

Nenad B. Grujić, PhD¹

LEGAL DILEMMAS REGARDING THE METHODS OF CONCLUDING DISTANCE INSURANCE CONTRACTS – VIA A MOBILE APPLICATION AND A WEBSITE

SCIENTIFIC PAPER

Abstract

In this paper, the author states that there are two dilemmas in practice regarding the conclusion of distance insurance contracts via mobile applications and websites as a remote communication means. The first dilemma refers to the use of a double authentication as a method of concluding distance insurance contracts, while the second one concerns the permissibility of using the insurance premium payment as a method of concluding distance contracts. The author deals with both dilemmas with a functional and systemic interpretation of the provisions of the Law on the Protection of Financial Service Users in Distance Contracts and the Law of Contracts and Torts. The author concludes that a deviation from the written form of a contract is permitted, in the sense that a policyholder's double authentication is sufficient for the conclusion of a contract, and that a qualified electronic signature of the other contracting party is not required when the contract is concluded via a mobile application and a website of an insurer or a distributor. In addition, the author concludes that the insurance premium payment is an adequate method of concluding a distance contract. Finally, the author tries to provide criteria for establishing the relation between concluding a distance contract via a double authentication and the premium payment, noting that these two methods are not mutually exclusive, but complement each other.

Keywords: *insurance contract, distance contract, premium payment, double authentication, methods of concluding insurance contracts*

¹ The author is the Head of Legal at Generali osiguranje Srbija a.d.o. Beograd, E-mail: nenad.grujic@general.rs.

Paper received on: 06.02.2024.

Paper accepted on: 18.02.2024.

I. Methods of Concluding Distance Insurance Contracts

Almost five years ago, the author published a paper in which he dealt with the rights of insurance service users to unilateral termination of distance insurance contracts.² In the introduction, in addition to the concept of a distance contract,³ he addressed the method of concluding distance insurance contracts.⁴ He had no dilemma that a distance insurance contract can be concluded in four ways, depending on the distance communication means used for that purpose. Those methods are (i) *signatures of the contracting parties*; (ii) *a qualified electronic signature* when the contract is concluded as an electronic document;⁵ (iii) *at least two elements to confirm the user's identity (authentication) or by using electronic identification schemes of a high reliability level* (when the contract is also concluded as an electronic document), with certain limitations regarding the value of such concluded contracts;⁶ (iv) *insurance premium payment* when the so-called insurance without a policy is concluded.⁷ That was the author's first reaction to the new legal regulation, that is, to the Law on the Protection of Financial Service Users in Distance Contracts (hereinafter referred to as the LPFSUDC), which came into force less than a year before writing that paper.

However, five years after the publication of that paper and six years after the implementation of the LPFSUDC, the practice⁸ gave rise to certain dilemmas regarding the methods of concluding distance insurance contracts. Therefore, the author's intention is to try to answer those dilemmas with this paper.

² Nenad Grujić, „Pravo korisnika usluge osiguranja na jednostrani raskid ugovora o osiguranju zaključenog na daljinu“, *Pravo i privreda*, 7-9/2019, pp. 525–538.

³ For a distance contract see: N. Grujić, pp. 526–527; Katarina Ivančević, „Zaštita korisnika finansijske usluge osiguranja pri zaključenju ugovora na daljinu u Srbiji“, *Evropska revija za pravo osiguranja*, br. 1/2016, p. 12.

⁴ Details on distance contracts: Andrej Pak, *Zaključenje i prestanak ugovora o osiguranju*, Novi Sad, 2016, pp. 97–106.

⁵ See: Law on the Protection of Financial Service Users in Distance Contracts, *Official Gazette of the RS*, no. 44/2018, article 3 paragraph. 2.

⁶ See: Law on the Protection of Financial Service Users in Distance Contracts, article 3 paragraph 3.

⁷ In accordance with: Law of Contracts and Torts – LCT, *Official Gazette of the SFRY*, no. 29/78, 39/85, 45/89 – decision of the Constitutional Court of Yugoslavia and 57/89, *Official Gazette of the FRY*, no. 31/93, *Official Gazette of the SMG*, no. 1/2003 – the Constitutional Charter and *Official Gazette of the RS*, no. 18/2020, article 903.

⁸ It is interesting that dilemmas arose in practice without legal science and courts providing answers to those dilemmas, nor did they assist in solving them in any other way. It seems to emphasise that our legal science and case law are not realistic in terms of practical needs, with certain exceptions, of course. Similarly in relation to consumer disputes and case law: Marija Karanikić Mirić, „Zakonodavna hiperaktivnost i delotvorna zaštita potrošača“, *Perspektive implementacije evropskih standarda u pravni sistem Srbije, Knjiga 11* (Stevan Lilić), Beograd, 2021, p. 5.

II. The First Dilemma – is a Double Authentication of a Policyholder Sufficient for the Conclusion of a Distance Insurance Contract or is a Qualified Electronic Signature of an Insurer or a Distributor also Required?

1. Practice of Using a Double Authentication as a Method of Concluding Distance Insurance Contracts and Emergence of a Dilemma

In practice, the first dilemma was about the use of at least two elements to confirm the identity (authentication) of an insurance service user, that is, the use of a double authentication. Namely, practice, i.e. insurers and distributors of insurance services⁹ have shyly, in the last few years, started using a double authentication as a method of concluding distance insurance contracts. This method is used mainly when an e-mail, a mobile application or a website of an insurer or a distributor of insurance services is used as a means of communication for concluding an insurance distance contract. Those pioneering endeavors of insurers and distributors opened the question of whether it is sufficient that only one party, a policyholder, expresses own will to conclude the contract by using a double authentication or it is necessary for an insurer or a distributor to use a qualified electronic signature to conclude an insurance contract, which is an electronic document. In order to answer that question one should, on one hand, start with the regulatory framework, and on the other, with the means of long-distance communication.

2. Regulatory Framework for a Double Authentication as a Method for Concluding Distance Insurance Contracts

As a reminder, the Law of Contracts and Torts (LCT) prescribes the written form of the insurance contract,¹⁰ and the LPFSUDC by provision of article 3 paragraph 2 prescribes that the written form, when concluding a distance contract as

⁹ An insurance service distributor, for the purposes of this paper, means insurance agencies, an insurance agent from article 98 paragraph 2 of the Insurance Law – the IL, *Official Gazette of the RS*, no. 139/2014 and 44/2021, and persons who offer insurance services in accordance with the provisions of article 113 of the IL. This is due to the fact that only those persons out of all insurance service distributors can conclude distance insurance contracts on behalf of and for the account of an insurer by using a distance communication means – a mobile application, an e-mail and a website. About the concept of an insurance service distributor, see: Nataša Petrović Tomić, *Pravo osiguranja, Sistem, Knjiga I*, Službeni glasnik, prvo izdanje, Beograd, 2019, pp. 242–243.

¹⁰ See: LCT, article 901 paragraph 1. "A written form is the most common form of official contracts used today. It requires two conditions – 1) a written text (contents) of a contract, and 2) a handwritten signature on a document." Jakov Radišić, *Obligaciono pravo (opšti deo)*, šesto izdanje, Beograd, 2000, p. 116.

an electronic document, is achieved by using qualified electronic signatures of both contracting parties.¹¹ Furthermore, the provision of article 3 paragraph 3 of the LPFSUDC expressly stipulates that a double authentication can be used as a method of concluding distance insurance contracts in the electronic form only by a policyholder.¹² A qualified electronic signature remains an obligation for an insurer or a distributor. In other words, if an insurer or a distributor offers to conclude a distance insurance contract, and at the same time gives a policyholder the option to use a double authentication, he is obliged to ensure that the contract is signed by a qualified electronic signature on his part, while the other party, the policyholder, can either use a qualified electronic signature or a double authentication (with certain limitations on the value of the contract thus concluded).

3. Practice versus Regulations

However, this legal provision, although very clear, failed the test of practicality. At least regarding a mobile application and a website as a remote communication means that serve to conclude distance insurance contracts, because with an e-mail the dilemma does not exist, that is, it should not exist. What are the reasons for that? With no intention to provide reasons for this, it seems that this is because neither the provisions of article 3 paragraphs 2 and 3 of the LPFSUDC are compatible with a remote communication means – a mobile application and a website.¹³ Undoubtedly, both distance communication means can serve as a method of concluding distance insurance contracts, but none of those two can serve as a means of concluding distance insurance contracts in accordance with the provision of article 3 paragraphs 2 and 3 of the LPFSUDC. This remote communication means implies the availability of the insurance service 24/7 in real time. An average insurance service user who intends to acquire a service via a mobile application or a website expects to be able to do so at any time of the day.¹⁴ More importantly, he expects to obtain a service quickly, efficiently and reliably. However, the provisions of article 3 paragraphs 2 and 3 of the LPFSUDC do not permit this. If every time a policyholder initiates the

¹¹ See: Law on the Protection of Financial Service Users in Distance Contracts, article 3 paragraph 2.

¹² The law uses the term *user*.

¹³ In case of an e-mail or a similar remote communication means, when the participation of a natural person on the side of an insurer or a distributor is implied, the use of a qualified electronic signature by an insurer or a distributor is not questionable. This obligation clearly follows from the provision of article 3 paragraph 3 of the Law on the Protection of Financial Service Users in Distance Contracts.

¹⁴ Similarly see: EIOPA, EIOPA's Digital Strategy, Support consumers, markets and the supervisory community through digital transformation, 2023, <https://www.eiopa.europa.eu/system/files/2023-10/EIOPA%20Digital%20Strategy.pdf>, accessed: 6.2.2024, p. 3. U: Piotr Tereszkiwicz, Katarzyna Poludniak-Gierz, „Consumer Protection in Polish Insurance Law”, in: Piotr Tereszkiwicz, Mariusz J. Golecki (ed.), *Protecting Financial Consumers in Europe*, Leiden Boston, 2023, pp. 25-45.

process of concluding an insurance contract via a mobile application or a website, an insurer or a distributor must participate in that process in real time and provide a qualified electronic signature, it leads to the economic unprofitability of thus concluded insurance contract.¹⁵ Then an insurer or a distributor must provide a sufficient number of experts authorised to conclude insurance contracts, with qualified electronic signatures and on duty 24/7, including holidays and non-working days. Although theoretically possible, it is not essentially possible because it implies disproportionately high costs that will certainly affect the insurance premium, and indirectly discourage insurance service users¹⁶ from acquiring a service via a remote communication means – a mobile application and a website.¹⁷ This would certainly not be acceptable to insurers, distributors, or policyholders,¹⁸ and more broadly, neither to the legislator, because the intention of the legislator is certainly not to discourage digital channels for insurance service distribution.^{19,20} On the contrary, it seems that the legislator has significantly contributed to the development of digital

¹⁵ The legislator announced the reduction of the costs of contracting parties (financial institutions and users) as one of the main positive effects of the adoption of the Law on the Protection of Financial Service Users in Distance Contracts. See: Narodna skupština Republike Srbije, *Obrazloženje Predloga zakona o zaštiti korisnika finansijskih usluga kod ugovaranja na daljinu*, http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/1274-18.pdf, accessed: 6.2.2024, p. 16.

¹⁶ That is contrary to article (5) of the preamble of the Directive 2002/65/EC of the European Parliament and of the Council concerning the distance marketing of consumer financial services. The Law on the Protection of Financial Service Users in Distance Contracts was adopted under the direct influence of that directive, in order to fulfill the obligation of harmonising the domestic law with the EU law. See: *Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part*, *Official Gazette of the RS – International Agreements*, no. 83/2008, article 91. The National Assembly of the Republic of Serbia, *Explanation of the Proposal of the Law on the Protection of Financial Service Users in Distance Contracts*, p. 19.

¹⁷ The option that a qualified electronic signature of a certain person is systemically generated by a software is excluded without the participation of that person in the process of signing the document. Although such solution provides a qualified electronic signature on a document, the fact that it was generated by a computer programme and not by a human takes away from such signature the property of a signature in terms of provisions of article 50 paragraph 2 of the Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business, *Official Gazette of the RS*, no. 94/2017 and 52/2021.

¹⁸ Modern regulatory framework of insurance law is characterized by the protection of the interests of both insurers and policyholders. See: Nataša Petrović Tomić, „O hitnosti usvajanja izmjena regulatornog okvira osiguranja – prijedlog izmjena Zakona o obveznim odnosima Republike Hrvatske“, *Hrvatski časopis za OSIGURANJE*, No. 7, 2022, p. 50.

¹⁹ On importance of digital insurance distribution channels in modern world see: Miro Stipić, Marinko Jurilj, „Pravci razvoja alternativnih prodajnih kanala na hrvatskom tržištu osiguranja“, *Zbornik radova Veleučilišta u Šibeniku*, Vol. 9 No. 3-4, 2015, pp. 95-106. Maja Mihelja Žaja, Ljubica Milanović Glavan, Mateja Grgić, „Digitalna tehnologija kao čimbenik razvoja kanala distribucije u osiguranju“, *Hrvatski časopis za OSIGURANJE*, No. 3, 2020, pp. 199–202.

²⁰ Moreover, Proposal of the LPFSUDC was submitted in order to improve the use of information and communication technologies in financial services. See: The National Assembly of the Republic of Serbia, *Explanation of the Proposal of the Law on the Protection of Financial Service Users in Distance Contracts*, p. 15.

insurance distribution channels in the last ten years by amending and supplementing the regulations.²¹

Therefore, the consistent application of the provision of article 3 paragraph 3 of the LPFSUDC via a mobile application or a website, at least concerning insurance contracts, would have the opposite effect, would be detrimental for users and lead to a significant increase in the price of the insurance product, and probably to dissatisfaction due to the speed, efficiency and reliability of the process itself.²² This would mean that the provision of article 3 paragraph 3 of the LPFSUDC would not fulfill its function. Since everything is functional in the law, the legislator certainly did not intend to make the provision of article 3 paragraph 3 of the LPFSUDC non-functional. In this sense, it would be appropriate to insert into the equation a functional interpretation of the provision of article 3 paragraph 3 of the LPFSUDC.

4. How to Legally Reconcile the Requirements of Practice and Regulations in Distance Contracts via a Mobile Application and a Website?

It seems that one potential answer to that dilemma is provided by the provision of article 901 paragraphs 2 and 3 of the Law of Contracts and Torts (LCT).²³ Namely, that provision enables an insurance contract to be concluded with the signature of only one contracting party – a policyholder. Namely, if a policyholder makes a written offer to an insurer, it is binding for eight days during which he has the option to decline the offer,²⁴ and if he does not decline it, the contract is considered concluded as of the date when the offer arrived.²⁵ In this sense, the use of a double authentication in accordance with the provision of article 3 paragraph 3 of the LPFSUDC, whose function is to be a substitute for a policyholder's signature, can fulfill its function by replacing a policyholder's signature just not on an insurance policy but on the offer for an insurance policy. It is necessary that insurers and distributors in mobile applications and on websites ensure that a policyholder with a double authentication makes an offer in accordance with the provision of article 901

²¹ For example, according to data obtained from Generali osiguranje Srbija a.d.o. Belgrade, this insurance company concluded around 110,000 insurance contracts in 2023 through digital distribution channels (a mobile application and a website).

²² The fact that it requires the participation of a natural person, an insurer or a distributor, during conclusion of a contract certainly has a negative effect on the speed, efficiency and reliability of the process. Therefore, a user's experience will not and cannot be in accordance with a user's expectations. When deciding to obtain an insurance product via a mobile application or a website a user most certainly expects a digital experience with all the advantages and benefits, which to a large extent are dictated by the needs of a modern consumer, that is, an insurance service user.

²³ See: LCT, article 901 paragraphs 2 and 3.

²⁴ More precisely, an insurer can decline the policyholder's offer within eight days, except when a medical examination of the insured is required, in which case that period is 30 days.

²⁵ More about the method of concluding an insurance contract, according to the provision of article 901 paragraphs 2 and 3 of the LCT see: N. Petrović Tomić, pp. 301–302.

paragraph 2 of the LCT. Having in mind that the provision of article 3 paragraph 1 of the LPFSUDC stipulates a corresponding application of the LCT, there is no obstacle for concluding a distance insurance contract.

Another mechanism for overcoming this problem could be that functional, but also systemic interpretation of the provision of article 3 paragraph 3 of the LPFSUDC. Having in mind that the goal and function of that provision is to provide insurance service users (insurance policyholders) with easier, simpler and faster access to the service, as well as that the provision of article 3 paragraph 1 of the LPFSUDC stipulates a corresponding application of the LCT, it seems that there is room for the application of the provision of article 900 paragraph 2 of the LCT. That provision enables deviation from the written form of a contract if it is in the unquestionable interest of the insured.^{26,27} It seems unequivocal that it is in the unquestionable interest of an insured (policyholder) to enable him to conclude a contract in a faster, more efficient and more reliable manner, and at the same time significantly cheaper.²⁸ Accordingly, deviation from the written form of an insurance contract, in the sense that for the validity of an insurance contract concluded via a mobile application or a website of an insurer or a distributor, only the signature of one contracting party, a policyholder, is sufficient, whereby he signs, i.e. expresses his will to conclude a contract using a double authentication which replaces the signature (in accordance with the provision of article 3 paragraph 3 of the LPFSUDC), seems possible, permitted and justified in accordance with the provision of article 900 paragraph 2 of the LCT.²⁹ Moreover, it seems reasonable to consider whether such method of concluding an insurance contract would be a deviation from the written form of a contract. The provision of article 72 paragraph 4 of the LCT stipulates that a written form of a contract can be satisfied by declarations of will given "by a means that enables the content and the person giving the declaration to be determined with certainty".^{30,31}

²⁶ See: LCT, article 900 paragraph 2. More about the application and limitations of the provision of article 900 paragraph 2 of the LCT see: Nataša Petrović Tomić, „O ograničenoj i umerenoj slobodi ugovaranja u ugovornom pravu osiguranja: fenomen 'pokoravanja' ugovora o osiguranju, *Anali Pravnog Fakulteta u Beogradu*, 1/2020, pp. 113–114.

²⁷ Deviation from the written form of an insurance contract is possible based on the provision of article 900 paragraph 2 of the LCT see: Predrag Šulejić, *Pravo osiguranja*, Pravni Fakultet Univerziteta u Beogradu, Beograd, 2005, p. 190.

²⁸ The involvement of the human factor in the process of concluding a distance insurance contract, in accordance with the provision of article 3 paragraph 3 of the LPFSUDC, significantly increases the cost of the conclusion process and has an undesired indirect effect on the insurance premium amount.

²⁹ Protection of the insured as the main goal of the PFSUDC is complemented by the protective function of the domestic law on insurance contracts. The relation between the consumer law and law on insurance contracts: Nataša Petrović Tomić, *Zaštita potrošača usluge osiguranja*, Pravni Fakultet Univerziteta u Beogradu, Beograd, 2015, p. 76.

³⁰ See: LCT, article 72 paragraph 4.

³¹ More about the satisfaction of the written form of the contract by using a distance communication means: Saša Nikšić, „Pisani oblik ugovora i drugih pravnih poslova“, *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 72, No. 1-2, 2022, pp. 311–315.

A mobile application and a website are certainly such methods when used by an insurer or a distributor, because the person giving the declaration of will and the content of that declaration can be undoubtedly and reliably determined, just as a double authentication is to a policyholder.

In this sense, having in mind all of the above, it is clear that distance insurance contracts concluded via a mobile application or a website as a remote communication means, by using only a double authentication by a policyholder as a method of concluding the contract, cannot be revoked due to the provision of article 900 paragraph 2 of the LCT and the provision of article 3 paragraph 1 of the LPFSUDC, but also due to the provision of article 72 paragraph 4 of the LCT.

The third and perhaps the safest way to overcome that problem is that insurers and distributors of insurance products use the payment of insurance premium as a method of concluding a distance insurance contract contract, via a mobile application and a website, that is, they abandon a double authentication as a method of concluding distance contracts. However, it cannot be claimed that this mechanism, regardless of its safety, presents the desired scenario. In that case provisions of article 3 of the LPFSUDC remain non-functional, at least when a mobile application and a website are used as a remote communication means, which is not and should not be the practice. However, if one were to follow that path, a new dilemma unexpectedly opens up.

III. The Second Dilemma – is the Insurance Premium Payment a Legitimate Method of Concluding a Distance Insurance Contract?

In practice, the question arose as to whether the insurance premium payment, as a method of concluding an insurance contract, is stipulated by the provision of article 903 of the LCT, is generally possible as a method of concluding a distance insurance contract after the entry into force of the LPFSUDC, since this law did not mention the insurance premium payment as a method of concluding a distance contract.³² Accordingly, and having in mind the focus of this paper, the dilemma is whether the insurance premium payment is a possible method of concluding a distance insurance contract if a mobile application and a website of an insurer or a distributor are used as a distance communication means. In order to get an answer to that question, one should first start with the legislation and then the needs of practice.

³² Take into account that the Law on the Protection of Financial Service Users in Distance Contracts does not regulate the form of distance contracts, but leaves that to the laws governing financial service contracts. See: Mirjana Radović, „Posebna zaštita korisnika finansijskih usluga kod ugovaranja na daljinu“, *Sloboda pružanja usluga i pravna sigurnost*, Institut za pravne i društvene nauke Pravnog fakulteta Univerziteta u Kragujevcu, 2019, p. 825.

1. Insurance Premium Payment was Originally Created Precisely for a Distance Contract Conclusion

Provision of article 903 of the LCT, which stipulates the insurance premium payment as a method of concluding an insurance contract, originally served for the conclusion of a distance insurance contract. After all, the title of article 903 of the LCT reads *Insurance without a policy*, which only confirms that the legislator's intention was to use this provision when life situations (practice) do not enable fulfillment of the requirements of the written form of the contract, and there is the need for insurance. That function of the provision of article 903 of the LCT should not be disputable.³³

2. Law on the Protection of Financial Service Users in Distance Contracts did not Exempt the Implementation of Article 903 of the LCT

According to a linguistic interpretation of the provisions of the LPFSUDC, it seems obvious that the corresponding application of the LCT is stipulated (article 3 paragraph 1 of the LPFSUDC). On the other hand, as we said before, although it prescribes the written form of an insurance contract, the LCT still permits three exceptions. One is based on the provision of article 903 of the LCT (the so-called insurance without a policy), and other is based on article 900 paragraph 2 of the LCT (when deviation from the written form of an insurance contract is permitted if it is undoubtedly in the insured's interest), and the third is based on the provision of article 901 paragraphs 2 and 3 of the LCT (conclusion of a contract because an insurer missed the deadline to decline the offer for the conclusion of a contract).³⁴ This is important because the LPFSUDC insists on applying the provisions of article 3 paragraphs 2 and 3 only if a mandatory written form of an insurance contract is prescribed by the LCT. However, considering that the LCT does not prescribe a mandatory written form of an insurance contract, but it recognizes three exceptions to the mandatory written form, it seems that there is no reason to apply the provisions of article 3 paragraphs 2 and 3 of the LPFSUDC and also recognize and permit those two exceptions (provided that the first addressed dilemma is an exception at all). Otherwise, if the position were taken that after the entry into force of the LPFSUDC, it was prohibited to conclude a distance insurance contract by paying the insurance premium in accordance with the provision of article 903 of the LCT, we would be in a situation where this provision would remain without any useful value,

³³ In that sense see: P. Šulejić, p. 190; N. Petrović Tomić, p. 302.

³⁴ Exceptions to the written form of an insurance contract, especially this third exception according to the provisions of article 901 paragraphs 2 and 3 of the LCT led certain authors to advocate the position on the informal nature of insurance contracts in our law. See: Vladimir Kapor, Slavko Carić, *Ugovori robnog prometa*, Deveto izdanje, Novi Sad, 1996, pp. 312–313.

completely non-functional. This provision (article 903 of the LCT) before the mass (and electronic) distance communication means served as a method of concluding an insurance contract when an insurer and a policyholder were not in direct contact, but used traditional distance communication means (mail, fax or telephone), which undoubtedly made such contracts distance insurance contracts, which would now be impossible according to this interpretation. I am convinced that the legislator's intention when adopting the LPFSUDC was not to disable the traditional methods of concluding distance insurance contracts that have existed for decades.

Therefore, it seems that the insurance premium payment as a method of concluding a distance insurance contract is not contrary to the provisions of the LPFSUDC. At the same time, it is important to have in mind that the provision of article 903 of the LCT is an exception to the general rule on the written form of a contract from article 901 of the LCT, and efforts should be made to, at least until the regulation of the law on insurance contracts changes,³⁵ the insurance premium payment is used as a method of concluding a distance insurance contract only in certain life situations, due to the need of an insured or the nature of the distance communication means. Consideration of various life situations is why the provision of article 903 was entered in the LCT, so it should be applied. In addition, the LCT always permits exceptions if it is undoubtedly in the interest of an insured, so there is no reason not to do so with the insurance premium payment as a method of concluding a distance contract. Finally, the provisions of the LPFSUDC take into account the nature of distance communication means used to conclude distance contracts. Applying all three mentioned criteria, the conclusion seems obvious that nothing is more natural, more reasonable, but also more legal than to use insurance premium payment as a method of concluding a distance insurance contract when a mobile application or a website is used as a distance communication means.

IV. Instead of a Conclusion – the Relation between the Insurance Premium Payment and a Double Authentication as a Method of Concluding a Distance Contract via a Mobile Application and a Website

Now that we have solved these two dilemmas, it remains to see what the relation is between these two methods of concluding distance contracts via distance

³⁵ Preliminary draft of the Civil Code of Serbia (published on May 29, 2015) goes exactly in that direction and introduces the informal character of an insurance contract, which is otherwise in accordance with the decisions of most countries where an insurance contract is considered concluded when agreement is reached on the essential elements. See: N. Petrović Tomić, p. 301. O razlozima za uvođenje neformalnog karaktera ugovora o osiguranju u naše pravo i protiv njega, videti: Slobodan Ilijić, „Način zaključenja ugovora o osiguranju u Prednacrtu građanskog zakonika Republike Srbije“, *Pravo i privreda*, 7-9/2017, pp. 401–412.

communication means – a mobile application and a website. To what extent do these two methods of concluding contracts compete with each other, and to what extent do they complement each other? Although it may seem at first glance that they are competitive, that is, they are equally important and are used as a method of concluding distance insurance contracts in the same factual situations, it seems that this is not exactly the case. Namely, it seems that determining the relation between these two methods of concluding contracts should be based on the interests. Let's start from the fact that the main difference between these two methods of concluding contracts is in the insurance premium payment. If a contract is concluded by paying the insurance premium, it is obvious that the premium is paid in full at the time of concluding the contract. For an insurer, it is a favourable circumstance because it does not have to take into account the risk that the insurance premium will not be paid, while for a policyholder it can sometimes be a favourable circumstance (if the insurance premium is moderately low and excludes the risk of being left without a cover due to non-payment of the insurance premium, and he needs relatively urgent cover), and it can also be unfavourable (if the insurance premium is high, so paying the insurance premium in full at the time of concluding a contract presents a financial burden, or if, on the other hand, there is no need for urgent cover, so he is more willing to take the risk of possible future irregular premium payments and consequences thereof). If a contract is concluded via a double authentication as a method of concluding an insurance contract, the insurance premium is paid after the conclusion. For an insurer it can be a favourable circumstance (due to the insurance premium he consciously assumes the risk that the insurance premium will not be paid for the sake of making the insurance service more accessible to policyholders and insureds), and it can also be unfavourable (in case of occurrence³⁶). Likewise, for a policyholder it can be a favourable circumstance (due to the insurance premium it is easier to obtain cover because there is no obligation to pay the insurance premium immediately), and it can also be unfavourable (after concluding a contract he loses a cover because he did not pay regularly or did not pay the insurance premium at all).

Therefore, the answer to the question when will insurers and distributors use insurance premium payment or a double authentication for concluding a distance insurance contract via a mobile application or a website depends on the type of insurance, the insurance period, the insurance premium, and other specifics which only practice can impose. In this sense, it is likely that a double authentication and

³⁶ Double authentication as a method of concluding an insurance contract has not yet passed the test of case law. Taking into account some previous experiences and other circumstances, it will be interesting to see how our courts will interpret not only the validity of contracts thus concluded, but also how they will value evidence of the conclusion, i.e. the existence of a contract. It is a future uncertainty that the entire insurance sector, including the legislator, should be aware of in the future and be prepared to react. Not only in terms of changing practice, but also in terms of changing regulations, if necessary.

an insurance premium payment will naturally determine their relation in future, and that they will not be a competition but complement each other.

Translated by: **Jelena Rajković**

Literature

- Direktiva 2002/65/EZ Evropskog parlamenta i veća o trgovini na daljinu finansijskim uslugama namenjenim potrošačima iz 2002. godine (DIRECTIVE 2002/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC).
- EIOPA, EIOPA's Digital Strategy, Support consumers, markets and the supervisory community through digital transformation, 2023, <https://www.eiopa.europa.eu/system/files/2023-10/EIOPA%20Digital%20Strategy.pdf>, accessed: 6. 2. 2024.
- Grujić, N., „Pravo korisnika usluge osiguranja na jednostrani raskid ugovora o osiguranju zaključenog na daljinu“, *Pravo i privreda*, 7-9/2019, pp. 525–538.
- Ilijić, S., „Način zaključenja ugovora o osiguranju u Prednacrtu građanskog zakonika Republike Srbije“, *Pravo i privreda*, 7-9/2017, pp. 400-413.
- Ivančević, K., „Zaštita korisnika finansijske usluge osiguranja pri zaključenju ugovora na daljinu u Srbiji“, *Evropska revija za pravo osiguranja*, No. 1/2016, pp. 10–19.
- Kapor, V., Carić, M., *Ugovori robnog prometa*, Ninth edition, Novi Sad, 1996.
- Karanikić Mirić, M., „Zakonodavna hiperaktivnost i delotvorna zaštita potrošača“, *Perspektive implementacije evropskih standarda u pravni sistem Srbije*, Book 11 (Stevan Lilić), Belgrade, 2021, pp. 1–18.
- Mihelja Žaja, M., Milanović Glavan, Lj., Grgić, M., „Digitalna tehnologija kao čimbenik razvoja kanala distribucije u osiguranju“, *Hrvatski časopis za OSIGURANJE*, No. 3, 2020, pp. 191–214.
- Miro Stipić, Marinko Jurilj, „Pravci razvoja alternativnih prodajnih kanala na hrvatskom tržištu osiguranja“, *Zbornik radova Veleučilišta u Šibeniku*, Vol. 9 No. 3-4, 2015, pp. 95–106.
- Narodna skupština Republike Srbije, *Obrazloženje Predloga zakona o zaštiti korisnika finansijskih usluga kod ugovaranja na daljinu*, http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/1274-18.pdf, accessed: 6. 2. 2024.
- Nikšić, S., „Pisani oblik ugovora i drugih pravnih poslova“, *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 72, No. 1-2, 2022, pp. 299–328.

- Pak, A., *Zaključenje i prestanak ugovora o osiguranju*, Novi Sad, 2016.
- Petrović Tomić, N., *Zaštita potrošača usluge osiguranja*, Pravnik Fakultet Univerziteta u Beogradu, Belgrade, 2015.
- Petrović Tomić, N., *Pravo osiguranja, Sistem, Book I*, Službeni glasnik, First edition, Belgrade, 2019.
- Petrović Tomić, N., „O ograničenoj i umerenoj slobodi ugovaranja u ugovornom pravu osiguranja: fenomen ‘pokoravanja’ ugovora o osiguranju, *Anali Pravnog Fakulteta u Beogradu*, 1/2020, pp. 100–125.
- Petrović Tomić, N., „O hitnosti usvajanja izmjena regulatronog okvira osiguranja – prijedlog izmjena Zakona o obveznim odnosima Republike Hrvatske“, *Hrvatski časopis za OSIGURANJE*, No. 7, 2022, pp. 29–54.
- Radišić, J., *Obligaciono pravo (opšti deo)*, Sixth edition, Belgrade, 2000.
- Radović, M., „Posebna zaštita korisnika finansijskih usluga kod ugovaranja na daljinu“, *Sloboda pružanja usluga i pravna sigurnost*, Institut za pravne i društvene nauke Pravnog fakulteta Univerziteta u Kragujevcu, 2019, pp. 813–833.
- Šulejić, P., *Pravo osiguranja*, Pravni Fakultet Univerziteta u Beogradu, Belgrade, 2005.
- Tereszkiewicz, P., Poludniak-Gierz, Katarzyna., „Consumer Protection in Polish Insurance Law“, in: Tereszkiewicz, Piotr., Golecki, Mariusz J., (ed.), *Protecting Financial Consumers in Europe*, Leiden Boston, 2023, pp. 25–45.
- Vlada Republike Srbije, Komisija za izradu Građanskog zakonika Srbije, Prednacrt građanskog zakonika Srbije, 2015, <https://www.mpravde.gov.rs/files/NACRT.pdf>, accessed: 6. 2. 2024.
- Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business, *Official Gazette of the RS*, nos. 94/2017 and 52/2021.
- Law of Contracts and Torts – LCT, *Official Gazette of the SFRY*, no. 29/78, 39/85, 45/89 – decision of the Constitutional Court of Yugoslavia and 57/89, *Official Gazette of the FRY*, no. 31/93, *Official Gazette of the SMG*, no. 1/2003 – the Constitutional Charter and *Official Gazette of the RS*, no. 18/2020
- Law on insurance, *Official Gazette of the RS*, no. 139/2014 and 44/2021.
- Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, *Official Gazette of the RS – International Agreements*, No. 83/2008,
- Law on the Protection of Financial Service Users in Distance Contracts, *Official Gazette of the RS*, No. 44/2018.