

UDK: 403.443:342.827+165.43:34:368:347.471:347.96

Ljiljana J. Lazarević Davidović, LLB¹

CONFERENCE REVIEW

**PROPORTIONALITY AND LEGAL CERTAINTY IN
INSURANCE LAW – THEME OF 18th ANNUAL
CONFERENCE OF THE ASSOCIATION FOR INSURANCE
LAW OF SERBIA**

The 18th Annual Conference titled “Proportionality and Legal Certainty in Insurance Law” was held on 21st and 22nd April, on Palic, organized by the Association for Insurance Law of Serbia, Association of Serbian Insurers and the German Foundation for International Legal Cooperation. This international conference brought together around seventy participants from Serbia, Germany, Austria, Italy, the Netherlands, Belgium, Turkey, Malta and other countries.

The participants were welcomed by **prof. Slobodan Jovanović, PhD**, President of the Association for Insurance Law, who, in his opening speech, said that the Conference was taking place at a time of completion of the Draft Civil Code of the Republic of Serbia, which would bring many innovations and improvements and create new challenges in the insurance law and practice.

Even before the Commission for drafting the Civil Code of the Republic of Serbia was set up in 2006, the Members of the Association for Insurance Law, at their annual conferences and in feedbacks, in the Papers published in the Proceedings and the European Insurance Law Review, proposed various suggestions for improvement and modernization of the legal framework for contractual insurance

¹The author is Head of Information and Publishing Department of Dunav Insurance Company

e-mail: ljiljana.lazarevic-davidovic@dunav.com

Paper received: 5. 05. 2017.

Paper accepted: 10. 05. 2017.

law. Prof. Slobodan Jovanović, PhD said that in recent years, the Association for Insurance Law had been achieving its objectives through a precious support of particular institutions and organizations and he expressed specially thanks, on the occasion, to Mr Dusko Jovanovic, Secretary General of the Association of Serbian Insurers and Mr Stefan Purner from the German Foundation for International Legal Cooperation in Bonn, the insurance companies that supported the Association and helped their work and the authors having covered interesting topics - since exchanging the experience and information, ideas and opinions on certain issues and topics enriched their body of knowledge.

Stefan Purner, PhD, also welcomed the participants in fluent Serbian, on behalf of the co-organizer, the German Foundation for International Legal Cooperation, stressing that the program of this year's Conference was extremely rich and highlighted different aspects of the basic theme.

The introductory paper on "Serbian Insurance Market in Process of Introducing Solvency II Concept" was presented by **Dragica Jankovic, PhD**, member of the Executive Board of Dunav Insurance Company. She pointed out the importance of the concept of Solvency II, which came into force in the countries of the European Union on 1 January 2016 and whose main objective is a long-term safety of the insured persons, which is important for both the policy holder and economy as a whole.

"After a year of implementation, the shortcomings of this concept appeared, given that it was a very complex regime with hundreds of pages of rules, regulations and guidelines" - said Dragica Jankovic, PhD. "The first experiences show the need for simplification; therefore, in 2018, a revision is planned of the delegated regulations that will aim at reducing the complexity of the regime, especially for small and medium-sized insurance companies."

Dragica Janković, PhD, also said that 1 January 2016 was an important date for the Serbian insurance market as well, since all the insurance companies started to operate in line with the new Insurance Law which adopted some elements of Solvency II:

"As the regulator of the Serbian insurance market, the National Bank of Serbia adopted, in June 2016, an implementation strategy for Solvency II in the Republic of Serbia, consisting of three phases: compliance analysis, assessment of the effects of Solvency II on the insurance sector in the Republic of Serbia and harmonization of the regulatory framework, i.e. drafting legislation based on a thorough compliance analysis and effects evaluation. The deadline for the first phase was the end of the first quarter of this year and, on 11 April, the NBS announced that this phase was successfully completed" said Dragica Jankovic, PhD.

She then analysed the domestic market of non-life and life insurance and the possibility of their further enhancement. Taking into account the experience

of the European countries that the regulatory requirements of Solvency II for capital adequacy as the ultimate guarantor of security of the insured persons are considerably stricter and that the overall adequacy of Serbian insurers under Solvency I, according to the NBS data in 2015, was expressed as a coefficient of 2.30 (the ratio between available and the required solvency margin), this would significantly reduce under the Solvency II regime, according to a rough estimate. Bearing in mind the average adequacy of the market, a number of insurance companies would not meet the basic capital requirement, which would further result in a reduced number of market participants, concluded Dragica Jankovic, PhD.

Boško Petrović, Chairman of the Executive Board of Đenerali Reinsurance in Serbia spoke on the condition of the Serbian insurance market in 2016 and prospects for its development. He stressed that the cooperation with the Association for Insurance Law was precious to insurers because it helped them to be more efficient in practice and up to date with the prospective legislation.

“The insurance market in Serbia remained relatively unchanged for many years - said Boško Petrović According to the tradition, Dunav Insurance is dominant in property insurance lines, whereas other top five companies are relatively equal; with the accident insurance, DDOR has, despite the relative loss of their market share in recent years, managed to maintain a stable position, which points to the fact that, in particular segments, the clients recognize this company and are loyal to it regardless of changes”.

Boško Petrović said that the perspective, of course, was the insurance of agriculture, especially because the premium that is now generated in this area is definitely below the potential.

“As a country recognized in the agricultural sector, we must as well focus our business on this sector. As far as legislation in the field of agricultural insurance is concerned, under the current regulations, 10 percent of the crops insurance premium is allocated and directed into the hail protection measures. The insurance companies advocate for the introduction of compulsory insurance in agriculture. An additional premium of about 20 million would be earned from this portfolio and we would be prepared to allocate a certain portion of these funds, obligatorily, into the hail protection fund so as to provide for anti-hail rockets, automated systems or aircrafts that would spread certain chemicals to prevent the hail formation. Our proposal was partly accepted by adopting a legal ruling on compulsory insurance of agricultural households subsidized by the state” - Petrovic said.

The papers in this annual Conference were grouped according to thematic units presented at the round tables. At the first round table dedicated to insurance contracts, two papers were presented. **Jovan Slavnić, PhD**, professor at the University of Novi Sad and the honorary president of the Association for Insurance

Law of Serbia, presented the paper on "Regulation of the Consequences for the Injured in Case of Insurance Contract Breach in Modern European Laws" and **prof. Pierpaolo Marano, PhD** (Prof. Dott. Pierpaolo Marano) from the Catholic University of St. Heart, Faculty of Banking, Finance and Insurance Science, in Milan, spoke on the topic of "Cross-Selling of Insurance Products and the Insurance Distribution Directive".

At the round table on non-life contracts, **prof. Slobodan Jovanovic, PhD** presented a report on "One View on the System of the Medical Malpractice and Insurance against Such Liability in Texas" while **prof. Jasmina Stankovic Labudović, PhD**, from the Law Faculty of the University of Kragujevac spoke on the theme of "Directors' and Officers' Liability Insurance and Management Board Members in Some Developed Countries and the Republic of Serbia".

At the round table on life insurance contracts, **Borseli Angelo, PhD** (Angelo Borselli, PhD, LLM) from the University of Bocconi in Milan, presented the paper "Contestability versus Incontestability in Life Insurance", whereas, at the round table on "Sales of Insurance Products and Protection of Consumers", **Wolfgang Rohrbach, PhD** (Prof. Wolfgang Rohrbach, PhD) a professor at the European Academy of Sciences and Arts in Salzburg, spoke of "Separation of the Banking and Insurance Sectors". This theme was further elaborated in a paper on "Bancassurance and Insurance Markets in EU" by **Katica Tomić, PhD** student of the Law Faculty of the University of Vienna and Banja Luka. At the same round table, **Katarina Ivančević, PhD**, a professor at the Faculty of Law of the "Union" University, presented the paper on "Protection of the Tourist Service Users against Agency Insolvency by way of an Insurance Policy in the Serbian and Comparative Laws". Director of the European Association of Insurance Brokers based in Brussels **Nik de Meskalk** (Nic de Maesschalck) informed the participants of the Conference on the latest development of the regulations of the European Union from the perspective of insurance intermediaries.

The last round table at the Conference was dedicated to the management and competition in insurance industry and the papers were presented by Simon Grima, PhD (Prof. Simon Grima, PhD), professor at the Faculty for Insurance, Economics, Management and Accounting of the University of Malta, who spoke on the topic of "The ORSA requirements: Insurance Practitioners' Concerns"; **Ljiljana Stojković, PhD**, a lawyer from Belgrade, spoke on "Legal Aspects of the Management System at Insurance Companies and the Principle of Proportionality under Solvency II"; **Zoran Ilkić, PhD**, legal representative in claims in "DDOR Novi Sad", presented the topic "A View on Some Forms of Competition Law Violation in Serbian Insurance", while **Nikola Filipovic, MA**, from the Institute for Business and International Trade Law, Faculty of Law, University of Graz and Belgrade Business School - College of Professional Studies addressed the issue of infringement

of competition in insurance, Article 101 of the Treaty on the Functioning of the European Union, outlining a number of specific instances where such behaviour on the insurance market was rigorously sanctioned.

The Conference was held in a very constructive atmosphere and the presented papers, especially those of participants from the EU countries, were a source of valuable information on trends in the European insurance market, regulations in this area, as well as on the advantages and potential pitfalls on our way of joining the community of European countries.

The Proceedings of the Conference comprises all published papers in the Serbian and English/German language as well as the papers that were planned by the Program, but due to the absence of the author were not presented.

*Translated by: **Bojana Papović***