislav Janković, PhD**, chose the topic "Necessity of regulating the multimodal transport in the Serbian Civil Code". The author started with comparative and national law sources and then theoretically and practically explained the term of a contract on

multimodal transport. The paper also showed differences between that and related contracts on transport after which followed a proposal on the manner to regulate such contract in provisions of the Civil Code draft.

4) Unlike previous conferences, this year's conference of jurists on Kopaonik did not see many papers directly related to insurance law. However, papers from the insurance department, and especially the first paper, presented a significant addition to the public discussion of the Civil Code draft regarding insurance law.

Translated by: Jelena Rajković