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ON LEGAL ASPECTS OF RISKS AND INSURANCE POLICY IN THE PRELIMINARY DRAFT OF THE CIVIL CODE OF THE REPUBLIC OF SERBIA (2015)

REVIEW ARTICLE

Abstract

This article is a contribution to the public debate on the Preliminary Draft of the Civil Code of the Republic of Serbia published in mid-2015. The public hearing on this Preliminary Draft has entered the stage in which participants are expected to propose specific wordings of individual articles or paragraphs. With the help of scientific instruments, the author presented a detailed analysis of various legal aspects regarding two significant articles and several provisions on insurance laid out in this Preliminary Draft. Where the author did not agree with a provision contained in an Article of the Preliminary Draft, he sought to take a constructive attitude, i.e. he proposed an original improvement in the verbiage of the provisions contained in each of the two articles. As a rule, the suggestions were made after consulting the views of prominent scientists of SFRY and Serbia in the area of insurance law theory. However, particular wordings suggested by the author took the form of an independent contribution to the provisions on the legal aspects of risk and insurance policy contained in this Preliminary Draft.

Key words: *Civil Code; Preliminary Draft; risk; insurance policy*

Introductory Remarks

1. The Government of the Republic of Serbia passed the Decision on the Establishment of a Special Commission for the purpose of drafting the Civil Code of the Republic

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of Serbia[2]. Six years after its establishment, the Commission for the Preparation of the Civil Code (hereinafter: "Commission") has compiled and published several books and other materials. The latest comprehensive book is the Working Draft of the Civil Code of the Republic of Serbia, prepared for public debate, with alternative proposals of 29 May 2015 (hereinafter: "Preliminary Draft"). In this paper, discussed will be two articles laid out in Chapter XLVI of the Preliminary Draft, which contain all provisions on insurance.

2. In formulating the provisions of the chapter on insurance contained in the Preliminary Draft, the Commission drew on the Law of Contracts and Torts[3] (hereinafter: "LCT"). The formulation of the Preliminary Draft regarding insurance was, to a certain extent, influenced by the Draft Law on Obligations and Contracts[4] (hereinafter: "Draft"). Unlike the legally effective LCT, the Draft has never been an official legal project. It was a project of a Serbian leading scientific figure[5] in the area of legislation. In addition, in the chapter on insurance, the Commission also presented some of its wordings of articles or paragraphs of the Preliminary Draft.

3. The 2015 Preliminary Draft included a total of 2928 Articles which were subject to a public debate. Today's participation in the advanced stage of the public debate requires specific wordings of articles and paragraphs instead of "general considerations and analyses" that the Commission should translate into the articles of the future Code. In order to spare the reader from searching among 2928 articles to find the wording of a relevant article or its paragraph discussed in this paper, the presentation begins with the quotation of an article or its paragraph, and is further discussed. It should be noted that there are no conclusions at the end of this paper. The conclusions are in fact contained in the proposals for support offered in the Preliminary Draft or in specific proposals of wordings that would represent a better solution than that offered in the Preliminary Draft. Naturally, two or three open legislative and legal issues were highlighted as the issues whereof the Commission will need to present its opinion. However, these issues are also formulated. Proposals are usually presented at the end of the item which considers an individual article or provision in its paragraph. Final proposals of a particular article or a provision in its paragraph are indicated in bold letters.

1. Legal Aspects of Risk in Article 1391 of the Preliminary Draft

1.1. Article 1391 of the Preliminary Draft deals with risks. The Article is presented in General Provisions (subsection 1) of the Common Provisions on Property and Personal

[2] *Official Gazette of RS,* no. 104/2006 and 110/2006.

[3] *Official Gazette of SFRY,* no. 29 /1978, 39 / 1985, 45/ 1989 – Constitutional Court of Yugoslavia and *Official Gazette of FRY,* number 31/1993.

[4] Professor Mihailo Konstantinović, PhD: *Obligacije i ugovori, Skica za zakonik o obligacijama i ugovorima,* Centar za dokumentaciju i publikacije Pravnog fakulteta u Beogradu, Beograd, 1969.

[5] Academician, Professor Slobodan Perović, PhD in the Proceedings Trideset godina Zakona o obligacionim odnosima: *Skica za jedan portret,* pp. 7-23.

Insurance (Section 1) Chapter XLVII on insurance. Above Article 1391 of the Preliminary Draft, the heading or the subject of that Article is "Risk". Below the heading, Article 1391 of the Preliminary Draft stipulated: „Risk covered by insurance (risk insured) shall be future, uncertain and independent of the sole will of the policyholder or insured".

1.2. The idea for formulating Article 1391 of the Preliminary Draft most likely came from Article 898, paragraph 1, of the LCT. Above Article 898 of the LCT, the heading is "Insured Event ". Article 898, paragraph 1 of the LCT stipulated that the event in respect of which the insurance is concluded (the insured event) has to be future, uncertain and independent of the sole will of the policyholder. Therefore, in Article 898, paragraph 1 of the LCT, the term - *insured risk* was not used. The term so used in the Preliminary Draft seems to have pointed out that the Commission needs to be reminded of particular views and opinions prevailing in the legal science on insurance, which were expressed after the LCT was adopted.

1.3. In the first sentences of the commentary[6] on Article 898 paragraph 1 of the LCT it was underlined that the LCT did not differentiate between the definition of risk and the definition of the insured event. Furthermore, the comment stressed that in the mentioned Article of the LCT, the term *Policyholder* should be expanded for the purpose of risk interpretation. On the one hand, it was pointed out that the said paragraph of that article did not only include the insured and the policyholder, but also any other user of the objects, the mortgage creditors, the persons in whose favour the insurance was concluded, and others. On the other hand, the comment stated that the policyholder may be a natural or a legal person, where in the case of a legal entity, the issue is raised regarding the liability of a person who acts in the capacity of the body of that legal entity.

1.4. According to another opinion[7], paragraph 1 of Article 898 of the LCT defines the insured event, whereby, according to such opinion, the insured event is considered an actuated risk. In addition, the quoted author interpreted that the term *Policyholder* as per Article 898 paragraph 1 of the LCT includes the will of the Policyholder, but presented to the legislator much more arguments for taking into account the will of the Insured. There were objections regarding paragraph 1 Article 898 of the LCT as to the fact that it was unnecessarily insisted on the existence of the sole will of the policyholder. Namely, it was argued that it would be sufficient to require that the policyholder shows will, whereas the adjective *sole* should be omitted. To illustrate this objection, the quoted author used the example of life insurance contract where the insurer is obliged to pay the sum insured to the insured if the insured returns from the USA after he or she turns 60. In the mentioned example, the author pointed out that it is uncertain whether the insured will live to that age,

[6] Professor Predrag Šulejić, PhD reviewed by Proffessor Slobodan Perović, PhD: *Komentar Zakona o obligacionim odnosima,* Savremena administracija, Beograd, 1955, pp. 1465.

[7] Professor Branko Jakaša, PhD: *Nekoliko napomena na propise Zakona o obveznim odnosima koji se odnose na osiguranje,* Osiguranje i privreda no. 8/1979, pp.13-25.

that is, the fact that he or she lives to be 60 does not depend on the insured's will. Thus, the quoted author concluded that the life insurance contract presented in the example was valid. Unlike the quoted author, who defined the insured event as an actuated risk, the Draft[8] defines the insured event as the actuation of a particular risk. In regard to Article 898 paragraph 1of the LCT, from the above mentioned **it is indisputable that the words – insured event – which were put in brackets, should be deleted from Article 1391 of the Preliminary Draft** because they could become the subject of new criticism. In addition, it **is indisputable** that the **heading above Article 1391 of the Preliminary Draft should remain– Risk.**

1.5. However, the previous sentence contains the following controversial questions: firstly, does Article 1391 of the Preliminary Draft adequately express a circle of interested parties? Secondly, in Article 1391 of the Preliminary Draft it is disputable which syntagm is more appropriate - independence from the sole will of the interested parties or independence from the will of the interested parties?

1.6. Regarding the first controversial question, from the foregoing it can be concluded that Article 1391 of the Preliminary Draft does not make an adequate legal representation of the circle of interested parties. If the first opinion was to be implemented in the Code, the circle of interested parties could include the insured, the policyholder, and the insurance beneficiary. If the second opinion was implemented in the Code, the interested parties could include at least the policyholder and the insured, however, according to this opinion, this does not close the circle of interested parties. If attempts were made to reconcile these opinions, the following result could be reached. **It is proposed** that the **circle of interested parties as per 1391 of the Preliminary Draft** includes the insured, the policyholder and the insurance beneficiary - which would also reconcile the difference between these two opinions.

1.7. Regarding the second controversial question, it seems that Article 1391 of the Preliminary Draft should contain the syntagm – independent from the will of the Insured, Policyholder, and Insurance Beneficiary and a third party. Additionally, it **is proposed that the revised text** of Article 1391 of the Preliminary Draft reads: **Risk covered by insurance shall be a future, uncertain event independent from the will of the Insured, Policyholder, and Insurance Beneficiary.**

2. Elements of Insurance Policy in the Provisions of Paragraphs 1 and 2 of Article 1407 of the Preliminary Draft

2.1.1. Article 1407 of the Preliminary Draft deals with insurance policy and thus, it is only logical that it will appear in the Section 3 – *Conclusion of the Contract* – and further, within the Section 1 – *Common Provisions on Property and Personal Insurance*, Chapter XLVII on insurance.

[8] Article 874 paragraph 1 of the Draft.

2.1.2. Above Article 1407 of the Preliminary Draft there is a heading – *Insurance Policy* – whereas the Article is structured to stipulate seven paragraphs. Paragraph 1 is short, whereas paragraph 2 is longer and includes 11 indents. Other paragraphs of that Article are not the subject of analysis in this paper.

Paragraph 1, Article 1407 of the Preliminary Draft includes the following precept: „The Insurer shall promptly deliver to the Contracting Party a duly composed and signed insurance policy or any other document evidencing the concluded insurance contract (cover note, etc.)".

Paragraph 2, Article 1407 of the Preliminary Draft stipulates compulsory elements of insurance policy. After the introductory sentence in paragraph 2 Article 1407 of the Preliminary Draft, which is intended to convey the compulsory character of the elements mentioned below, 11 elements of insurance policy were set forth, as follows: „In the policy, the following shall be indicated: Contracting Parties, object insured or person insured, indication of the insurance beneficiary, risk covered by insurance, insurance period and cover period, sum insured or indication that the insurance is unlimited, premium or contribution, date of policy issue and signatures of Contracting Parties, participation of the insured or beneficiary in the profit distribution in life insurance, governing law applicable to the contract if such law is not the law of the Republic of Serbia, name and address of the supervisory body in charge of controlling the insurer or other body to which complaints may be filed in connection with insurance contract".

2.2. Regulatory and Legal Aspects of the Provisions in Article 1407 of the Preliminary Draft

2.2.1. Among the articles contained in the chapter on insurance, Article 1407 is the most extensive one. Three important legislative and legal factors influenced the scope of this Article. First was the idea of the Commission to make the previous paragraph 2 (which will become paragraph 1 in the proposal made in this paper) a leading or common Article for all property and personal insurance lines. In addition, the legal elements in the concept of insurance policy would be in line with the essential elements of the insurance contract and thus, the insurance contract would be considered concluded by signing the policy. Another factor related to the number of compulsory elements in insurance policy. The fact is that the comparative insurance law tends[9] to increase the number of elements that the laws which define the term *insurance policy* should contain. The Preliminary Draft followed that trend by defining 11 elements of insurance policy whereas, for example, in the provisions

[9] Professor Predrag Šulejić, PhD: *Ugovor o osiguranju u Prednacrtu Građanskog zakonika Srbije,* Proceedings from Legal Days in Budva, June 2010, pp. 27-42.

defining insurance policy, the Draft and the LCT contained seven elements each. The third factor highlighted the relationship between insurance policy and cover note. Namely, the LCT and the Draft took one approach to legislative and legal relationship between insurance policy and cover note, whereas the Preliminary Draft took another approach. The Draft and the LCT combined the terms of insurance policy and cover note into one Article. Conversely, in one Article (1407) of the Preliminary Draft, the Commission outlined the provisions on insurance policy elements and in the second, subsequent Article (1408), the provisions on cover note were presented. **The author of this paper supports the Commission's ideas to define compulsory elements of insurance policy in Article 1407 of the Preliminary Draft which will be common to all property and personal insurance lines, and to increase the number of compulsory elements in the definition of the term insurance policy in comparison to the Draft and the LCT and, finally, to regulate the term insurance policy in one Article, whereas another Article should define the term cover note**.

2.2.2. The LCT constituted a firm legal rule that the conclusion of an insurance contract is a formal legal transaction. Ever since the LCT has entered into force, this legal rule has been the subject of objections. Namely, after the entry into force of Article 902, paragraph 1 of the LCT (1 October 1978), the insurance experts[10] objected that the insurers would find that the signing of an insurance policy and other insurance documents represents an expensive manipulation. To support this thesis of expensive manipulation with policy signing they mentioned the printing costs of one policy, prices of postal services in the distribution of signed policies, other expenses for particular types of insurance operations, and the like. Article 1407 of the Preliminary Draft was subject to objections much later in the public debate on the Preliminary Draft[11]. Namely, the signing of insurance policy was discussed as a phase in the conclusion of insurance contract and the question was raised whether insurance policy represents a pure matter of form and administration or just a type of an operating cost. Regarding the expenses to which the insurers are exposed, one of the leading German professors in the area of insurance economics[12] stated, with a German precision, that the share of operating costs of property insurance in the total average costs of an individual insurer is maximum 30%, operating costs of life insurance approximately amount to 10-15%, whereas in health (sickness) insurance

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[10] Hrvoje Ivanišević: *Odraz Zakona o obveznim odnosima na praksu osiguranja osoba,* Osiguranje i privreda no. 1/1980, pp.24-30.

[11] Slobodan Ilijić, M.A.: *Način zaključenja ugovora o osiguranju u Prednacrtu Građanskog zakonika Republike Srbije,* Pravo i privreda no. 7-9/2017, pp.400-413.

[12] Professor Dieter Farny, PhD: *Troškovi poslovanja osiguravajućih preduzeća – razmišljanja o budućim problemima i njihovom rješenju,* Osiguranje i privreda no.3/1977, pp.3-16 (translated form the lecture held at CEA Congress held in Cologne in the beginning of October 1976).

operating costs are et the level of 10%. The same source stated that employee salaries and costs of organisational network (including brokers) account for the biggest share in the operating costs, whereas material expenses account for only 4-5%. Therefore, the author of this paper is of the opinion that **the objections that signing of the insurance policy within the conclusion of the insurance contract represents an expensive manipulation for the insurers are unfounded.** Namely**, the signing of policy or formal conclusion of insurance contract does** not generate **increased operating costs of the insurers.**

2.3. Consideration of Particular Compulsory Elements of Insurance Policy Stipulated in Paragraph 1, Article 1407 of the Preliminary Draft

2.3.1. Paragraph 1 of Article 1407 of the Preliminary Draft offered the provisions according to which the insurer is obliged to promptly present to the insurance contracting party a duly composed and signed policy or any other insurance document (cover note, etc.). The attention was focused on the use of the two terms in the said provisions. The expression – insurance contracting party – and the expression – other insurance document (cover note, etc.) – have raised the question if such expressions could be confusing and produce dilemmas in insurance practice? In the theory of insurance law it is not customary to use the term – insurance contracting party. In addition, it is not true that the cover note is a synonymous with another insurance document. Another insurance document, for example, may be the inventory of contents and equipment in an apartment as a policy schedule in homeowners insurance. Such inventory of contents and equipment in an apartment is an important appendix to the policy because it may serve as an evidence in the event that the fire completely destroys the apartment or partly destroys the contents and equipment therein. The cover note is a temporary replacement of insurance policy i.e. the cover note is not a replacement of any other insurance document. Based on the foregoing, the author of this paper is of the opinion that the present paragraph 1 in Article 1407 of the Preliminary Draft needs to be rephrased and adequately incorporated into the present paragraph 2 of the mentioned Article. Thus, **it is proposed** that the **present paragraph 1 is appropriately incorporated in the present paragraph 2 so as to become paragraph 1 in Article 1407 of the Preliminary Draft**.

2.3.2. The nomotechnical rules recommend that in the first paragraph of an article of the law a general legal rule is established for the topic concerned, after which a general legal rule would be elaborated in the next paragraphs of that article or in further articles of that regulation. Thus, it **is proposed that the new paragraph 1 of Article 1407 of the Preliminary Draft** begins with an **introductory sentence** which would read as follows: **The Insurance Contract is concluded**

when the contracting parties sign a prepared insurance policy or a cover note, which should be determined in the insurance policy as follows: (followed by the list of compulsory elements of insurance policy)**.** This introductory sentence actually means that the Code provides for compulsory elements of the insurance policy which are listed thereinafter in the form of indents. The indents would contain all important elements of insurance policy and all ingredients[13] of insurance policy which, at the same time, represent important elements of an insurance contract. Each indent would end with semicolon. The Preliminary Draft did not contain such punctuation. The meaning of punctuation used in a legal norm differs from the meaning it conveys in literature.

2.3.3. The first obligatory element in the insurance policy is presented in the first indent of the previous paragraph 2 or in the new paragraph 1 of Article 1407 of the Preliminary Draft. Namely, the first element is formulated as - the contracting parties - which is obviously not appropriate to the law. The author of this paper is of the opinion that after the words "the contracting parties" the following words should be added "and their place of residence or seat". In other words, in the insurance practice, the insurance policy is signed by natural and legal persons, both domestic and foreign, and in the event of a dispute, it is important that each party knows the full address of the seat or residence of the other party. More recent, specialised insurance regulations[14] require, among other things, that in addition to the first and last name of an individual, the policy contains his or her personal identity number or, in case of legal entities, their taxpayer's number. Therefore, **it is proposed** that the first indent in paragraph 1 Article 1407 of the Preliminary Draft reads as follows: **contracting parties and their place of residence or seat.** Additionally, the Commission **still needs to deal with the question whether personal ID number or taxpayer's number should be indicated next to the first and last name of an individual or legal entity, respectively.**

2.3.4. Every law shows its good and bad sides after some time of application. This also applies to the LCT in respect of the provisions contained in the chapter on insurance. On the occasion when thirty years from the beginning of the LCT implementation were marked[15], the Secretary of the Commission[16] pointed out to general existence of some inadequate solutions or "weak points" in the provisions of the LCT, which should be rectified in the future Civil Code of the Republic of Serbia. Hence, the opinion of the author of this paper is that in its chapter on insurance, the LCT

[13] Professor Predrag Šulejić, PhD edited by Professor S.Perović, PhD pp.1473, 1542.

[14] Decree on Voluntary Health Insurance („Official Gazette of RS", no. 108/2008 and 49/2009)

[15] Proceedings of the Faculty of Law of the University of Kragujevac and the Institute for Law and Social Science: *Thirty Years of the Law on Obligations,* prepared by the Professor Radovan D. Vukadinović, PhD, Beograd, 2009.

[16] Ratomir M. Slijepčević in the Proceedings Thirty Years of the Law on Obligations, pp. 9-23.

has envisaged more beneficial solutions than the inadequate ones. However, the foregoing statement should be borne in mind. In addition, at present, insurance is more developed than it was at the time when the provisions of the chapter on insurance in the LCT were prepared, and its development is followed by breakthroughs in equipment, technology, and electronics. Thus, **some previously raised questions regarding insurance rights stipulated in the LCT, which were neither answered nor attempted to be answered, now are made topical in the wordings of the provisions of the Preliminary Draft**.

2.3.5. Has one of the inadequate solutions already found its place in the second element of the insurance policy referred to in Article 1407 of the Preliminary Draft? This element of the insurance policy is identical with the element of the insurance policy referred to in Article 902, paragraph 1 of the LCT. Upon the entry into force of the LCT, there were authors who expressed disagreement with the element in the insurance policy referred to in Article 902, paragraph 1 of the LCT, which read "object insured or person insured" [17]. This is why the arguments of that author are still topical. Namely, the quoted author pointed out that a part of the expression "person insured" is associated with property insurance, whereas the other part of the expression "object insured" is associated with the insurance beneficiary and his or her bodily integrity. Based on the whole expression "object insured or person insured" this author concluded that the person insured is not the same as the insured, namely, the person insured is not a synonymous word for the insured. According to the quoted author, the subject matter of insurance may be a number of legal relations such as liability, credit, debt, costs, expenses, etc., and not just an object or a person. Hence, the quoted author was of the opinion that from the legal perspective, it would be most rational to replace the cited expression in the LCT with the "insurance subject matter" as an element of insurance policy, which could be implemented in one of the future amendments to the LCT. After entry into force of the LCT (1978) some innovations were made[18], however, they evidently did not deal with the amendments to Article 902 paragraph 1 of the LCT. Similar remark can be drawn from another opinion[19], which generally tackles the expressions used in the LCT, including the expression "person insured". Namely, this could be confusing. This other author illustrated his opinion by the following example: if a person concludes an insurance contract with an insurer so that the insured event is realized in the life of another person, that other person is called "the insured person". This other person is not an insurance beneficiary, nor is he or she a policyholder. Therefore, the arguments

[17] See the footnote no. 6.

[18] For more details, see M. Slijepčević.

[19] Professor Predrag Šulejić, PhD: *Ugovor o osiguranju u Prednacrtu Građanskog zakonika Srbije od 2010. godine,* Proceedings of the Insurance Law Association of Serbia, from the Conference held in April 2010, pp. 162-187.

of these authors in relation to the term "object insured or person insured" as per Article 902, paragraph 1, of the LCT have never been seriously appreciated and evaluated during any amendments to the LCT and thus, the Commission was presented with **the proposal to reconsider the term "object insured or person insured" i.e. to replace it in the other mandatory element of the insurance policy referred to in paragraph 1 of Article 1407 of the Preliminary Draft, by the term "the subject matter of insurance"**.

2.3.6. "The subject matter of insurance", as a compulsory element of insurance policy, can also be deduced from the obligations and legal perspective. The subject matter of the contract belongs to the essential elements of each contract on obligations, and also to the essential elements of the insurance contract. The subject matter of the contract in the contractual relations is one of the general conditions necessary for the creation of a contract[20]. This scientific explanation argued that the subject matter of the contract[21] does not comprise an "object" but the effect of obligations in relation to such object i.e. the effects of action or non-action in connection with such an object. Further in that scientific explanation, it was pointed out that every subject of a contractual obligation is essentially a property interest of a person. When negotiating the conclusion of the contract, the subject matter of the contract is a subject of negotiations[22]. Some argue [23] that on the one hand, a difference should be made between the subject matter of insurance comprised of the person insured or object insured and, on the other, the subject matter of insurance contract comprised of the effects of obligations i.e. premiums and insurance indemnities or other obligations. The opinion of the author of this paper is that the insurance contract is concluded upon the signing of insurance policy, and thus, the definition of a mandatory element in an insurance policy is at the same time a definition of a material element of any insurance contract. In other words, the legal provisions on insurance policy do not determine the general elements of insurance as a business activity, but the legally binding element of each insurance policy and therefore an important element of any insurance contract. For all of the above reasons, **and from the perspective of obligations and contracts, it is proposed that in the future, the second indent i.e. the second compulsory element of insurance policy referred to in paragraph 1 Article 1407 of the Preliminary Draft** reads: **"subject matter of insurance"** instead of present "object insured" or "person insured".

[20] Professor Slobodan K. Perović, PhD: *Obligaciono pravo,* NIU Official Gazette of SFRY, Beograd, 1981, pp. 311-312.

[21] Ibidem.

[22] Prepared by the Professor Mihailo Stupar in the Proceedings of the Civil Code of Former Yugoslavia: *Opšti imovinski zakonik Crne Gore, naimenovanje iznad člana 513,* Grafički zavod Titograd, 1960, pp.80.

[23] Professor Predrag Šulejić, PhD: *Pravo osiguranja, drugo prošireno izdanje,* NIU Official Gazette of SFRY, Beograd, 1980, pp. 155-158.

2.3.7. Special attention was drawn to the sixth obligatory element of the insurance policy referred to in the sixth indent of paragraph 1, Article 1407 of the Preliminary Draft. Namely, this element read "the sum insured or the insurance is unlimited". One part of this element is stated, in the amended form, in paragraph 5 of Article 1452 of the Preliminary Draft, stipulating that: "If a contract is concluded without an indication of the sum insured or with unlimited coverage, it shall be considered a contract concluded with the highest sum insured". The wording contained in paragraph 5, Article 1452 of the Preliminary Draft has an expression "unlimited coverage", whereas the sixth indent of paragraph 1, Article 1407 of the Preliminary Draft contains the expression "unlimited insurance". It is **evident** that the expressions "**unlimited coverage"** and **"unlimited insurance" are contradictory** and thus, it would be desirable that in its further work, the Commission eliminates this contradiction since legal wordings require clarity and unambiguity**.**

2.3.8. The eighth compulsory element of insurance policy is stipulated in indent 8, paragraph 1, Article 1407 of the Preliminary Draft. This element reads "the date of policy issue and signatures of the contracting parties". The verbiage is taken from Article 902, paragraph 1, of the LCT. This is not incorrect, however, in the present-day circumstances of insurance development, this is incomplete. It seems that the place of issue should be added to the issue date so that the first part of this policy element could read "the date and place of policy issue". It is worth reminding that the place and date of policy issue is related to the territorial scope of insurance in terms of general and special, or supplementary insurance terms and conditions (insurance contract), and that these conditions are determined in accordance with the law. The other part of the wording takes into account the signatures of contracting parties. The insurance literature[24] (on so-called group policies) elaborates in detail the different aspects of signatures of the contracting parties in places where there is a large number of policyholders among insurers and/or reinsurers. The completeness of the second part of this wording requires that the signatures of the authorized persons are added in that part, so that the second part of the consolidated text reads "the signatures of the authorized persons of the contracting parties". Without prejudice to the electronic signature in the policy, etc., because it is outside the scope of this paper, it is **proposed** that the eight compulsory element of the insurance policy reads "**the date and place of policy issue**, **as well as the signatures of the authorized persons of the contracting parties**".

2.3.9. Article 1407, paragraph 1 of the Preliminary Draft provided for a closed list of 11 compulsory elements of the insurance policy. Since the Civil Code is adopted for an indefinite period of time, the opinion of the author of this paper is that **the list of compulsory elements of the insurance policy in paragraph 1 of Article 1407 of the Preliminary Draft should not be closed**. It does not matter

[24] Nikola Nikolić, PhD: *Saosiguranje u našim uslovima, stanje i mogućnosti,* Osiguranje u teoriji i praksi no. 1/1991, pp.23-27.

if the list is comprised of 11, 12, or 13 compulsory elements. What matters is that the list ends with **the other elements or details in accordance with the law**. The meaning of such a wording would be to allow the future legislator to complete the list with new compulsory elements of the insurance policy. If the Commission adopts the solution proposed in this paper, this will not prejudice the compulsory character of the regulation contained in paragraph 1, Article 1407 of the Preliminary Draft.

2.3.10. In the formulation of the compulsory elements of insurance policy, the Commission rightfully had in mind the effects of private international law on Serbian insurance industry (indent 10). However, the Commission did not seem to have thought about the necessary influence of Serbia's constitutional law on the business policy of most foreign insurers operating in Serbia. Namely, it is a notorious fact that the insurer prepares and prints an insurance policy in advance, and that this action is part of the insurer's business policy in relation to the insured. Starting from Article 10 of the Constitution of the Republic of Serbia, **it is proposed that as a mandatory element of insurance policy the Civil Code should stipulate that the form of an insurance policy issued in Serbia is printed in the Serbian language and Cyrillic script, whereas the insurance policy forms in other languages and scripts should be printed in line with a special law.**

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