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DIVORCE INSURANCE

REVIEW ARTICLE

Abstract

Marriage is the cohabitation of a man and a woman governed by law. This cohabitation is characterised by the effects of personal rights (changing family name of a spouse, citizenship, community life, duty of mutual aid and respect, maintaining household, and deciding on the place of residence) and the effects of property rights (financial maintenance, acquiring property during marriage, managing and disposing of joint ownership, liability for obligations, etc.).

In this paper, the author analyses the insurance of consequences the divorce produces on the property rights, because during the marriage, new property rights are acquired and become a part of joint ownership or special property of spouses which is acquired as debt free or otherwise. By analysing the rights effective in the selected federal states of America, in the German law, and the rights arising from insurance terms and conditions, the paper considers the effects of divorce on the existing insurance policies, and insurance liabilities and their characteristics. The author concludes that high divorce rate and poor culture regarding the conclusion of prenuptial agreements represent a big opportunity for insurance companies in Serbia to draw up the terms and conditions for insurance against the risk of divorce and offer them to prospective policyholders.

Key words: *marriage, divorce, insurance, liability, legal protection, maintenance, informing, counselling*

I Introduction

According to Article 3, paragraph 1 of the Family Law of the Republic of Serbia, "Marriage is the cohabitation of a man and a woman governed by law." This

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cohabitation is characterised by the effects of personal rights (changing family name of a spouse, citizenship, community life, duty of mutual aid and respect, maintaining household, and deciding on the place of residence), and the effects of property rights (financial maintenance, acquiring property during marriage, managing and disposing of joint ownership, liability for obligations, etc.). Still, its strongest function concerns procreation, the care of children and their education and socialization, and regulation of lines of descent.² Marriage comes from spiritual convergence and intellectual and physical attraction of persons of different gender, who have built their mutual relationship based on loyalty and love. A motive for solemnisation of marriage can also be sought in looking for a marital partner who is in possession of a considerable property. In particular cases, principal reasons are those of economic nature, however, sometimes motives can be quite different such as tax reliefs, acquiring citizenship, or the right to reside in a country.

In this paper, the author analyses the insurance of consequences the divorce produces on the property rights, because in marriage, new property rights are acquired and become a part of joint ownership or special property of spouses which is acquired as debt free (inheritance, founding a lost object, occupation), and otherwise. This is worth noting because the issues of ownership over particular rights are not addressed when the relationship and understanding between spouses is harmonious, since the entire property serves the purpose of a particular matrimonial cohabitation.

Because marriage is solemnised for the above reasons, legal norms are not able to influence its success and longevity. It is possible that the marriage concluded between intellectually mature persons will last, however, it may happen that when spouses reach a particular age, they will be met with irreconcilable differences which, in turn, will lead to divorce. In addition, hasty marriage between two young people may last shorter due to unresolved existential issues (employment, housing), or other reasons (disapproval of parents, immaturity of partners, or early parenthood).

It should be borne in mind that according to the data of the Statistical Office of the Republic of Serbia³, in 2014, the number of concluded marriages was 36.429, and in 2015, 36.949. In 2014, crude divorce rate per 1.000 inhabitants of the Republic of Serbia was 5.1, and in 2015, it was 5.2, which represents a slight increase in the number of concluded marriages.

In both analysed years, the majority of grooms got married between the age of 25 and 34 (in 2014, average age of a groom was 30.9), whereas the age of a bride when concluding the first marriage varied between 20 and 29 (in 2014, average age of a bride was 27.9).

² <https://www.britannica.com/topic/marriage>, 12.6.2017.

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³ Statistical Yearbook of the Republic of Serbia 2016, Statistical Office of the Republic of Serbia, Belgrade, 2016, pp. 47 and 48.

In 2014 and 2015, there were 7.614 and 9.381 divorces, respectively. In 2014, there were 209.0 divorces per 1.000 marriages in the Republic of Serbia, whereas in 2015, this figure amounted to 253.9. If had in mind that in 2005, there were 197.21 divorces and that in 2006, this number amounted to 206.36⁴, we can conclude that in the Republic of Serbia, there is a slight increase in the number of divorces. In 2014, the average age of a husband when getting a divorce was 43.1, and of a wife 39.3. The average length of marriage in 2014 was 13.6 years. According to certain analyses, Serbia takes the fourth place in Europe in the number of divorces, behind Lithuania, Check Republic and Denmark, whereas in the region, it ranks first.⁵

II Effect of Divorce on the Existing Insurance Policies and Insurance Obligations

From legal perspective, when mutual communication is disrupted due to intolerance and distrust, the spouses begin to wish to lead their separate lives and end the relationship that is so seriously and permanently **disturbed**. If the spouses are sufficiently tolerant and sensible, they will manage to agree on the future of their joint property. Otherwise, this decision will be referred to the court. Even though legally simple, in practice, the disputes over joint property division are actually complicated and time-consuming, consequently resulting in the waste of time and money, inability to independently dispose of the share in joint ownership, temporary exclusion from legal transactions, etc.⁶ A special type of obligation is the obligation to pay child support and maintenance for the spouse who has no means of support and is unemployed or incapable of work. We would also like to point out the possibility of a revenge of one of the spouses against the other by selling a part of property and leaving the other spouse with burden of financial obligations and without the possibility to cash in on the possessions acquired during the marriage. All of the aforementioned may leave one of the spouses in a difficult financial situation through no fault of his/her own and therefore, in this area of social relationships, it was necessary to design the ways of financial protection.

The first divorce insurance was developed in 2005 by John Logan, a founder and CEO of *SafeGuard Guaranty Corporation*, an American insurance company, as a result of Logan's own financial turmoil following his divorce in 2002.⁷ Since 2011, this type of insurance has become available in France⁸, United Kingdom, and other

⁴ Slobodan I. Panov, *Porodično pravo*, Beograd, 2016, pp. 54.

⁵ Vesna Miličević, „Razvod braka i njegove pravne posledice“, Institut za pravo i finansije, Beograd, <http://ipf.rs/razvod-braka-i-njegove-pravne-posledice/>, 12. 6. 2017.

⁶ Slobodan I. Panov, *Ibidem*, pp. 126.

⁷ https://en.m.wikipedia.org/wiki/Divorce_insurance, 12. 6. 20167.

⁸ In 2010, the insurer, *Solly Azar*, was the first to introduce the insurance of maintenance of the mothers with custody over their children, whereas a brokerage firm, *Mazal Assur*, in 2012 offered the insurance of

countries experiencing high divorce rate and expenses affecting former newlyweds who were supposed to „live happily ever after“⁹. In particular cases, these products had specific names such as: New Beginning Insurance (*Assurance Nouveau départ*), Marriage-Legal Protection Insurance (*Ehe-Rechtsschutz*), WedLock Divorce Insurance, etc.

Further in the text, we will present some aspects of this insurance according to the selected rights effective in the federal states of America, German Law, and insurance terms and conditions.

When, in addition to the above, one has in mind that in the developed countries spouses often take out joint health, life and comprehensive motor vehicle insurance policies, and that failing to make appropriate changes to such policies after the divorce (including dropping a former spouse from a policy or getting one's own insurance) can cause a person to be over-insured, underinsured, or not being insured at all, and even lead to insurance fraud due to the failure to report the change in the personal status,¹⁰ things look even grimmer than a mere superficial analysis of divorce consequences. In addition, a divorcee may find that taking out his/her own policy is much more expensive than was the joint insurance policy¹¹. However, this is an unavoidable consequence of a separate life after the divorce.

In the event of a divorce, a characteristic unpleasant situation in mutual life insurance of spouses is the necessity to remove the spouse who is a policyholder or insurance beneficiary. In such case, a spouse who took out the insurance may exclude the other spouse from the cover or designate another insurance beneficiary and thus leave his/her partner without the insurance cover. On the other hand, in some federal states of the USA, the court may order the former spouse to maintain life insurance policy for the benefit of the divorced spouse to cover the alimony.¹² In such case, life insurance policy serves as security for alimony in the event of payor's death during the alimony period. The court order to maintain life insurance policy is based on the following factors: age and insurability of the payor, cost of insurance, amount of the judgment, policies carried during the marriage, duration of the alimony order, prevailing interest rates at the time of the order, and other obligations of the payor.¹³

financial risks in case of a divorce – *Marie Pellefigue*, „Assurance mariage et assurance divorce: à examiner avant de dire oui“, *Capital*, 10/02/2012, <http://www.capital.fr/votre-argent/assurance-mariage-et-assurance-divorce-a-examiner-avant-de-dire-oui-697041>, 14.6.2017.

⁹ „U trendu je osiguranje od rastave braka“, *Svijet osiguranja*, 29.4.2011, <http://www.svijetosiguranja.eu/hr/novosti/u-trendu-je-osiguranje-od-rastave-braka,11985.html>, 12. 6. 2017.

¹⁰ Geoff Williams, „How to untangle your insurance plans in divorce“, *Reuters*, September 11, 2012, <http://www.reuters.com/article/us-divorce-insurance-idUSBRE88A0UY20120911>, 14.6.2017.

¹¹ *Ibidem*.

¹² 2015 North Carolina General Statutes, Chapter 50 – Divorce and Alimony. Article 1 – Divorce, Alimony, and Child Support, Generally (abbr. NC Gen Stat § 50-16.3A (2015)).

¹³ 2016 Massachusetts General Laws, Part II Real and personal property and domestic relations, Title III Domestic relations, Chapter 208 DIVORCE, Section 55 Reasonable security for alimony in event of payor's death; orders to maintain life insurance; modification of orders (abbr. MA Gen L ch 208 § 55 (2016)); 2016

When it comes to health insurance available to one of the spouses, which also covers the other spouse, in case of the divorce, the court which makes an order for alimony in the federal state of Massachusetts shall determine whether the obligor under such order has health insurance or other health coverage available to him/her through an employer that may be extended to cover the spouse for whom support is ordered or shall order him/her to obtain coverage for the spouse.¹⁴ To this end, there is a rule that the courts, when entering or modifying a support order, shall require either or both parents to maintain or provide (new) health insurance coverage for any dependent child.¹⁵

III Characteristics

Divorce insurance is a form of contractual liability insurance where cash benefits in the event of validly terminated marriage may serve for different purposes: to cover the costs of a divorce suit or expenses of moving and setting up a new apartment or house. According to the rules of *Wedlock Divorce Insurance*, the premium and sum insured are determined according to the value of units. This means that the premium and the sum insured are obtained by multiplying the number of units by the unit value, whereby after the expiry of the waiting period, each year, the insurer increases the agreed sum insured by an additional lower amount.

As in the other types of insurance, the divorce insurance entails moral hazard which may put an insurer in a situation to pay benefits for fictitious divorces.

As pointed out in foreign press, divorce insurance may imply from the beginning that divorce is already an option.¹⁶ Therefore, to prevent the divorce intended solely for the purpose of receiving an attractive benefit, insurance terms and conditions stipulate a waiting period for filing a claim, which may be three¹⁷ to four years from the date of policy conclusion. Waiting period where there is no liability of the insurer does not exist if the insurance policy is extended with the same insurer.

In the event of a claim, the benefit involves the payment of the agreed sum, which means that the rules of proportional decrease of insured benefit due to underinsurance are not applied.

California Code, Family Code – FAM, Division 9 – Support, Part 3 – Spousal support, Chapter 5 – Provision for Support After Death of Supporting Party, Section 4360 (abbr. CA Fam Code § 4360 (2016)).

¹⁴ 2016 Massachusetts General Laws, Part II Real and personal property and domestic relations, Title III Domestic relations, Chapter 208 DIVORCE, Section 34 Alimony or assignment of estate; determination of amount; health insurance (abbr. MA Gen L ch 208 § 34 (2016)).

¹⁵ 2016 Revised Code of Washington, Title 26 – Domestic relations, 26.26 Uniform parentage act. 26.26.165 Health insurance coverage (abbr. WA Rev Code § 26.26.165 (2016)); German Insurance Contracts Act of 2007 (*Versicherungsvertragsgesetz*), Article 107, paragraph 2.

¹⁶ Belinda Luscombe, "Divorce Insurance: Get Unhitched, Get a Payout", *Time*, September 19, 2010, <http://content.time.com/time/magazine/article/0,9171,2015772,00.html>, 12. 6. 2017.

¹⁷ ARAG *Allgemeine Bedingungen für die Rechtsschutzversicherung (ARB 2016)*, Stand 01.2016, § 4(1).

On the other hand, two reasons are highlighted for which it may seem that regular monthly allocation of money to the bank account and interest earned from savings pay off much more than this type of insurance. Firstly, this is because interest increases yields on a savings account and cannot go to waste or disappear, whereas when the insurance is taken out, the payments of premium will be kept by the insurer even if the divorce never happens. The other reason relates to the fact that some divorces are settled relatively easily and amicably and are not necessarily costly. The main argument supporting the conclusion that this type of insurance has a key advantage over savings lies not only in the fact that the savings funds of one spouse could be the subject of division in equal parts (which certainly does not represent the adequate security for the spouse who saved in case of the divorce¹⁸), but also in the fact that majority of people do not have the discipline to save consistently. In addition, as pointed out in the comments in favour of this type of insurance, annual appreciation per unit may represent quite an offset for the returns available on savings accounts.¹⁹

In addition to the above, one of the ways to manage risks entailing divorce is the institute of prenuptial agreement (*pacta nuptialia*). Following the Serbian Civil Code of 1844, the possibility to enter prenuptial agreement was introduced in the Family Law of 2005, which in Article 188 stipulates that spouses or future spouses (married couples and cohabitantes) may regulate property relations regarding their existing or future property by a contract, and that prenuptial agreement pertaining to immovable property is to be entered into the public record of rights on immovable property. However, the conclusion of a prenuptial agreement in France, the Netherlands, Germany, and Serbia is not common.²⁰ The main purpose of this agreement between spouses is to eliminate the legal presumption of equal shares in joint property acquired during the marriage, and to apply the rules which will help distinguish what joint property is comprised of. This agreement regulates property and other rights belonging to each spouse in the event of divorce. Thus, in the event of a dispute, spouses are financially secured for the purpose of their peace of mind and social wellbeing.²¹

According to insurance terms and conditions of a German company, ARAG SE, which underwrites this class as marriage-legal protection insurance²², the insured

¹⁸ In Serbian legal theory it is pointed out that savings and accrued interest are included in the joint property (Slobodan I. Panov, *Ibidem*, pp. 337) and thus, in the absence of a prenuptial agreement which would regulate this matter otherwise, each spouse is entitled to the half of those funds.

¹⁹ Jennifer Schultz Saranow, "Divorce Insurance (Yes, Divorce Insurance)", *The New York Times*, August 6, 2010, https://bucks.blogs.nytimes.com/2010/08/06/divorce-insurance-yes-divorce-insurance/?_r=0, 12. 6. 2017.

²⁰ Slobodan I. Panov, *Ibidem*, str. 360.

²¹ Slobodan I. Panov, *Ibidem*, str. 363.

²² Više o osiguranju troškova pravne zaštite, videti kod: Slobodan Jovanović, „Osiguranje troškova pravne zaštite“, *Evropski put prava osiguranja Srbije posebno ugovora o osiguranju* (urednici Jovan Slavnić, Predrag Šulejić i Jasna Pak), Beograd, Association for Insurance Law of Serbia, 2008, pp. 212–227.

event is considered to have occurred in the following cases: (a) liability for damage; (b) counselling on legal protection in family law, relationships between spouses and inheritance law, as well as in the event of a judicial separation when the legal position of the policyholder or his/her co-insured is changed. This insurance covers the interests of both married couples and cohabitants in the event of divorce or marriage annulment in the court proceedings, to the sum insured of EUR 30.000 per any one insured event.²³ In addition, provided that the spouses accept to settle their dispute amicably, by mediation, this insurer reimburses the expenses of up to EUR 3.000 per one mediation in Germany, and maximum EUR 6.000 worth of expenses for all mediations in a calendar year. This type of insurance characteristically covers the expenses and fees for lawyers, expert witnesses, and court, both of one's own and of the other party in the event that the dispute is lost.²⁴ If uninsured persons appear in mediation, the insurer pays for its liability in proportion to the total number of persons. This type of insurance can be concluded either as stand-alone insurance policy or as an extended cover in liability insurance policy, and does not cover the gaps (differences) between the covers of other insurance policies but only those losses or damages which have occurred as a direct consequence of the divorce.

In case of lost employment or unemployment, and if specially agreed, the insurance cover remains effective even without the obligation to pay the premium, provided that the insured is registered in the labour market as unemployed or has lost his/her earning capacity, all in accordance with the provisions of German Social Code (Articles 137 and 43). In this case, the insured must be temporarily employed for minimum two consecutive years and be the beneficiary of unemployment benefits for low paid employment.²⁵ In such case, the liability of the insurer is effective for maximum five years, provided that after the death of the insured, the person who maintains-concludes the insurance contract with this same company is given the possibility to continue to be exempted from premium payment.

The premium payment will not be subject to exemption if any other person has the obligation to pay for it. Exemption from premium payment is not valid in alternatively stipulated cases (in the insurance terms and conditions): (1) when the insured is legally obliged to pay the financial maintenance, (2) if the employment or earning capacity was lost prior to the conclusion of the insurance contract, (3) if the unemployment or loss of earning capacity occurred within six months after the insurance was written, unless unemployment or the loss of earning capacity

²³ ARAG *Allgemeine Bedingungen für die Rechtsschutzversicherung (ARB 2016)*, Stand 01.2016, § 2, (I).

²⁴ S. Jovanović, str. 213.

²⁵ According to Article 8 of the Book IV of (German) Social Code of 2009 (*Das Vierte Buch Sozialgesetzbuch*) „Low paid employment exists: (1) when the wage does not exceed EUR 450 per month, and (2) employment lasts maximum two months in a calendar year or 50 working days, depending on the nature of the job and time limits stipulated in the labour contract, unless it is the work in the form of occupation and a monthly fee exceeds EUR 450.”

has occurred, within such period, as a consequence of an accident, (4) if unemployment or loss of earning capacity are caused by military conflicts, unrests, strikes or nuclear effects, except in the event of a medical treatment, or (5) if unemployment, professional or general incapacity for work are caused intentionally by action or violation of the insured.

The insurer will meet his liability to the policyholder and/or insureds for all their obligations incurred on the territory of Germany and other European countries, as well as for those arising from the decisions of the courts in Germany or any other European country. The only exclusion of the insurer's liability from the aforementioned relates to the legal interests in connection with acquiring or alienation of property rights or timeshare of buildings or parts of buildings.

In addition, the automatic extension of insurance policy is stipulated for additional year, provided that the policyholder does not cancel the insurance policy minimum three months before the policy expiry.

It is interesting to note that the effectiveness of insurance cover/insurer's liability is conditioned by the payment of the first premium, that is, if the payment of premium is delayed, the insurance will become effective on the date when the premium is paid. If after the expiry of the premium payment period the insured is in default regarding the payment of outstanding amounts, the insurer may cancel the contract without the observance of the cancellation period. However, the insurer may connect the payment period with the cancellation so that upon the expiry of the payment period, the cancellation becomes effective, provided that at that moment the insured is in default in payment. The insurer cannot exercise this right unless he has expressly warned the insured about this consequence. Nevertheless, it should be noted that the insurer cannot deviate from the above rules to the detriment of the insured.

However, if the insured is able to prove that the default in premium payment did not occur through his/her fault, the insurance will become effective on the agreed date.²⁶ By proving that the default in payment was through no fault of his own, the insured eliminates the possibility of default in premium payment. The cancellation of marriage-legal protection insurance policy will become void if the policyholder makes the payment of outstanding premium within one month after the contract has been cancelled. However, in such case, the insurer is not obliged to compensate for the damages occurred from the moment when the insured was in default in premium payment until the date when the outstanding premium is paid.²⁷

Dunning notice for outstanding insurance premium will be effective only if it contains the information of: outstanding premium, interest and expenses, and caution about legal consequences of failure to pay the premium within the defined

²⁶ ARAG Allgemeine Bedingungen für die Rechtsschutzversicherung (ARB 2016), Stand 01.2016, § 9, B(2).

²⁷ ARAG Allgemeine Bedingungen für die Rechtsschutzversicherung (ARB 2016), Stand 01.2016, § 9, C(5), German Insurance Contract Act of 2007 (*Versicherungsvertragsgesetz*), Article 38, paragraph 3

period (suspension of the insurance cover as of the date of default). Insurer is not liable to pay the benefit only if he has warned the insured about legal consequences of premium non-payment in a special written notice or warning visibly indicated in the insurance policy.²⁸

To maintain an adequate level of insurance premium payable by the insured, in the insurance terms and conditions the insurer anticipates that the premium will be adjusted each calendar year, on 1 July. Premium adjustment is made by an independent actuary who analyses the whole insurance market and companies selling legal protection insurance, uses statistical data in connection with frequency of claims and average amount of an individual claim, and decides whether the insurance premium needs to be increased or decreased.²⁹ The actuary also determines the change in value by types of liability insurance: legal protection in traffic, legal protection of legal persons and entrepreneurs, associations, households, farms, etc.

It goes without saying that the insured is to act with due care and, in addition to the obligation to report the relevant facts when concluding the insurance contract, the insured must act with due care even after the occurrence of the insured event. The insured is obliged to eliminate and minimise the loss after the occurrence in accordance with his/her means, and in case of marriage-legal protection insurance, he/she must do his/her best to minimise the defence costs (attorney's expenses, court fees, counterparty's costs, etc.). The insurance also covers the judicial and extra-judicial costs arising from claims asserted by a third party³⁰, insofar as the circumstances, that is, relationships between spouses, necessitate the expenditure. The insurer shall also reimburse the costs of a legal dispute conducted at his instigation and the costs for defence counsel, insofar as they exceed the sum insured plus the insurer's expenses for indemnifying the policyholder. This shall also apply to interest payments which the policyholder owes the third party as a result of a delay in satisfying the third party occasioned by the insurer.³¹

The policyholder must follow, to the greatest extent possible, the instructions of the insurer or of his attorney, if circumstances permit. The insurer provides preliminary legal advice by providing the policyholder with the telephone number of the attorney in charge of counselling in legal matters regarding the German Law. When it comes to the law of a foreign country, the insurer *ARAG SE* provides the attorneys which give advice on the rights in EU countries, and in: Serbia, Turkey and USA.

The need for advisory services of the insurer arises when the consultation is necessary for the analysis and avoidance of a potential judicial proceedings. In such

²⁸ Slobodan Jovanović, „Pravne posledice neplaćanja premije neživotnog osiguranja u odabranim pravnim sistemima EU i srpskom pravu“, *Evropsko zakonodavstvo*, no. 47–48, January–June 2014, pp. 234.

²⁹ *ARAG Allgemeine Bedingungen für die Rechtsschutzversicherung (ARB 2016)*, Stand 01.2016, § 10(2).

³⁰ German Insurance Contract Act of 2007 (*Versicherungsvertragsgesetz*), Article 101, paragraph 1.

³¹ German Insurance Contract Act of 2007 (*Versicherungsvertragsgesetz*), Article 101, paragraph 2.

case, the insurer *ARAG SE* refunds the expense of attorney's counselling and informing over the telephone up to EUR 250, and maximum EUR 500 in one calendar year.

The right of the insured to choose his lawyer, in accordance with Articles 3 and 4 of the Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance,³² is guaranteed in Article 17, paragraph 3 of the General Legal Expenses Terms and Conditions of the company *ARAG SE*, provided that the insurer may appoint a lawyer only: (1) if requested by the policyholder, (2) if the policyholder fails to appoint the lawyer and an urgent response is required. The insurer appoints the lawyer for and on behalf of the policyholder and is not responsible for the lawyer's actions in any of the aforementioned cases.

The policyholder is obliged to disclose to the insurer, within one week, those facts which could give rise to his responsibility vis-à-vis a third party. If the third party asserts a claim against the policyholder, the policyholder is obliged to disclose that fact to the insurer within one week after the claim is asserted. Where a claim is asserted against the policyholder in court, legal aid is applied for or a third-party complaint is filed against him in court, he is obliged to disclose that fact to the insurer without undue delay. This also applies when investigative proceedings have been initiated against the policyholder on account of the occurrence of the loss giving rise to a claim.

When the policyholder reports the occurrence of the insured event, the insurer will confirm to the policyholder the existence and amount of cover for the given occurrence. However, if the policyholder decides to take certain actions before the insurer has confirmed the insurance cover, for the purpose of his legal interests, the insurer will cover only those expenses which the policyholder had prior to taking such actions. Here, it should be pointed out that the agreements under which the insurer is not obliged to effect payment if the policyholder satisfies the third party or acknowledges his entitlement without the insurer's consent shall be void, and this rule in the German Insurance Contract Act is of a mandatory nature.³³

As of the engagement of the lawyer, the policyholder is obliged to provide to such lawyer complete and true information, evidence, necessary data and documents, and to inform the insurer of the developments in the case. In the case of grossly negligent non-observance of the obligation, the insurer is entitled to reduce any benefits payable commensurate with the severity of the policyholder's fault. The policyholder may not be released from liability for failing to disclose the said

³² Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance, *Official Journal of the European Communities*, L 185, 4. 7. 1987, 77–80.

³³ German Insurance Contract Act of 2007 (*Versicherungsvertragsgesetz*), Article 105 in connection with Article 112.

information to the insurer solely on the grounds that he has expected his lawyer to do so. If the policyholder breaches the obligation to inform or provide information for the purpose of clarifying the insured event, the insurer is entitled to refuse his obligation, partly or fully, provided that he has warned the policyholder thereof, in a special written notice (in a registered letter or e-mail). However, the insurance will be effective and the insurer will be liable to pay the benefit to the policyholder if the policyholder proves that he has not breached the said obligations by gross negligence.³⁴ General insurance terms and conditions of legal protection in marriage concretizes the obligation of the policyholder to present evidence by conditioning the obligation of the insurer with the fact that the policyholder is supposed to prove that the breach of contractual obligations did not cause the occurrence of the insured event.

The policyholder has a special obligation to preserve his rights to his debtor, so that the insurer can effect the recovery. For example, if the other party to a dispute has the obligation to compensate the policyholder for the litigation costs or costs of other procedure, the insurer is entitled to collect these costs provided that he has borne such costs (temporarily, before the completion of the procedure).³⁵ This means that the policyholder is obliged to surrender to the insurer the documents necessary to recover the costs. If the policyholder intentionally fails to do so, and the insurer does not succeed in recovering the costs from the debtor, the policyholder will be obliged to compensate the insurer for the entire amount of such costs. In the event of gross negligence, the insurer is entitled to reduce any benefits payable in proportion to the fault of the policyholder, provided that the policyholder can prove that such fault did not occur through his/her gross negligence.

Several provisions of the general insurance terms and conditions regarding legal protection in marriage also define the jurisdiction of the Court before which the proceedings will be instituted against the insurer and the policyholder, in accordance with the German law and the EU law.

If agreed, insurance policy of marriage-legal protection of the German insurance company *ARAG SE* includes, in addition to the policyholder, the names of persons registered as living in the place of residence of the policyholder : (1) spouse or cohabitee, no matter if the community of life still lasts or has ended; (2) minor children; (3) unmarried children until they are employed or become entrepreneurs; (4) persons living in the same household with the policyholder (apartment or house), who are relatives of the policyholder or his partner, provided that they are registered as living at the same address; (5) all persons in the capacity of a driver with valid driving license for motor vehicles registered in the name of any of the above persons

³⁴ *ARAG Allgemeine Bedingungen für die Rechtsschutzversicherung (ARB 2016)*, Stand 01.2016, § 17(5); German Insurance Contract Act of 2007 (*Versicherungsvertragsgesetz*), Article 28, paragraph 2.

³⁵ *ARAG Allgemeine Bedingungen für die Rechtsschutzversicherung (ARB 2016)*, Stand 01.2016, § 17(8).

as at the date of the conclusion of the insurance contract or the term thereof. The insurance cover includes all legal interests of the policyholder in the capacity of the owner, holder, lessor, lessee, buyer, and the driver of motor vehicles on land, water or air, including trailers, and all electric vehicles (bicycles, Segways, electric skateboards and the like).

The cover excludes the risks relating to commercial activities, activities of independent professions, and other independent activities.

Under the compulsory provision of the German Insurance Contract Act³⁶, in the insurance of marriage-legal protection, the insurer is obliged to release the policyholder from the third party's claim within two weeks, beginning at the time when the third party's claim is established with binding effect for the insurer by final judgement, acknowledgement, or settlement. If the third party has been satisfied by the policyholder with binding effect for the insurer, the insurer is obliged to pay the compensation to the policyholder within two weeks after the third party has been satisfied. The insurer shall be obliged to pay any costs to be reimbursed within two weeks after communication of the calculation. In addition, if the sum insured is not equal to the capital value of the annuity that the policyholder is obliged to pay to the third party, the insurer is only liable to pay a pro-rata share of the annuity.³⁷ If the policyholder bears responsibility towards several third parties and their claims are in excess of the sum insured, the insurer shall pay these claims in proportion to their amounts. However, this is an operative rule as per Article 109 of the German Insurance Contract Act of 2007 (*Versicherungsvertragsgesetz*) which can be modified in the insurance terms and conditions in favour of the policyholder.

Special cases in which the insurer's liability is excluded relate to the insurance of legal expenses when the legal protection of persons is insured in a different capacity (e.g. insurance of legal expenses of entrepreneurs or insurance in connection with the infringement of intellectual property rights excludes legal protection insurance related to marriage, etc.).

IV Conclusion

The cohabitation of two people of different gender, governed by law, represents an important institution of society which is characterized by emotional, psychological, procreational, social, legal, and economic aspects. During marriage, spouses support their children, acquire particular property, and assume rights and obligations. The ownership over particular rights is not addressed when the relationship and understanding between spouses is harmonious, since the entire property serves the purpose of a particular matrimonial cohabitation. The divorce entails

³⁶ German Insurance Contract Act of 2007 (*Versicherungsvertragsgesetz*), Article 106.

³⁷ German Insurance Contract Act of 2007 (*Versicherungsvertragsgesetz*), Article 107, paragraph 1.

numerous consequences for the property, which may seriously disturb financial status of spouses and their ability to meet different obligations. The institute of prenuptial agreement is not common in practice and it should be pointed out that the conclusion of a pre-nup does not necessarily guarantee that one of the spouses will not file a suit regarding a right not stipulated in the prenuptial agreement. On the other hand, divorce insurance can provide protection regarding the matters omitted to be entered in the terms of a prenuptial agreement. Taking into account the possibility that events may unfold adversely for the spouses, divorce insurance was introduced to comparative law and insurance practice to cover the mentioned situations. High divorce rate and poor culture regarding the conclusion of prenuptial agreements represent a big chance for insurance companies in Serbia to draw up the terms and conditions for insurance against the risk of divorce and offer them to prospective policyholders. This is particularly when had in mind that this type of insurance can be taken out as a wedding present to newlyweds from relatives, groomsmen, or friends.

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