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ECONOMY AND ARBITRATIONS

In June 2018, the Association of Business Lawyers of Serbia organised a conference entitled *Economy and Arbitrations*. In the introductory paper, **Professor Mirko Vasiljević, PhD** emphasized the importance of comparative advantage in resolving commercial disputes through arbitration. In his paper, the author explored the real reasons and needs to develop alternative ways of resolving commercial disputes in Serbia, especially the lack of regulations and undeveloped practice, notwithstanding the fact that private business companies and entrepreneurs are predominantly the ones expected to recognize their interest in that issue and provide their support. The author points to the general trend of extending the domain of objective arbitration to the domains that, until recently, have been reserved for the national courts. Such intensified preference for arbitration (institutional or ad hoc) has contributed to an increasing number of arbitration disputes at the international level.

Ljubiša Dabić, PhD prepared the paper *Courts of Honour in the Chambers of Commerce*. The author focused on the courts of honour of the chambers of commerce and on their conceptual determination and organization, primarily that of the Court of Honour in the Serbian Chamber of Commerce.

He pointed out that in the Serbian law, the courts of honour decide "in the matters of violation of good business practices". The source of legal standard of "good business practices" lies in business ethics.

Marija Karanikić Mirić, PhD drew attention to the importance of arbitration as an alternative mechanism for resolving consumer disputes. The topic of her paper was *Accountability of the State for the Damage caused by the Enforcement of an Arbitral Award Violating the EU Law*, where she sought to present and consider the views which the European Court of Justice laid down in a court judgment in

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mid-2016, and to highlight a relatively new connection between the EU consumer contract law and the arbitration.

Svetislav Đ. Janković, PhD prepared a report entitled *The Validity of Arbitration Agreement in the Bill of Lading*. In this paper, the author considered the validity of an arbitration agreement concluded within a contract of carriage, which is considered to create a unity with the bill of lading. Janković concluded that an arbitration agreement from a contract of carriage may be binding on a later acquirer of the bill of lading only if he is entered in the bill of lading in such capacity. He considered that the arbitration clause should not be binding on the third party holder of the bill of lading if it does not contain a reference to a contract containing an arbitration clause.

In the report *Time Limits to the Insurer's Liability*, **Vladimir Čolović, PhD** dealt with the application of the "claim's made" clause in liability insurance. As opposed to the provisions of the Law of Contracts and Torts, in the Preliminary Draft of the Civil Code of the Republic of Serbia, the insured event in liability insurance is defined in two ways: as the moment of occurrence of the insured event and as the moment of filing a claim. Whether one or the other element will be defined in the insurance contract depends on the contracting parties, and since the injured party is not a contracting party, this puts it in the unenviable position.

The author considers that the „claim's made“ clause will help insurers to perform better risk assessment.

In her paper *Culture of Arbitration in the Disputes arising from Insurance of Major Risks and Reinsurance*, **Professor Nataša Petrović Tomić, PhD** deals with the application of arbitration in the part that has remained outside the scope of consumer trends. This concerns commercial insurance and reinsurance. According to the author, the key advantage of arbitration for insurance professionals lies in avoiding aleatory outcome and duration of the court proceedings. She supports the foundation of the Arbitration Centre in the Association of Serbian Insurers for the purpose of resolving disputes arising from insurance and reinsurance.

The culture of resolving commercial disputes and reinsurance disputes by arbitration attaches the benefits that this private justice mechanism brings to the stakeholders in insurance business.

In his paper *The Right of Insurance Service Consumers to File a Complaint to the National Bank of Serbia as a Method of Out-of-Court Dispute Resolution*, **Nenad Grujić PhD**, deals with the right of the insured person to object to the work of the insurance company. Analysing the importance of the complaint, the author tried to view this issue from the perspective of all three parties to the process (insurance beneficiary, insurance company and the National Bank) and to obtain a realistic picture of the extent to which the right to complaint contributes to resolving disputes in the insurance market.

A lawyer, **Stefan Kovač** M.A., in his paper *Reinsurance Arbitration* pointed to the exceptional importance of arbitration for the financial sector, while the interests of insurers and reinsurers are “intertwined”.

Ad hoc arbitration is a traditional mechanism for resolving disputes arising from reinsurance. It allows the insurer and the reinsurer a wide flexibility in creating an arbitration agreement and conducting a dispute. An arbitration clause with a broader verbiage enjoys the presumption of arbitration in all disputes arising from a particular contract.

Miloš Radovanović, a doctoral student of law, prepared the report *The Use of Tractor and Insurance Cover*. The author stressed the problems with liability insurance of tractor owners and combined use of tractors as vehicles and as means of labour. He presented the examples from the practice and judgments of the European Court of Justice and the interpretation of the EU Motor Insurance Directive. The EU law does not require Member States to establish compulsory liability insurance for damage caused by the use of tractors.

The author considers that the insurance should not cover the damage caused by the use of tractor as a driving power of other static agricultural devices.

Bojana Bilankov, Master of Laws, prepared the report *Financial Ombudsman - Proposal for the Introduction of a New Mechanism for Resolving Consumer Disputes Arising from Insurance*. She believes that in the provision of insurance services, Serbia can boast a true protection of consumers only after introducing the financial ombudsman to its existing legal system. Such introduction would raise the standards of insurance consumer protection.

Mirjana Glintić, Master of Laws, wrote a paper *Resolving Disputes before the Ombudsman*, with a special reference to the Ombudsman in insurance industry. The German Insurance Act stipulates that the settlement of disputes may be transferred onto private bodies, and accordingly, the Federal Government has transferred this task to the Ombudsman. A consumer dissatisfied with the status of his rights under the insurance contract may either make a complaint to the Ombudsman or institute legal proceedings.

The author considers that the scope of Ombudsman’s powers should not be limited only to insurers but also extended to include brokers and agents.

Tamara Radojčić, Master of Laws, in the paper *Impact of the Information Paradigm on the Insurance Contract Law* focused on improving the position of insurance consumers. Consumer contracts are defined as contracts between the two parties in which one party, the consumer, enters the contract only for personal purposes, whereas the other party is a professional who carries out his professional activities. The insurance beneficiary is often a weaker counterparty. The author points out the European law. Consumer law includes all contracts that a person as a consumer of insurance, be it a natural or a legal person, concludes with an insurer or brokers and

insurance agents, except for “high risk” insurance. Tamara Radojčić concludes that the most adequate solution would be to adopt a special law on consumer insurance.

Andrea Đurović, Master of Laws, prepared a paper *On Damages Covered by Liability Insurance in Road Transport of Goods*. The author considers that adequate insurance is necessary in order to protect all transport participants, and particularly to protect the interests of the persons at whose risk the goods are transported, when had in mind that such goods in transport are accompanied by numerous risks.

In the liability insurance of road carriers, the identified problems related to non-conformity of domestic rules with the CMR Convention. The author considers domestic insurance companies offer a rather narrow cover. As a result, it is likely to happen that the carrier would remain uncovered, despite having concluded the insurance contract. She emphasizes that Serbia has not ratified the 2011 Protocol to the CMR modernizing the rules of the Convention.

Out of the seventy papers presented at the Conference, it is not easy to mention just those that were most topical. Nevertheless, we draw attention to the papers of the following authors: **Aleksandar Ćirić, PhD** *Settlement of Disputes in National and International Commercial Transactions - Do Not Miss Out on the Right to Arbitration*, **Professor Maje Stanivuković, PhD** *“Unprofessional Treatment of an Important Topic: Why One Recommendation for Amending the Law on Arbitration Should Be Completely Ignored*, **Mirjana Cukavac, PhD** *Secretary of Foreign Trade Arbitration in the Serbian Chamber of Commerce until 2016, The Effect of Arbitration Agreement on Third Parties*, **Jelena Vukadinović Marković, PhD** *Arbitrability of Disputes with a Special Focus on Disputes Arising from the Company Law*, **Vanja Serjević**, a judge of the Commercial Court and **Predrag Ćatić**, a specialist in legal affairs in the Association of Banks, *Judicial and Arbitration Practices in Banking*, **Njegoslava Jović**, a Senior Assistant of the Faculty of Law *Arbitrability in International Disputes in the Field of Intellectual Property Rights - Comparative Analysis*, **Professor Dijana Marković Bajalović, PhD** *The Concept of Agreement in the Law on Competition*, **Sanja Stojković Zlatanović, PhD** a research associate, *The Impact and Significance of Arbitration in Contemporary Labour Law - Theoretical Concept, Perspectives and Challenges* and **Marija Dragičević**, a teaching assistant at the Faculty of Law, *Resolution of Individual Labour Disputes by Arbitration - Comparative Review*.

Translated by: **Zorica Simović**