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Prof. dr Mirela Mitrašević[1]

AKTUARSKI ASPEKTI PRIMENE VEŠTAČKE INTELIGENCIJE U ODREĐIVANJU CENA NEŽIVOTNOG OSIGURANJA U REPUBLICI SRPSKOJ

ORIGINALNI NAUČNI RAD

Apstrakt

U ovom radu akcenat je na pretpostavkama koje je neophodno da zadovolje modeli koji koriste veštačku inteligenciju u svrhu određivanja cena neživotnog osiguranja u Republici Srpskoj. Prilikom primene Generalizovanih linearnih modela, koji su najzastupljeniji u savremenoj praksi određivanja cena neživotnog osiguranja, aktuari su svesni rizika da će usled neadekvatnog izbora promenljivih i njihove međusobne veze model pokazati lošije performanse. Navedeni nedostatak bio je jedan od razloga zbog koga su stručnjaci iz ove oblasti počeli da razvijaju modele koji kombinuju neuronske mreže i Generalizovane linearne modele za određivanje cena osiguranja, a u radu smo analizirali dva hibridna modela: *Combined Actuarial Neural Network* i *LocalGLMnet*. Sumirajući rezultate prikazane u izabranoj literaturi dolazimo do zaključka da navedeni modeli mogu da daju bolje rezultate u poređenju sa Generalizovanim linearnim modelima, ali budući da postupci određivanja cena osiguranja nisu u potpunosti transparentni, neophodna su dalja istraživanja koja će doprineti razvoju modela usklađenih sa propisima i standardima aktuarske prakse.

Ključne reči: Generalizovani linearni modeli, neuronske mreže, Combined Actuarial Neural Network, LocalGLMnet, standardi aktuarske prakse.

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I Uvod

Određivanje cena neživotnog osiguranja, koga karakterišu stohastički tokovi isplata odštetnih zahteva tokom vremena, je veoma složen posao aktuara. U tu svrhu aktuari vrše projekciju odštetnih zahteva za određeni vremenski period oslanjajući se na adekvatne statističke podatke, uz pomoć složenih matematičkih modela.

U ovom radu cilj nam je bio da istražimo koje pretpostavke je neophodno ispuniti kako bi se veštačka inteligencija mogla koristiti na tržištu osiguranja Republike Srpske u svrhu određivanja cena u skladu sa propisima koji regulišu ovu oblast. Neophodno je istaći da dok sa jedne strane primena algoritama veštačke inteligencije za analizu podataka povećava postojeće rizike i dovodi do pojave novih rizika vezanih za korišćenje novih podataka i modela, ona takođe može pomoći u smanjenju rizika tamo gde njena upotreba služi za pojednostavljivanje procesa koji imaju veliku verovatnoću da prouzrokuju grešku. Uočavajući potencijalne probleme u primeni veštačke inteligencije u osiguranju Institut i Fakultet aktuara (engl. *The Institute and Faculty of Actuaries*) u 2023. godini je objavio dokument pod nazivom „Upozorenje o riziku".[2] U ovom dokumentu se upozoravaju aktuari da budu svesni dodatnih potencijalnih rizika usled povećane upotrebe veštačke inteligencije. Aktuari koji primenjuju veštačku inteligenciju mogu biti izloženi značajnoj neizvesnosti u pogledu toga kako se ove nove tehnike mogu primeniti u praksi, ali i rizicima od neodgovarajuće primene i neželjenih posledica. Kako bi se ovi rizici sveli na najmanju moguću meru od aktuara se traži da poseduje najnovija znanja o aktuarskim tehnikama i praksama, a svi zadaci koje obavljaju treba da se baziraju na primeni kodeksa profesionalnog ponašanja aktuara.

U drugom delu rada govorićemo o trenutnom stanju vezanom za aktuarsku profesiju u Republici Srpskoj te o izazovima vezanim za nova znanja u oblasti veštačke inteligencije, kako bi se sagledale prednosti i potencijalni rizici usled njene primene. Razmatranje obima delatnosti ovlašćenog aktuara i trenutnih propisa koji je regulišu je veoma bitno sa aspekta mogućnosti primene modela zasnovanih na veštačkoj inteligenciji u aktuarskoj praksi. Iz tog razloga u trećem delu rada analiziraćemo propise koji regulišu poslovanje aktuara u oblasti utvrđivanja cena osiguranja na teritoriji Republike Srpske. Zatim ćemo u četvrtom delu rada dati jedan selektivan pregled skorašnjih dostignuća u metodologiji primene neuronskih mreža za određivanje cena osiguranja, pokazujući u kojoj meri su usklađena sa smernicama po pitanjima razumljivosti modela. Na kraju rada data su zaključna razmatranja.

[2] Institute and Faculty of Actuaries, Risk Alert:AI techniques and outputs by actuaries, 2023, dostupno na adresi: *https://notifications.actuaries.org.uk/t/7C8L-44NR-1EEBF4274018EE51GAJ5F24CB0D35BC68DDCC/cr.aspx* posećeno: 19.3.2025.

II Izazovi razvoja aktuarske profesije u Republici Srpskoj u svetlu savremenih dostignuća u oblasti veštačke inteligencije

Važećim „Zakonom o društvima za osiguranje u Republici Srpskoj"[3] predviđeno je da društvo za osiguranje pored internog aktuara, kao stručnog lica zaposlenog u društvu za osiguranje za obavljanje aktuarskih poslova, angažuje i ovlašćenog aktuara. Ovlašćeni aktuar u Republici Srpskoj obavlja aktuarske poslove propisane Zakonom o društvima za osiguranje, a naročito daje mišljenje i ocenu o: aktima poslovne politike i njihovoj primeni; finansijskim izveštajima i godišnjem izveštaju o poslovanju društva; o tome da li su tehničke rezerve neživotnih i životnih osiguranja obrazovane i sredstva za njihovo pokriće investirana u skladu sa propisima Agencije za osiguranje Republike Srpske i pravilima struke; o načinu izračunavanja tarifa premija; izveštaju o sprovođenju politike saosiguranja i reosiguranja; o margini solventnosti; i o stanju sredstava tehničkih i garantnih rezervi, njihovom plasmanu i sigurnosti.

Sposobnost da obavljaju prethodno nabrojane aktivnosti aktuarska nauka i praksa su sticale postepeno počevši od sredine XIX veka. Buhlmann 1997. godine piše o tri faze u razvoju aktuarske profesije[4]. Prva faza podrazumeva aktuare životnog osiguranja koji primenjuju metode koje se zasnivaju na determinističkim kalkulacijama. U toku 60-ih i 70-ih godina XX veka, počinje druga faza u kojoj je akcenat na aktuarima u neživotnom osiguranju koji za obračune koriste probabilističke metode. Rast značaja investicionih performansi u poslovanju društava za osiguranje stvara potrebu da aktuari razviju nove veštine u upravljanju sredstvima za pokriće tehničkih rezervi. Krajem 80-ih godina XX veka ovo dovodi do treće faze u razvoju aktuarske profesije u kojoj aktuari analiziraju investicione aspekte poslovanja i inkorporiraju stohastičke procese u aktuarske obračune. Vremenom aktuarska profesija se usmerava na upravljanje rizikom, ocenu finansijske stabilnosti osiguravajuće kompanije i rešavanje poslovnih i socijalnih problema. Ostvarenje rizika koji se osiguravaju ima za posledicu finansijski gubitak, pa se stoga može reći da je jedan od osnovnih zadataka aktuara upravljanje finansijskim rizicima. Zahvaljujući ovoj ulozi govorimo o četvrtoj fazi koja je rezultirala aktuarima usmerenim na upravljanje rizicima preduzeća. Demografske, tehnološke, ekološke, političke i pravne promene dovode do aktuara pete vrste (engl. *Fifth Kind*), koji na bazi podataka i modela omogućava donošenje finansijskih odluka u promenljivom poslovnom okruženju u kome vlada neizvesnost.[5]

[3] Zakon o društvima za osiguranje Republike Srpske, *Službeni glasnik Republike Srpske*, br. 17/2005, 1/2006 - ispravka, 64/2006, 74/2010, 47/2017 i 58/2019.

[4] Hans Buhlmann, "The actuary: the role and limitations of the profession since the mid-19th century" *Astin bulletin*, Vol. 27, No 2/1997, 165-171.

[5] Paul Embrechts, Mario V. Wüthrich, "Recent challenges in actuarial science", *Annual Review of Statistics and Its Application*, Vol. 9, No 1/2022, 119–140.

Na tržištu osiguranja Republike Srpske većina aktuara je specijalizovana za obavljanje poslova neživotnog osiguranja, jer su samo dva društva za osiguranje sa sedištem u ovom entitetu registrovana za obavljanje poslova životnog osiguranja, dok svi ovlašćeni aktuari s obzirom na sadržinu njihovih mišljenja moraju da poseduju znanja iz oblasti investiranja i upravljanja rizikom. Pravilnikom o uslovima za sticanje i povlačenje zvanja ovlašćenog aktuara definisano je da se ispit za sticanje zvanja ovlašćenog aktuara priznaje polazniku postdiplomskog studija iz aktuarstva, ako je položio sve ispite prema nastavnom planu i programu toga studija[6].

Naredni izazov pred aktuarskom profesijom u Republici Srpskoj jeste usvajanje znanja iz oblasti veštačke inteligencije. U tom kontekstu jednu od ključnih uloga može da ima Udruženje aktuara Republike Srpske koje je formirano 2008. godine sa svrhom unapređenja, razvoja i promocije aktuarske nauke i struke, njene praktične primene i stručnog usavršavanja i obrazovanja aktuara. Zaključno sa junom 2025. godine Udruženje je brojilo ukupno 23 člana.[7] Udruženje je pridruženi član Međunarodne asocijacije aktuara (engl. *International Actuarial Association-IAA*) u čijem fokusu jeste edukacija aktuara. Kontinuirani profesionalni razvoj aktuara je od suštinskog značaja te je uobičajeno da profesionalni standardi pored bazne definišu i kontinuiranu edukaciju, što je bila i dosadašnja praksa. Budući da kriterijumi za dobijanje licence ovlašćenog aktuara u Republici Srpskoj nisu povezani sa članstvom u određenoj profesionalnoj organizaciji niti profesionalnim iskustvom, kompetentnost aktuara, odnosno njegova spremnost da obavlja poslove, koji kao što smo prethodno naveli postaju sve kompleksniji, zavisi i od toga u kojoj meri se nastavni planovi i programi studija na pojedinim fakultetima prilagođavaju aktuelnim promenama.

Iz neformalne komunikacije sa članovima Udruženja aktuara Republike Srpske saznajemo da trenutno ovlašćeni aktuari na tržištu Republike Srpske primenu veštačke inteligencije u najvećoj meri svode na korišćenje Modela velikih jezika (engl. *Large language models -LLMs*). *LLM* su klasa modela veštačke inteligencije obučenih na velikim količinama tekstualnih podataka koji spadaju u klasu generativnih modela i imaju zadatak razumevanja i generisanja ljudskog jezika. Uspešno su korišćeni za razvoj četbotova, kao što su *ChatGPT* i *Google Bard*.[8] U korišćenju ovih alata treba imati u vidu da modeli velikih jezika, u koje se ubrajaju *GitHub Copilot* i *ChatGPT*, nisu pouzdani za pomoć aktuaru u pisanju Python koda, o čemu se može više pročitati u istraživanju Balona objavljenom 2024. godine.[9] U skladu sa profesionalnim standardima

[6] Pravilnik o uslovima za sticanje i povlačenje zvanja ovlašćenog aktuara, *Službeni glasnik Republike Srpske*, br.57/06.

[7] Udruženje aktuara Republike Srpske, Članovi udruženja, dostupno na adresi: *https://uars.rs.ba/clanovi-udruzenja/* posećeno: 3.6.2025.

[8] Samuel R. Bowman, Eight Things to Know about Large Language Models, 2023, dostupno na adresi: *https://arxiv.org/abs/2304.00612* posećeno: 16.2.2025.

[9] Balona Caesar, "ActuaryGPT: applications of large language models to insurance and actuarial work", *British Actuarial Journal, Cambridge University Press*, 2024, vol. 29, 1-1.

nosioci aktuarske funkcije u Republici Srpskoj treba da razmotre uticaje koje upotreba Modela velikog jezika može da ima na poslovanje, te da usvoje procedure pregleda dobijenih odgovora i na bazi njih donesenih odluka.[10] Pored toga, postoji zabrinutost u vezi sa validacijom ovih modela i problema takozvanih halucinacija, odnosno pojave da izlazi iz modela nisu povezani sa izvornim tekstom.[11]

Veoma je bitno razumeti da je cilj uključivanja veštačke inteligencije u tradicionalne aktuarske zadatke poboljšanje efikasnosti modela i metoda. Veštačka inteligencija može da pojednostavi razne aktuarske procese uključujući obradu velikih količina podataka i izveštavanje, što omogućava aktuarima da se fokusiraju na aktivnosti kao što su strateško planiranje, nadzor i upravljanje rizicima.

Mnoge nove tehnologije koje se primenjuju za procenu rizika i kao podrška za smanjenje rizika osiguranika, posebno one koje se odnose na primenu veštačke inteligencije i mašinskog učenja u kreiranju, redizajniranju i određivanju cena proizvoda osiguranja, zahtevaju visok nivo tehničkih veština.[12] Kao rezultat toga ključno je da aktuari ovladaju oblašću programiranja, manipulacije velikim obimom podataka i dizajniranja i implementacije algoritama veštačke inteligencije, kako bi ostali ključni akteri u procesu upravljanja rizicima i pripremi neophodnih analiza i zaključaka za donošenje odluka.

III Propisi koji regulišu određivanje cena društava za osiguranje sa sedištem u Republici Srpskoj

Odlukom o sadržaju mišljenja ovlašćenog aktuara (član 2.) definisano je da ovlašćeni aktuar daje mišljenje na akte poslovne politike, u koje se ubrajaju između ostalog odluka o tehničkim osnovama osiguranja; opšti i posebni uslovi osiguranja i tarife premija.[13] Društvo je dužno u roku od petnaest dana od dana usvajanja izmena i dopuna akata poslovne politike dostaviti ih Agenciji za osiguranje Republike Srpske zajedno sa mišljenjem ovlašćenog aktuara. Za razliku od ovog pristupa Društva za osiguranje iz Republike Srpske, koja imaju dozvolu za poslovanje na teritoriji Federacije Bosne i Hercegovine putem filijala, su prema odredbama člana 10. i 11.

[10] Mirela Mitrašević, Nataša Tešić, Kristina Bradić, "Challenges in applying machine learning for predictive modelling", *Innovations in insurance -from traditional to modern market*, (editori: Jelena Kočović, Marija Koprivica, Zorica Mladenović, Radmila Dragutinović Mitrović, Biljana Jovanović Gavrilović), Beograd, 2025, 367-384.

[11] Weijia Xu et al., "Understanding and Detecting Hallucinations in Neural Machine Translation via Model Introspection", *Transactions of the Association for Computational Linguistics*, 2023, vol. 11, 546–564.

[12] OECD, "Leveraging Technology in Insurance to Enhance Risk Assessment and Policyholder Risk Reduction", *OECD Business and Finance Policy Papers*, 2023, dostupno na adresi: *https://www.oecd.org/en/publications/ leveraging-technology-in-insurance-to-enhance-risk-assessment-and-policyholder-risk-reduction_2f5c18ac-en.html* posećeno: 19.2.2025.

[13] Odluka o sadržaju mišljenja ovlašćenog aktuara, *Službeni glasnik Republike Srpske*, br. 15/07.

Zakona o osiguranju obavezna da podnesu zahtev za prethodnu saglasnost Agenciji za nadzor Federacije Bosne i Hercegovine o uslovima osiguranja koje će društvo za osiguranje koristiti u svom poslovanju sa osiguranicima na teritoriji Federacije Bosne i Hercegovine, kao i u slučaju nastajanja bilo kakvih izmena i dopuna.[14] Društvo za osiguranje dostavlja Agenciji za nadzor tarife premija koje će koristiti u svom poslovanju sa osiguranicima, kao i bilo kakve izmene i dopune, najmanje 30 dana pre početka njihove primene. Prema "Uputstvu o sadržaju i dostavi mišljenja ovlaštenog aktuara"[15] ovlašćeni aktuar daje mišljenje o tome da li su tarife premija osiguranja, u skladu sa Zakonom, pravilima aktuarske struke i struke osiguranja, daje informaciju o statističkim podacima na temelju kojih su izračunate premijske stope i podacima o tehničkim osnovama i korišćenim metodama. Odredbe ove tačke primenjuju se i na izmene i dopune tarifa, s tim da je ovlašćeni aktuar u obavezi da dostavi i mišljenje o ostvarenom tehničkom rezultatu za poslednje tri godine u kojima se primenjuju tarife koje se menjaju ili dopunjuju. Pri davanju mišljenja ovlašćeni aktuar je u obavezi da argumentuje da je mišljenje podržano analizama koje pokazuju da su stope premija racionalne, adekvatne i nediskriminatorne. Agencija za nadzor može naložiti korekcije tarifa premija kako bi se obezbedilo usklađivanje sa uslovima osiguranja u roku 30 dana od dana prijema. Prema članu 118. istoga zakona imenovani ovlašćeni aktuar u obavezi je da obezbedi da tarife premija osiguranja budu u skladu sa aktuarskom strukom i važećim propisima te da budu oblikovane tako da omogućuju trajno ispunjavanje svih obaveza iz ugovora o osiguranju. Veoma značajno sa aspekta teme koju obrađujemo je da je članom 141. Zakona o osiguranju u sklopu obaveze za redovnim izveštavanjem društvo za osiguranje dužno obaveštavati Agenciju za nadzor o tehničkoj podlozi koju upotrebljava pri izračunavanju tarifa premija.

Agencija za osiguranje Republike Srpske ne daje prethodnu saglasnost za uvođenje proizvoda osiguranja, ali u skladu sa članom 13. Zakona o društvima za osiguranje ona može za određeni vremenski period ograničiti obim delatnosti osiguranja koju neko društvo obavlja, ako je to neophodno da bi se zaštitila finansijska sposobnost društva. Zakonom o osiguranju (član 54.) definisano je da ako Agencija za osiguranje Republike Srpske utvrdi da društvo za osiguranje krši pravila upravljanja rizikom i zaštite osiguranika može da naloži društvu da obustavi primenu ili da izmeni uslove i tarife osiguranja, i preduzme druge mere neophodne za poboljšanje postupaka upravljanja rizicima. Agencija za osiguranje Republike Srpske može, naložiti povećanje, odnosno smanjenje visine premija određene vrste osiguranja, ukoliko te premije po mišljenju Agencije za osiguranje Republike Srpske nisu odgovarajuće. U postupku kontrole tarifa i njene primene Agencija za osiguranje Republike Srpske može da zahteva izmene odredbi vezane za popuste ukoliko se ustanovi da su u obračun uvedeni subjektivni elementi tarife koji nisu vezani za stvarne i odredive

[14] Zakon o osiguranju, *Službene novine Federacije BiH*, br. 23/17 i 103/21.

[15] Uputstva o sadržaju i dostavi mišljenja ovlaštenog aktuara, *Službene novine Federacije BiH*, br. 106/18.

karakteristike rizika koji je predmet osiguranja, te čije efekte nije moguće kvantifikovati i kontrolisati u skladu sa opšteprihvaćenim aktuarskim metodama. Ovaj stav postaje posebno bitan ako se uzme u obzir praksa određivanja cena, koja nije zasnovana na profilu rizika osiguranja i troškovima usluga, poznata pod nazivom „diferenciranje cena". Savremene tendencije vezane sa primenom veštačke inteligencije i većom dostupnošću podataka omogućavaju sve veće prilagođavanje premija ponašanju i karakteristikama osiguranika, čak i ako nisu povezane sa rizicima osiguranja. Evropska uprava za osiguranje i profesionalne penzije (engl. *European Insurance and Occupational Pensions Authority –EIOPA*) je informacije vezane za prakse diferenciranog određivanja cena objavila u nizu radnih dokumenata. U izveštaju objavljenom 2023. godine na sajtu Evropske uprave za osiguranje i profesionalne penzije se navodi da je tokom proteklih godina u evropskom sektoru neživotnog osiguranja sve veća konkurencija, ne samo u pogledu usluga i obima pokrića koje se nudi, već i po pitanju cene, što dovodi do pojave diferenciranog određivanja cena. Ova sve učestalija praksa pokrenula je nadzorne i regulatorne aktivnosti i studije u brojnim državama: Velikoj Britaniji i članicama Evropske unije: Nemačkoj, Irskoj, Italiji, Holandiji i Švedskoj.[16] U izveštaju Nacionalnog udruženja poverenika za osiguranje (engl. *National Association of Insurance Commissioners –NAIC*), američke organizacije koja postavlja standarde i obezbeđuje regulatornu podršku, se navodi da je istraživanje Earnix-a iz 2013. godine sprovedeno na 73 velika društva za osiguranje pokazalo da je oko 45% koristilo neki oblik optimizacije cena, a 29% od posmatranih društava je izvestilo da planiraju da to urade u budućnosti. Međutim, u izveštaju NAIC 2015. godine se navodi da su u veoma malom broju slučajeva identifikovali upotrebu optimizacije cena na bazi dostavljenih tarifa premija, potencijalno iz razloga što optimizacija cena nije definisana u dokumentaciji dostavljenoj regulatorima,[17] a navedena praksa je takođe otkrivena u sklopu redovnih i vanrednih kontrola od strane Agencije za osiguranje Republike Srpske i na tržištu osiguranja Republike Srpske.

Na bazi napred navedenog možemo da zaključimo da prema važećim propisima društva za osiguranje treba da obezbede odgovarajuću evidenciju o procesima upravljanja podacima i metodologijama modeliranja kako bi se omogućila njihova transparentnost i mogućnost nadzora.

Nepostojanje propisa i principa upravljanja veštačkom inteligencijom trenutno u određenoj meri kompenzuju propisi iz domena upravljanja rizicima, određivanja premije osiguranja, tehničkih rezervi i adekvatnosti kapitala. Međutim,

[16] EIOPA, Supervisory statement on differential pricing practices in non-life insurance lines of business, 2023, dostupno na adresi: *https://www.eiopa.europa.eu/document/download/1e9a8fb2-e688-4bf5-a347-ee-0a1ec3aab3_en?filename=EIOPA-BoS-23-076-Supervisory-Statement-on-differential-pricing-practices_0.pdf* posećeno: 20.3.2025.

[17] National Association of Insurance Commissioners, Casualty Actuarial and Statistical Task Force, Price Optimization White Paper, November 2015, pp. 1-16. dostupno na adresi: *https://content.naic.org/sites/default/files/inline-files/committees_c_catf_related_price_optimization_white_ paper.pdf* posećeno: 20.3.2025.

uviđajući potencijal veštačke inteligencije u poboljšanju efikasnosti aktuara u Republici Srpskoj, ali i rizike povezane sa njenom primenom (o kojima pišu Preez i saradnici[18]), regulisanje ove oblasti bi trebalo da bude jedan od prioritetnih ciljeva na tržištu Republike Srpske. Akt o veštačkoj inteligenciji (engl. *Artificial Intelligence Act*), koji uspostavlja skup zahteva kojih će se morati pridržavati provajderi i korisnici visokorizičnih sistema veštačke inteligencije na području Evropske unije[19], kao i šest principa upravljanja veštačkom inteligencijom (proporcionalnosti, pravičnosti i nediskriminacije, transparentnosti i objašnjivosti, ljudskog nadzora, upravljanja podacima i vođenja evidencije, te robustnosti i performansi), koje je objavila Evropska uprava za osiguranje i profesionalne penzije (*EIOPA*) u 2021. godini[20], ali i dosadašnja iskustva u vezi sa njihovom primenom mogu biti jedna od polaznih osnova za regulisanje ove oblasti u Republici Srpskoj.

IV Primena veštačke inteligencije u određivanju cena neživotnog osiguranja

Ugovor o osiguranju je specifičan po tome što se premija ili cena osiguranja naplaćuje unapred, a osiguravač se obavezuje da će isplatiti buduće odštetne zahteve koji nastanu u vreme trajanja ugovora o osiguranju. Proces formiranja cena uključuje brojne komponente od kojih svaka može imati ključnu ulogu za obezbeđenje profitabilnosti i solventnosti kompanije. Premija osiguranja treba da obezbedi pokriće: rizika koji osiguravač preuzima po osnovu polise osiguranja, odnosno troškova odštetnih zahteva čijom projekcijom se utvrđuje neto premija osiguranja; režijskih troškova (administrativnih i troškova pribave) i željenog profita. Iako se prilikom obračuna tarifa uključuje i dodatak za profit, u praksi profit će biti ostvaren samo ako planirane premije premaše iznos ukupnih troškova.[21] Od izuzetnog je značaja da aktuar na bazi dostupnih informacija pravilno proceni veličinu odštetnih zahteva i na bazi njih iznos neto premije osiguranja. U savremenoj aktuarskoj praksi određivanja cena (premija) neživotnog osiguranja najzastupljeniji su Generalizovani linearni modeli, čije se teorijske osnove pronalaze u radovima Neldera i Wedderburna[22],

[18] Valerie du Preez et al., "From Bias to Black Boxes: Understanding and Managing the Risks of AI – an Actuarial Perspective", *British Actuarial Journal,* 29, 2024.

[19] European Parliament, Artificial Intelligence Act: MEPs adopt landmark law, 2024. dostupno na adresi: *https://www.europarl.europa.eu/news/en/press-room/20240308IPR19015/artificial-intelligence-act-meps-adopt-landmark-law* posećeno: 29.3.2025.

[20] EIOPA, Artificial intelligence governance principles: towards ethical and trustworthy artificial intelligence in the European insurance sector, 2021, dostupno na adresi: *https://www.eiopa.europa.eu/system/files/2021-06/eiopa-ai-governance-principles-june-2021.pdf* posećeno: 20.3.2025.

[21] Mirela Mitrašević,"Aktuarska i finansijska analiza adekvatnosti kapitala kompanija za neživotna osiguranja" (doktorska teza), *Ekonomski fakultet u Beogradu*, 2010.

[22] John Ashworth Nelder, Robert William Maclagan Wedderburn, "Generalized linear models", *Journal of the Royal Statistical Society*, 1972, 135, 370-384

te McCullagha i Neldera[23]. U radu dostupnom na sajtu Instituta i fakulteta aktuara (engl. *Institute and Faculty of Actuaries*) se ističe da su generalizovani linearni modeli u nastavni proces po prvi put uvedeni u toku 1980. godine na *Cass Business School*, kako se do septembra 2021. godine zvanično zvala *Bayes Business School*, koja je članica *City, University of London* i sa kojom Institut i fakultet aktuara ima sporazum o priznavanju određenih ispita.[24]

U nastavni plan i program Aktuarskog društva za osiguranje od posledica nesrećnog slučaja (engl. *Casualty Actuarial Society-CAS*) iz 1990. godine je u spisak literature uvršten rad čiji je autor Brown, a koji se bavio primenom Generalizovanih linearnih modela u svrhe određivanja cene osiguranja[25]. Kuo i Lupton[26] ističu da su ovi modeli spominjani samo usputno sve do 2006. godine, kada je u spisak literature u nastavnom planu i programu *CAS* uveden priručnik "*A Practitioner's Guide to Generalized Linear Models*" čiji su autori Anderson i saradnici[27].

Ovlašćenim aktuarima na tržištu Republike Srpske Generalizovani linearni modeli su zvanično predstavljeni u sklopu kontinuirane edukacije aktuara u 2015. i 2016. godini u organizaciji Udruženja aktuara Republike Srpske[28].

Interesantno je navesti da su metode mašinskog učenja i generalizovani linearni modeli paralelno razvijani tokom sredine XX veka. Jedan od ključnih razloga popularnosti Generalizovanih linearnih modela može se potražiti u činjenici da se metode mašinskog učenja često smatraju potpuno „crnom kutijom", te u oblasti određivanja cena, koja je definisana brojnim propisima i zahteva određenu količinu transparentnosti u modelima, nisu mogle da nađu širu primenu. Pored toga, limitirajući faktor mogu biti visoki troškovi implementacije. Aktuari bi trebalo da budu u stanju da objasne regulatorima i revizorima principe na kojima se zasnivaju tarifni modeli, a potrošači treba da budu informisani o glavnim faktorima koji utiču na veličinu premije osiguranja, kako bi im omogućili da se informišu, prilagode i usvoje odluku. Kako bi se to omogućilo, neophodan je visok nivo transparentnosti i objašnjivosti sistema, modela i podataka koji se koriste. U ovom radu ćemo najpre objasniti Generalizovane linearne modele, a zatim ćemo prikazati tri modela nastala kombinacijom Generalizovanih linearnih modela sa neuronskom mrežom.

[23] Peter McCullagh, John Ashworth Nelder, *Generalized linear models*. London, 1983.

[24] Steven Haberman, Arthur Edward Renshaw, "Generalized Linear Models in Actuarial Work", *Journal of the Staple Inn Actuarial Society*, 32, 1990, 171-172., dostupno na adresi: *https://www.actuaries.org.uk/system/files/documents/pdf/glm.pdf* posećeno: 20.3.2025.

[25] Robert L. Brown, "Minimum Bias with Generalized Linear Models", *Casualty Actuarial Society*, 1988,187–217.

[26] Kevin Kuo, Daniel Lupton, "Towards Explainability of Machine Learning Models in Insurance Pricing", *Variance,* 2023, *16* (1).

[27] Duncan Anderson et al., "A Practitioner's Guide to Generalized Linear Models", *CAS Study Note*, 2005, 4–39.

[28] Udruženje aktuara Republike Srpske, Seminar na temu izrade tarifa u osiguranju, 2015, dostupno na adresi: *https://uars.rs.ba/foto-galerija-seminar-mart-2015/* i Udruženje aktuara Republike Srpske, Određivanje cijena osiguranja odgovornosti za motorna vozila, 2016, dostupno na adresi: *https://uars.rs.ba/odredjivanje-cijene-osiguranja-motorna-vozila/* posećeno: 2.6.2025.

1. Primena Generalizovanih linearnih modela za određivanje cena neživotnog osiguranja

Generalizovani linearni modeli omogućavaju modeliranje odnosa između ciljne promenljive čiji ishod želimo da predvidimo i jedne ili više objašnjavajućih promenljivih. U neživotnom osiguranju ciljna promenljiva je obično:

- učestalost šteta (broj zahteva za isplatom štete po izloženosti);
- intenzitet šteta (veličina zahteva za isplatom štete po jednom odštetnom zahtevu ili događaju);
- čista premija (veličina gubitka po izloženosti);
- racio gubitka (odnos nastalih šteta i merodavne premije).

Razlog za to je što se odštetni zahtevi modeliraju kao kombinacija učestalosti i intenziteta šteta ili direktno određivanjem čiste premije ili racija gubitka. Prilikom modeliranja intenziteta uobičajeno se koriste gama i inverzna Gausova raspodela, dok se za modeliranje učestalosti šteta najčešće koristi Poasonova raspodela ili negativna binomna raspodela. Za modeliranje čiste premije (ili koeficijenta gubitaka) na nivou polise tradicionalno se koristi Tvidijeva raspodela.[29]

Generalizovani linearni modeli se zasnivaju na pretpostavci da imamo niz nezavisnih slučajnih promenljivih $Y_1,\ldots,Y_n$ koje pripadaju eksponencijalnoj familiji raspodela čija gustina (diskretna ili neprekidna) ima oblik[30]:

$$f_{Y_i}\left(y_i;\theta;\omega_i/\varphi\right)=\exp\left\{\frac{y_i\theta_i-b\left(\theta_i\right)}{\varphi/\omega_i}+c\left(y_i,\omega_i/\varphi\right)\right\} \quad (1)$$

Gde je:

$\omega_i > 0$ - faktor izloženosti riziku (težina) $1 \le i \le n$;

$\varphi > 0$ -parametar disperzije ili skaliranja, koji je isti za svako i;

$\theta_i \in \Theta$ - kanonski parametar $1 \le i \le n$;

$b: \Theta \rightarrow R$ - kumulativna funkcija.

Pretpostavlja se da je kumulativna funkcija $b(\theta i)$ dvaput neprekidno diferencijabilna. Funkciji $c(\cdot,\cdot,\cdot)$, koja ne zavisi od kanonskog parametra θ se ne pridaje pažnja u teoriji vezanoj za Generalizovane linearne modele.

U praksi se često bira odgovarajuća funkcija veze *g* tako da možemo izraziti sistematske efekte na sledeći način:

[29] Mark Goldburd et al., *Generalized Linear Models for Insurance Rating*, Casualty Actuarial Society, Arlington, 2020.

[30] Esbjörn Ohlsson, Björn Johansson, *Non-Life Insurance Pricing with Generalized Linear Models*; Springer: Berlin/Heidelberg, 2010.; Steven Haberman, Arthur E. Renshaw, "Generalized Linear Models and Actuarial Science", *Journal of the Royal Statistical Society*. Series D (The Statistician), Vol. 45, No 4/1996, 407-436.

$$x_i \mapsto g(\mu_i) = \langle \beta, x_i \rangle \tag{2}$$

gde je:

$\beta \in R^{q+1}$ -regresioni parametar,

$xi \in \{1\} \times R^q$ -informacije o prediktorskim varijablama,

$\langle , \rangle$- skalarni proizvod u Euklidskom prostoru R^{q+1}.

Važno je napomenuti da informacije o prediktorskim varijablama kao prvu komponentu uključuju slobodan član, pa prethodna formula može biti prikazana na sledeći način[31]:

$$x_i \mapsto g(\mu_i) = \beta_0 + \langle \beta, x_i \rangle \tag{3}$$

Kanonski parametar θ_i ima sledeći oblik

$$\theta = (b')^{-1}\left(g^{-1}\left(\beta_0 + \langle \beta, x_i \rangle\right)\right) \tag{4}$$

Gde je:

$(b')^{-1}$ - kanonska veza izabrane eksponencijalne familije raspodele.

Prediktorske varijable u Generalizovanim linearnim modelima mogu biti kontinuirane i kategoričke. Kategorička promenljiva može biti numerička ili nenumerička. U praksi određivanja cena većina objašnjavajućih varijabli je kategoričkog tipa, i kao posledica toga, statistička analiza se suočava sa komplikacijama kao što je, npr. proređenost (engl. *sparsity*) osnovne matrice modela ili tzv. matrice dizajna. Neophodno je istaći da se prethodno navedeni pristup određivanja cena oslanja na informacije o osiguranicima koje su dostupne prilikom zaključivanja ugovora.

Iako Generalizovani linearni modeli imaju mnogo prednosti, istraživanje koje je 2017. godine sprovela Lovisa Styrud pokazuje da je ovaj model imao lošiju ukupnu prediktivnu tačnost u poređenju sa rezultatima dobijenim primenom neuronskih mreža[32]. Takođe, Generalizovani linearni model (GLM) ne može da obrađuje različite tipove podataka i ne funkcioniše u radu sa nelinearnim odnosima u podacima.

2. Razvoj modela koji kombinuju neuronske mreže i GLM-e za određivanje cena osiguranja

Modeli dubokog učenja su stekli veliku popularnost u statističkom modeliranju jer dovode do regresionih modela, čije su performanse često bolje od klasičnih modela, kao što su generalizovani linearni modeli. Embrechts i Wüthrich su posmatrali

[31] Ronald Richman, Mario V. Wüthrich, "LocalGLMnet: interpretable deep learning for tabular data". *Scandinavian Actuarial Journal*, 2022, dostupno na adresi: https://arxiv.org/pdf/2107.11059, 20.3.2025.

[32] Lovisa Styrud, *Risk Premium Prediction of Car Damage Insurance Using Artificial Neural Networks and Generalized Linear Models*, Royal Institute of Technology, Stockholm, 2017.

neuronske mreže prosleđivanja unapred (engl. *feed-forward neural networks*) kao proširenje GLM-a, predstavljajući regresione funkcije u izrazu 2 na sledeći način:[33]

$$x_i \mapsto g(\mu_i) = \beta_0 + \langle \beta, z^{(d:1)}(x_i) \rangle \tag{5}$$

gde je

$\beta = (\beta_1, ..., \beta_{q_d})^T \in R^{q_d}$ - GLM regresioni parameter

$\beta_0 \in R$ - slobodan član;

$z^{(d:1)}$ - kompozicija d ∈ N (d ≥ 2) slojeva skrivene neuronske mreže $z^{(d:1)} = z^{(d)} \circ \ldots \circ z^{(1)}$.

U ovom modelu k-ti slojevi skrivene neuronske mreže $z^{(k)} : R^{q_{k-1}} \to R^{q_k}$ su nelinearne transformacije neobrađenih podataka o kovarijantama tako da se naučene reprezentacije $z^{(d:1)}(x) \in R^{q_d}$ mogu uključiti u GLM kako je prikazano u formuli (5).

Uviđajući da model u izrazu (5) ne dovodi do poboljšanja GLM-a, autori prethodno navedenog rada ukazuju na istraživanje u kome Wüthrich i Merz polaze od jednostavnog generalizovanog linearnog modela sa regresionom funkcijom[34]:

$$x_i \mapsto \mu^{GLM}(x) = \exp\{\langle x, \beta \rangle\} \tag{6}$$

i funkcijom regresije neuronske mreže:

$$x_i \mapsto \mu^{NN}(x) = \exp\{b_3 + B_3' z^{(2)}(x)\} \tag{7}$$

sa eksponencijalnom aktivacionom funkcijom, slobodnim članom b_3 i težinama B_3 u izlaznom sloju. Prethodne funkcije: μ^{GLM} i μ^{NN} se kombinuju u CANN (*Combined Actuarial Neural Network*) regresionu funkciju na sledeći način:

$$x_i \mapsto \mu^{CANN}(x) = \exp\{\langle x, \beta \rangle + b_3 + B_3' z^{(2)}(x)\}. \tag{8}$$

CANN pristup se može primeniti na veliki broj klasičnih parametarskih aktuarskih modela, a jedan od primera jeste modeliranje frekvencije odštetnih zahteva koji imaju Poasonovu raspodelu kako prikazuju Schelldorfer i Wüthrich[35]

Navedeni pristup su primenili Wilson i ostali na skupovima podataka o francuskom osiguranju od odgovornosti prema trećim licima, *„freMTPL2freq"* i *„freMTPL2sev"*, uključenim u R paket *CASdatasets*. Različite metodologije mašinskog učenja, uključujući Generalizovani linearni model (engl. *Generalized linear model -GLM*), Pojačavanje

[33] Paul Embrechts, Mario V. Wüthrich, "Recent challenges in actuarial science", *Annual Review of Statistics and Its Application*, 9 (1), 2022, 119–140.

[34] Mario V. Wüthrich, Michael Merz, "Yes, we CANN!", *ASTIN Bull,* 49:1–3, 2019.

[35] Jürg Schelldorfer, Mario V. Wüthrich, "Nesting Classical Actuarial Models into Neural Networks", 2019, dostupno na adresi: SSRN: *https://ssrn.com/abstract=3320525* or *http://dx.doi.org/10.2139/ssrn.3320525 ssrn-3320525.pdf* posećeno: *12.2.2025.*

gradijenta (engl. *Gradient boosted machines-GBM*), Veštačke neuronske mreže (engl. *artificial neural networks - ANN*) i hibridni model koji kombinuje *GLM* i *ANN*, ispitivane su u svrhu kreiranja tehničkih modela. Rezultati su pokazali da su performanse hibridnog modela koji kombinuje *GLM* i *ANN* bile najbolje.[36] Međutim, u primeni GLM-a treba imati u vidu da zahtevaju profesionalnu obradu karakteristika kako bi se izvršio izbor promenljivih i njihove međusobne veze, te da se ukoliko se to ne uradi može desiti da GLM ostvaruje slabije rezultate u poređenju sa drugim metodama.[37] Veća fleksibilnost neuronskih mreža jedan je od razloga njihove sve veće popularnosti.[38]

Richman i Wüthrich predstavljaju takozvani *LocalGLMnet*, kao arhitekturu neuronske mreže koja ima mnoge osobine GLM-a tako što omogućava izbor promenljivih, interpretaciju kalibrisanog modela dubokog učenja, a takođe dozvoljava i da parametri regresije $\beta_j = \beta_j(x)$ postanu zavisni od karakteristike x. Neuronske mreže prosleđivanja unapred dubine $d \in N$ sa ulaznim i izlaznim dimenzijama jednakim $q_0 = q_d = q$ se koriste za modeliranje parametra regresije zavisnog od x:

$\beta: R^q \longrightarrow R^q$

$$x_i \mapsto \beta(x) = z^{(d:1)}(x) = \left(z^{(d)} \circ \ldots \circ z^{(1)}\right)(x) \tag{9}$$

LocalGLMnet je definisan na sledeći način:

$$x_i \mapsto g(\mu) = \beta_0 + \langle \beta(x), x \rangle \tag{10}$$

za strogo monotonu i glatku funkciju veze g.[39]

Harris, Richman i Wüthrich ističu da napredak u prilagođavanju dubokog učenja za aktuarske svrhe, kao što je prikazano u prethodno opisanom pristupu *LocalGLMnet*, doprinosi transparentnosti modela. Ipak, potrebno je uspostavljanje jasnih standarda koji precizno definišu šta predstavlja prihvatljiv stepen usklađenosti sa smernicama i propisima u ovoj oblasti. Pošto je GLM transparentan moguće je objasniti način na koji se predviđanja formiraju, a koeficijenti dobijeni primenom *LocalGLMnet* mogu se analizirati zajedno, što dovodi do boljeg razumevanja odnosa koje je naučila neuronska mreža.[40]

[36] Alinta Wilson et al., "A Comparison of Generalised Linear Modelling with Machine Learning Approaches for Predicting Loss Cost in Motor Insurance", *Risks,* 12: 62/2024, *https://doi.org/10.3390/risks12040062*

[37] Više o ovome u: Alexander Noll, Robert Salzmann, Mario V.Wüthrich, Case Study: French Motor Third-Party Liability Claims, 2020, dostupno na adresi: SSRN: *https://ssrn.com/abstract=3164764* or *http://dx.doi.org/10.2139/ssrn 3164764*.

[38] Mario V. Wüthrich, "Bias regularization in neural network models for general insurance pricing" *European Actuarial Journal* , *10* (1), 2020,179–202.

[39] Mario V. Wüthrich, Michael Merz, *Statistical Foundations of Actuarial Learning and its Applications*, Springer Actuarial, 2022, dostupno na adresi: *https://link.springer.com/book/10.1007/978-3-031-12409-9*

[40] Roseanne Harris, Ronald Richman, Mario V. Wüthrich, "Reflections on deep learning and the actuarial profession(al)", 2024, dostupno na adresi: SSRN: *https://ssrn.com/abstract=4672447 or http://dx.doi.org/10.2139/ssrn.4672447*

U primeni neuronskih mreža treba imati u vidu da one mogu dovesti do pojave pristrasnosti, odnosno pojave da ukupna predviđanja neuronskih mreža u zbiru nisu garantovano jednaka ukupnim odštetnim zahtevima u portfoliju na kojem su kalibrisane, što ih može činiti neprikladnim za primenu u određivanju cena. U skladu sa opšteprihvaćenim standardima prakse aktuari imaju zadatak da obezbede da modeli budu prikladni za njihovu namenu i lišeni značajnih pristrasnosti, a koje u slučaju primene modela mašinskog učenja mogu proisteći iz podataka na bazi kojih se vrši obuka ili iz izabranog algoritma. Razumevanje modela pruža aktuarima osnovne alate za efikasno otklanjanje grešaka u modelima i za identifikovanje potencijalnih problema u obradi podataka ili obuci modela.

V Zaključna razmatranja

Sumirajući napred navedeno u pogledu propisa u oblasti određivanja cena u Republici Srpskoj možemo da zaključimo da oni omogućuju aktuaru polaznu osnovu za primenu veštačke inteligencije, ali da ih je neophodno dodatno prilagoditi i neprekidno ažurirati u skladu sa savremenim dostignućima. Bitno je istaći da bi aktuari trebali da nastave da razvijaju svoje veštine i profesionalne standarde kako bi smanjili rizike proistekle usled korišćenja veštačke inteligencije.

U radu smo prikazali da više od četiri decenije aktuari prilikom određivanja cena neživotnih osiguranja koriste Generalizovane linearne modele. Poslednjih godina interesovanje za primenu neuronskih mreža raste, jer su istraživanja pokazala da one obezbeđuju bolje projekcije odštetnih zahteva u osiguranju kada se uporede sa drugim modelima. Budući da modeli zasnovani na neuronskim mrežama mogu dovesti do pojave pristrasnosti i da se često smatraju potpuno „crnom kutijom", što otežava tumačenje i implementaciju, u prethodnom periodu nisu našli široku primenu u aktuarskoj praksi. U radu su prikazani modeli pod nazivom *Combined Actuarial Neural Network* i *LocalGLMnet* u kojima su njihovi autori pokušali da prevaziđu određene nedostatke kombinujući Generalizovane linearne modele sa neuronskom mrežom. Imajući u vidu da prikazani hibridni modeli nisu u potpunosti transparentni, neophodna su dalja istraživanja u pogledu mogućnosti ispunjavanja zahteva koje modeli određivanja cena moraju da ispune u skladu sa propisima.

Literatura

- Anderson D. et al., "A Practitioner's Guide to Generalized Linear Models", *CAS Study Note*, 2005, 4–39.
- Buhlmann, H., "The actuary: the role and limitations of the profession since the mid-19th century", *Astin bulletin*, Vol. 27, No 2/1997, 165-171.

- Bowman, S. R., Eight Things to Know about Large Language Models, 2023, dostupno na adresi: *https://arxiv.org/abs/2304.00612*, 16.2.2025.
- Brown, R. L., "Minimum Bias with Generalized Linear Models", *Casualty Actuarial Society*, 1988,187–217.
- Caesar, B., "ActuaryGPT: applications of large language models to insurance and actuarial work", *British Actuarial Journal, Cambridge University Press*, 2024, vol. 29, 1-1.
- du Preez V. et al., "From Bias to Black Boxes: Understanding and Managing the Risks of AI – an Actuarial Perspective", *British Actuarial Journal,* 29, 2024.
- Embrechts, P., Wüthrich, M. V., "Recent challenges in actuarial science", *Annual Review of Statistics and Its Application*, Vol. 9, No 1/2022, 119–140.
- Haberman, S., Renshaw, A. E., "Generalized Linear Models in Actuarial Work", *Journal of the Staple Inn Actuarial Society*, 32, 1990, 171-172., dostupno na adresi: *https://www.actuaries.org.uk/system/files/documents/pdf/glm.pdf*.
- Harris, R., Richman, R., Wüthrich, M. V., "Reflections on deep learning and the actuarial profession(al)", 2024, dostupno na adresi: SSRN: *https://ssrn.com/abstract=4672447 or http://dx.doi.org/10.2139/ssrn.4672447*.
- Goldburd M., et al., *Generalized Linear Models for Insurance Rating*, Casualty Actuarial Society, Arlington, 2020.
- Kuo, K., Lupton, D., "Towards Explainability of Machine Learning Models in Insurance Pricing", *Variance,* 2023, *16* (1).
- McCullagh, P., Ashworth Nelder, J., *Generalized linear models*. London, 1983.
- Mitrašević,M., "Aktuarska i finansijska analiza adekvatnosti kapitala kompanija za neživotna osiguranja" (doktorska teza), *Ekonomski fakultet u Beogradu*, 2010.
- Mitrašević, M., Tešić, N., Bradić, K., "Challenges in applying machine learning for predictive modelling", *Innovations in insurance -from traditional to modern market*, (editori: Jelena Kočović, Marija Koprivica, Zorica Mladenović, Radmila Dragutinović Mitrović, Biljana Jovanović Gavrilović), Beograd, 2025, 367-384.
- Nelder, J. A., Maclagan Wedderburn, R. W., "Generalized linear models", *Journal of the Royal Statistical Society*, 1972, 135, 370-384
- Noll, A., Salzmann, R., Wüthrich, M., Case Study: French Motor Third-Party Liability Claims, 2020, dostupno na adresi: SSRN: *https://ssrn.com/abstract=3164764 or http://dx.doi.org/10.2139/ssrn.3164764*.
- Ohlsson, E., Johansson, B., *Non-Life Insurance Pricing with Generalized Linear Models*; Springer: Berlin/Heidelberg, 2010.
- Richman, R., Wüthrich, M. V., "LocalGLMnet: interpretable deep learning for tabular data". *Scandinavian Actuarial Journal*, 2022, dostupno na adresi: *https://www.tandfonline.com/doi/full/10.1080/03461238.2022.2081816*, 20.3.2025.

- Schelldorfer, J., Wüthrich, M. , "Nesting Classical Actuarial Models into Neural Networks", 2019, dostupno na adresi: SSRN: *https://ssrn.com/abstract=3320525* or *http://dx.doi.org/10.2139/ssrn.3320525* ssrn-3320525.pdf, 12.2.2025.
- Styrud, L., *Risk Premium Prediction of Car Damage Insurance Using Artificial Neural Networks and Generalized Linear Models*, Royal Institute of Technology, Stockholm, 2017.
- Wilson A. et al., "A Comparison of Generalised Linear Modelling with Machine Learning Approaches for Predicting Loss Cost in Motor Insurance", *Risks,* 12: 62/2024, *https://doi.org/10.3390/risks12040062*.
- Wüthrich, M. V., "Bias regularization in neural network models for general insurance pricing" *European Actuarial Journal* , *10* (1), 2020,179–202.
- Wüthrich, M. V., Merz, M., *Statistical Foundations of Actuarial Learning and its Applications*, Springer Actuarial, 2022, dostupno na adresi: *https://link.springer.com/book/10.1007/978-3-031-12409-9*.
- Wüthrich, M. V., Merz, M., "Yes, we CANN!", *ASTIN Bull,* 49:1–3, 2019.
- Udruženje aktuara Republike Srpske, Seminar na temu izrade tarifa u osiguranju, 2015, dostupno na adresi: *https://uars.rs.ba/foto-galerija-seminar-mart-2015/* i Udruženje aktuara Republike Srpske, Određivanje cijena osiguranja odgovornosti za motorna vozila, 2016, dostupno na adresi: *https://uars.rs.ba/odredjivanje-cijene-osiguranja-motorna-vozila/*, 2.6.2025.
- Xu W. et al., "Understanding and Detecting Hallucinations in Neural Machine Translation via Model Introspection", *Transactions of the Association for Computational Linguistics*, 2023, vol. 11, 546–564.

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ACTUARIAL ASPECTS OF THE APPLICATION OF ARTIFICIAL INTELLIGENCE IN NON-LIFE INSURANCE PRICING IN THE REPUBLIC OF SRPSKA

ORIGINAL SCIENTIFIC PAPER

Abstract

This paper focuses on the assumptions that AI models must satisfy for the purpose of determining non-life insurance pricing in the Republic of Srpska. When applying Generalized Linear Models, which are most common in modern non-life insurance pricing practice, actuaries are aware of the risk that inadequate choice of variables and their interrelationships will result in poorer model performance. This limitation was one of the reasons why experts in this field began developing models that combine neural networks and Generalized Linear Models for insurance pricing. In this paper, we analyze two hybrid models: the Combined Actuarial Neural Network and LocalGLMnet. Summarizing the results presented in the selected literature, we conclude that these models can deliver better results compared to Generalized Linear Models; however, given the limited transparency of insurance pricing procedures, further research is necessary to develop models aligned with regulations and actuarial practice standards.

Keywords: Generalized Linear Models, neural networks, Combined Actuarial Neural Network, LocalGLMnet, actuarial practice standards.

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I Introduction

The pricing of non-life insurance, characterized by stochastic claim payment processes over time, is a highly complex task for actuaries. For this purpose, actuaries project insurance claims over a specific time horizon using appropriate statistical data and sophisticated mathematical models.

The objective of this paper is to examine the assumptions that must be satisfied in order for artificial intelligence (AI) to be applied in the insurance market of the Republic of Srpska for pricing purposes in compliance with the regulations governing this field. It is essential to emphasize that, while on the one hand, the application of AI algorithms for data analysis increases existing risks and gives rise to new risks related to the use of new data sources and models, on the other hand, it also has the potential to mitigate operational risk by simplifying processes that have a high probability of causing errors. Recognizing potential issues related to the application of AI within the insurance sector, the Institute and Faculty of Actuaries published a document titled *"Risk Alert"* in 2023.[2] This document warns actuaries to be aware of additional potential risks arising from the increasing use of AI. Actuaries applying AI may face significant uncertainty about how to implement these new techniques in practice, as well as risks of inadequate application and unintended consequences. In order to minimize these risks, actuaries must maintain up-to-date expertise in actuarial methods and adhere strictly to the professional code of conduct.

The second part of the paper examines the current state of the actuarial profession in the Republic of Srpska, with particular emphasis on the challenges of acquiring new AI competencies, thereby enabling an evaluation of both the advantages and potential risks of its application. From the perspective of the implementation feasibility of AI-based models in actuarial practice, careful consideration is given to the statutory responsibilities of authorized actuaries and the applicable regulatory framework governing their activities. For this reason, the third part of the paper analyzes the regulatory framework governing actuarial activities in the field of insurance pricing in the territory of the Republic of Srpska. Subsequently, the fourth part of the paper provides a selective review of recent methodological advances in applying neural networks to insurance pricing, with particular attention to their alignment with emerging standards of model interpretability. The paper concludes with final remarks.

[2] Institute and Faculty of Actuaries, Risk Alert: AI techniques and outputs by actuaries, 2023, available at: *https://notifications.actuaries.org.uk/t/7C8L-44NR-1EEBF4274018EE51GAJ5F24CB0D35BC68DDCC/cr.aspx,* accessed: 19 March 2025.

II Challenges in the Development of the Actuarial Profession in the Republic of Srpska in Light of Contemporary Advances in AI

Pursuant to the currently applicable Law on Insurance Companies in the Republic of Srpska,[3] an insurance company is required, in addition to an internal actuary employed as a professional responsible for performing actuarial tasks within the insurance company, to engage an authorized actuary. An authorized actuary in the Republic of Srpska performs actuarial tasks prescribed by the Law on Insurance Companies and, in particular, provides opinions and assessments on: business policy acts and their implementation; financial statements and the annual business report of the insurance company; whether technical reserves for non-life and life insurance have been established and whether assets covering technical reserves have been invested in accordance with applicable regulations of the Insurance Agency of the Republic of Srpska and professional actuarial standards; the methodology for calculating premium tariffs; reports on the implementation of coinsurance and reinsurance policies; the solvency margin; and the status of technical and guarantee reserve funds, including their investment and safekeeping.

The ability to perform the aforementioned activities was acquired gradually through the development of actuarial science and practice, beginning in the mid-nineteenth century. Bühlmann (1997) identified three phases in the development of the actuarial profession.[4] The first phase refers to life insurance actuaries who applied methods based on deterministic calculations. During the 1960s and 1970s, the second phase emerged, with an emphasis on non-life insurance actuaries using probabilistic methods in their calculations. The growing importance of investment performance in insurance company activities created a need for actuaries to develop new skills in managing assets covering technical reserves. By the late 1980s, this led to the third phase in the development of the actuarial profession, in which actuaries analyzed investment aspects of insurance activities and incorporated stochastic processes into actuarial calculations. Over time, the actuarial profession has focused on risk management, the assessment of insurers' financial stability, and the resolution of business and social issues. Since the realization of insured risks results in financial losses, it can be said that one of the fundamental tasks of actuaries is financial risk management. As a result of this role, a fourth phase is identified, in which actuaries focus on enterprise risk management. Demographic, technological, environmental, political, and legal changes subsequently led to the emergence of actuaries of the

[3] Law on Insurance Companies in the Republic of Srpska, *Official Gazette of the Republic of Srpska*, Nos. 17/2005, 1/2006 – Corrigendum, 64/2006, 74/2010, 47/2017, 58/2019.

[4] Hans Buhlmann, "The actuary: the role and limitations of the profession since the mid-19th century", *Astin bulletin*, Vol. 27, No. 2/1997, 165-171.

so-called *Fifth Kind*, who using data and models, enable financial decision-making in a volatile business environment characterized by uncertainty.[5]

In the insurance market of the Republic of Srpska, the majority of actuaries specialize in non-life insurance activities, as only two insurance companies headquartered in this entity are registered to conduct life insurance activities. However, all authorized actuaries, given the scope and content of their opinions, are required to possess knowledge in the areas of investment and risk management. The Rulebook on the requirements for acquiring and revocation of the title of the authorized actuary stipulates that the examination for acquiring the title of authorized actuary is recognized for postgraduate actuarial studies candidates if they have passed all examinations in accordance with the curriculum and study program.[6]

The next major challenge facing the actuarial profession in the Republic of Srpska is the acquisition of AI-related competencies. In this context, one of the key roles may be played by the Actuarial Association of the Republic of Srpska, established in 2008 to improve, develop, and promote actuarial science and the profession, their practical application, and the professional development and education of actuaries. As of June 2025, the Association had 23 members.[7] The Association is an associate member of the International Actuarial Association (IAA), whose primary focus includes actuarial education. Continuous professional development of actuaries is essential, and it is common for professional standards to define both foundational and continuing education, which has been the practice to date. Since the criteria for obtaining an authorized actuary license in the Republic of Srpska are not linked to membership in a specific professional organization nor to professional experience, the competence of actuaries, namely, their readiness to perform tasks that, as previously noted, are becoming increasingly complex, also depends on the extent to which university curricula and study programs adapt to current developments.

Based on informal communication with members of the Actuarial Association of the Republic of Srpska, we learn that currently authorized actuaries operating in the Republic of Srpska predominantly limit the application of AI to the use of large language models (LLMs). LLMs are a class of AI models trained on large amounts of textual data, generative models designed to understand and generate human language. They have been successfully used in the development of chatbots such as ChatGPT and Google Bard.[8] When using these tools, it should be noted that large language models, including

[5] Paul Embrechts, Mario V. Wüthrich, "Recent challenges in actuarial science", *Annual Review of Statistics and Its Application*, Vol. 9, No. 1/2022, 119–140.

[6] The Rulebook on the requirements for acquiring and revocation of the title of the authorized actuary (*Official Gazette of the Republic of Srpska*, 57/06)

[7] Actuarial Association of the Republic of Srpska, *Members of the Association, a*vailable at: *https://uars.rs.ba/clanovi-udruzenja*/, accessed*:* 3 June 2025.

[8] Samuel R. Bowman, Eight Things to Know about Large Language Models, 2023, *a*vailable at: *https://arxiv.org/abs/2304.00612,* accessed*:*16 February 2025.

GitHub Copilot and ChatGPT, are not reliable for assisting actuaries in writing Python code, as discussed in more detail in a study by Ballon published in 2024[9]. In accordance with professional standards, holders of the actuarial function in the Republic of Srpska should consider the potential impacts that the use of Large Language Models may have on business operations and should adopt procedures for reviewing generated outputs and decisions made based on them.[10] In addition, there are concerns regarding the validation of these models and the issue of so-called hallucinations, that is, situations in which model outputs are not connected to the source text.[11]

It is crucial to understand that the objective of incorporating AI into traditional actuarial tasks is to improve the efficiency of models and methods. Artificial intelligence can simplify various actuarial processes, including data processing and reporting, thereby enabling actuaries to focus on activities such as strategic planning, supervision, and risk management.

Many new technologies used for risk assessment and as support for policyholder risk reduction, particularly those related to the application of AI and machine learning in creating, redesigning, and pricing insurance products, require a high level of technical skills.[12] As a result, it is essential for actuaries to acquire skills in programming, large-scale data manipulation, and the design and implementation of artificial intelligence algorithms, in order to remain key stakeholders in the risk management process and in the preparation of analyses and conclusions necessary for decision-making.

III Regulations Governing Insurance Pricing by Insurance Companies Headquartered in the Republic of Srpska

Pursuant to the Decision on the Content of the Opinion of an Authorized Actuary (Article 2), it is stipulated that the authorized actuary shall provide an opinion on business policy acts, which include, *inter alia*, decisions on the technical bases of insurance; general and special insurance terms and conditions; and premium tariffs.[13]

[9] Balona Caesar, "ActuaryGPT: applications of large language models to insurance and actuarial work", *British Actuarial Journal, Cambridge University Press*, 2024, Vol. 29, 1-1.

[10] Mirela Mitrašević, Nataša Tešić, Kristina Bradić, "Challenges in applying machine learning for predictive modelling", *Innovations in insurance -from traditional to modern market*, (eds. Jelena Kočović, Marija Koprivica, Zorica Mladenović, Radmila Dragutinović Mitrović, Biljana Jovanović Gavrilović), Belgrade, 2025, 367-384.

[11] Weijia Xu *et al*., "Understanding and Detecting Hallucinations in Neural Machine Translation via Model Introspection", *Transactions of the Association for Computational Linguistics*, 2023, Vol. 11, 546–564.

[12] OECD, "Leveraging Technology in Insurance to Enhance Risk Assessment and Policyholder Risk Reduction", *OECD Business and Finance Policy Papers*, 2023, available at: *https://www.oecd.org/en/publications/leveraging-technology-in-insurance-to-enhance-risk-assessment-and-policyholder-risk-reduction_2f5c18ac-en.html,* on 19 February2025.

[13] Decision on the Content of the Opinion of the Authorized Actuary, *Official Gazette of the Republic of Srpska*, No. 15/07.

An insurance company is obliged to submit amendments and supplements to business policy acts to the Insurance Agency of the Republic of Srpska within fifteen days from the date of their adoption, together with the opinion of the authorized actuary. Unlike this approach, insurance companies from the Republic of Srpska that are authorized to operate in the territory of the Federation of Bosnia and Herzegovina through branch offices are, pursuant to Articles 10 and 11 of the Insurance Law, required to submit a request for prior approval to the Insurance Supervision Agency of the Federation of Bosnia and Herzegovina regarding the insurance conditions that the insurance company intends to apply in its business operations with policyholders in the territory of the Federation of Bosnia and Herzegovina, including any subsequent amendments or supplements.[14] The insurance company must submit the premium tariffs to be applied in its business with policyholders, as well as any amendments thereto, to the Supervisory Agency at least 30 days prior to their implementation. According to the "Instruction on the content and submission of the opinion of an authorized actuary",[15] the authorized actuary provides an opinion as to whether insurance premium tariffs are in accordance with the law, actuarial professional standards, and insurance practice. The opinion also includes information on the statistical data used to calculate premium rates, as well as data on the technical bases and methods applied. These provisions also apply to amendments and supplements to premium tariffs, with the authorized actuary obligated to submit an opinion on the technical results achieved over the last three years during which the tariffs subject to change or amendment were applied. When providing an opinion, the authorized actuary is required to substantiate that the opinion is supported by analyses demonstrating that premium rates are rational, adequate, and non-discriminatory. The Supervisory Agency may require corrections to premium tariffs in order to ensure compliance with insurance conditions within 30 days of receipt. According to Article 118 of the same Law, the appointed authorized actuary is obliged to ensure that insurance premium tariffs are consistent with actuarial practice and applicable regulations and that they are structured in such a manner as to enable the continuous fulfillment of all obligations arising from insurance contracts. Of particular relevance to the subject of this paper is the provision of Article 141 of the Insurance Law, as part of the regular reporting obligation, which stipulates that insurance companies are required to inform the Supervisory Agency about the technical basis used in the calculation of premium tariffs.

The Insurance Agency of the Republic of Srpska does not grant prior approval for the introduction of insurance products; however, in accordance with Article 13

[14] Insurance Law, *Official Gazette of the Federation of Bosnia and Herzegovina*, Nos. 23/17 and 103/21.
[15] Instruction on the Content and Submission of the Authorized Actuary's Opinion, *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 106/18.

of the Law on Insurance Companies, it may limit the scope of insurance activities performed by a company for a specified period if this is necessary to protect the company's financial soundness. Furthermore, Article 54 of the Insurance Law stipulates that if the Insurance Agency of the Republic of Srpska determines that an insurance company is in breach of risk management rules and policyholder protection requirements, it may order the company to suspend the application of, or amend, insurance terms and conditions and premium tariffs, and to undertake other measures necessary to improve risk management procedures. The Insurance Agency of the Republic of Srpska may order an increase or decrease in the premium amount for a specific type of insurance if, in the opinion of the Agency, such premiums are not appropriate. In the process of tariff control and its application, the Insurance Agency of the Republic of Srpska may require amendments to provisions related to discounts if it is established that subjective elements have been introduced into the pricing process that are not linked to actual and identifiable characteristics of the insured risk, and whose effects cannot be quantified and controlled in accordance with generally accepted actuarial methods. This position becomes particularly significant when considering pricing practices that are not based on the insurance risk profile and service costs, commonly referred to as "price differentiation". Contemporary trends in AI and increased data availability enable ever-greater customization of premiums based on policyholder behavior and characteristics, even when these are not directly related to insured risks. The European Insurance and Occupational Pensions Authority (EIOPA) published information a series of working papers on differential pricing practices. The report published in 2023 on the EIOPA website states that in recent years, the European non-life insurance sector has experienced increasing competition not only in terms of services and coverage offered, but also in pricing, leading to the emergence of differential pricing practices. This increasingly widespread practice has triggered supervisory and regulatory activities and studies in several countries, including the United Kingdom and European Union Member States such as Germany, Ireland, Italy, the Netherlands, and Sweden.[16] The report of the National Association of Insurance Commissioners (NAIC), an American organization that sets standards and provides regulatory support, states that according to a 2013 survey by Earnix conducted on 73 large insurance companies, approximately 45% were using some form of price optimization, while 29% of the surveyed companies reported plans to implement such practices in the future. However, the NAIC report published in 2015 notes that price optimization was identified in very few cases based on submitted premium tariffs, potentially because price optimization was not defined in the documentation

[16] EIOPA, Supervisory statement on differential pricing practices in non-life insurance lines of business, 2023, available at: *https://www.eiopa.europa.eu/document/download/1e9a8fb2-e688-4bf5-a347-ee0a-1ec3aab3_en?filename=EIOPA-BoS-23-076-Supervisory-Statement-on-differential-pricing-practices_0.pdf*, accessed: 20 March 2025.

submitted to regulators.[17] Similar practices have also been identified through regular and extraordinary inspection supervisions conducted by the Insurance Agency of the Republic of Srpska in the insurance market of the Republic of Srpska.

Given the above, it can be concluded that under the current regulations, insurance companies are required to ensure adequate records of data management processes and modeling methodologies in order to enable transparency and effective supervision.

The absence of specific regulations and governance principles for AI is currently compensated to some extent by existing regulations in the areas of risk management, insurance pricing, technical reserves, and capital adequacy. However, recognizing both the potential of AI to improve actuarial efficiency in the Republic of Srpska and the risks associated with its application (as discussed by Preez *et al*.[18]), the regulation of this area should be considered one of the priority objectives in the insurance market of the Republic of Srpska. The *Artificial Intelligence Act*, which establishes a set of requirements applicable to providers and users of high-risk AI systems within the European Union,[19] as well as the six principles of AI governance (proportionality; fairness and non-discrimination; transparency and explainability; human oversight; data governance and record-keeping; and robustness and performance) published by EIOPA in 2021,[20] together with existing implementation experience, may serve as one of the starting bases for regulating this area in the Republic of Srpska.

IV Application of Artificial Intelligence in Non-Life Insurance Pricing

An insurance contract is specific in that the premium, or insurance price, is collected in advance, while the insurer undertakes to pay future claims that may arise during the term of the insurance contract. The pricing process includes numerous components, each of which may play a crucial role in ensuring the profitability and solvency of the insurance company. The insurance premium should provide coverage

[17] National Association of Insurance Commissioners, Casualty Actuarial and Statistical Task Force, Price Optimization White Paper, November 2015, 1-16. available at: *https://content.naic.org/sites/default/files/inline-files/committees_c_catf_related_price_optimization_white_paper.pdf*, on 20 March 2025.

[18] Valerie du Preez *et al*., "From Bias to Black Boxes: Understanding and Managing the Risks of AI – an Actuarial Perspective", *British Actuarial Journal,* 29, 2024.

[19] European Parliament, Artificial Intelligence Act: MEPs adopt landmark law, 2024. available at: *https://www.europarl.europa.eu/news/en/press-room/20240308IPR19015/artificial-intelligence-act-meps-adopt-landmark-law,* accessed*:* 29 March 2025.

[20] EIOPA, Artificial intelligence governance principles: towards ethical and trustworthy artificial intelligence in the European insurance sector, 2021, available at: *https://www.eiopa.europa.eu/system/files/2021-06/eiopa-ai-governance-principles-june-2021.pdf,* accessed*:* 20 March 2025.

for: the risk assumed by the insurer under the insurance policy, that is, the claim costs, the projection of which determines the net insurance premium; overhead costs (administrative and acquisition costs); and the target profit. Although a profit loading is included in premium tariff calculations, in practice profit will be realized only if collected premiums exceed total costs.[21] It is of paramount importance that the actuary, based on available information, correctly estimates the size of claims and determines the net insurance premium accordingly. In contemporary actuarial practice of non-life insurance pricing, the most widely used models are Generalized Linear Models (GLMs), whose theoretical foundations can be found in the works of Nelder and Wedderburn[22] as well as McCullagh and Nelder.[23] A paper available on the website of the Institute and Faculty of Actuaries emphasizes that Generalized Linear Models were first introduced into actuarial education in 1980 at Cass Business School, as Bayes Business School was officially called until September 2021, which is a member of City, University of London, and has a mutual recognition agreement with the Institute and Faculty of Actuaries.[24]

The 1990 curriculum of the Casualty Actuarial Society (CAS) included, in its literature list, a paper by Brown on the application of GLMs for insurance pricing.[25] Kuo and Lupton[26] note that these models were mentioned only in passing until 2006, when the CAS curriculum literature list officially included the manual "A Practitioner's Guide to Generalized Linear Models" authored by Anderson *et al*.[27]

Authorized actuaries in the insurance market of the Republic of Srpska were formally introduced to GLM within the framework of continuing professional development programs organized by the Actuarial Association of the Republic of Srpska in 2015 and 2016.[28]

It is worth noting that machine learning methods and GLM were developed in parallel during the mid-twentieth century. One of the key reasons for the popularity

[21] Mirela Mitrašević,"Aktuarska i finansijska analiza adekvatnosti kapitala kompanija za neživotna osiguranja" (doctoral dissertation), Faculty of Economics, University of Belgrade, 2010.

[22] John Ashworth Nelder, Robert William Maclagan Wedderburn, "Generalized linear models", *Journal of the Royal Statistical Society*, 1972, 135, 370-384.

[23] Peter McCullagh, John Ashworth Nelder, *Generalized linear models*. London, 1983.

[24] Steven Haberman, Arthur Edward Renshaw, "Generalized Linear Models in Actuarial Work", *Journal of the Staple Inn Actuarial Society*, 32, 1990, 171-172., available at: *https://www.actuaries.org.uk/system/files/documents/pdf/glm.pdf.*

[25] Robert L. Brown, "Minimum Bias with Generalized Linear Models", *Casualty Actuarial Society*, 1988,187–217.

[26] Kevin Kuo, Daniel Lupton, "Towards Explainability of Machine Learning Models in Insurance Pricing", *Variance,* 2023, 16 (1).

[27] Duncan Anderson *et al*., "A Practitioner's Guide to Generalized Linear Models", *CAS Study Note*, 2005, 4–39.

[28] The Actuarial Association of the Republic of Srpska, Seminar on Insurance Rate-Making, 2015, available at: *https://uars.rs.ba/foto-galerija-seminar-mart-2015/*, and The Actuarial Association of the Republic of Srpska, Pricing of MTPL Insurance, 2016, available at: *https://uars.rs.ba/odredjivanje-cijene-osiguranja-motorna-vozila/*, accessed: 2 June 2025.

of GLM can be found in the fact that machine learning methods are often perceived as a complete "black box" and, in the field of insurance pricing, which is governed by numerous regulations and requires a certain level of model transparency, were therefore unable to achieve wider application. In addition, high implementation costs may represent a limiting factor. Actuaries should be able to explain to regulators and auditors the principles on which tariff models are based, while consumers should be informed about the main factors influencing the level of insurance premiums in order to enable informed decision-making. Achieving this requires a high level of transparency and explainability of the systems, models, and data used. In this paper, we first explain Generalized Linear Models and subsequently present three models that combine Generalized Linear Models with neural networks.

1. Application of Generalized Linear Models in Non-Life Insurance Pricing

Generalized Linear Models enable modeling relationships between a target variable, whose outcome is to be predicted, and one or more explanatory variables. In non-life insurance, the target variable is most commonly:

- claim frequency (number of claims per exposure);
- claim severity (loss amount per individual claim or per loss event);
- pure premium (loss amount per exposure);
- loss ratio (ratio of incurred losses to earned premium).

This is because insurance claims are typically modeled as a combination of claim frequency and claim severity, or directly through the modeling of the pure premium or the loss ratio. When modeling claim severity, the Gamma and Inverse Gaussian distributions are commonly used, while claim frequency is most often modeled using the Poisson or Negative Binomial distribution. For modeling the pure premium (or loss ratio) at the policy level, the Tweedie distribution is traditionally used.[29]

Generalized Linear Models are based on the assumption that we have a series of independent random variables $Y_1,\ldots, Y_n$ belonging to the exponential family of distributions, whose density (discrete or continuous) has the form:[30]

$$f_{Y_i}\left(y_i;\theta;\omega_i/\varphi\right)=\exp\left\{\frac{y_i\theta_i-b(\theta_i)}{\varphi/\omega_i}+c\left(y_i,\omega_i/\varphi\right)\right\} \quad (1)$$

where:

$\omega_i > 0$ - risk exposure factor (weight) $1 \le i \le n$;

[29] Mark Goldburd *et al*., *Generalized Linear Models for Insurance Rating*, Casualty Actuarial Society, Arlington, 2020.

[30] Esbjörn Ohlsson, Björn Johansson, *Non-Life Insurance Pricing with Generalized Linear Models*; Springer: Berlin/Heidelberg, 2010.; Steven Haberman, Arthur E. Renshaw, "Generalized Linear Models and Actuarial Science", *Journal of the Royal Statistical Society*. Series D (The Statistician), Vol. 45, No. 4/1996, 407-436.

$\varphi > 0$ - dispersion or scale parameter, which is the same for each i;
$\theta_i \in \Theta$ - canonical parameter $1 \leq i \leq n$;
$b: \Theta \rightarrow R$ - cumulant function.

It is assumed that the cumulant function $b(\theta_i)$ is twice continuously differentiable. In the theory of Generalized Linear Models, no particular attention is paid to the function $c(\cdot,\cdot,\cdot)$, as it does not depend on the canonical parameter θ.

In practice, an appropriate link function *g* is often selected so that we can express systematic effects as follows:

$$x_i \mapsto g(\mu_i) = \langle \beta, x_i \rangle \tag{2}$$

where:
$\beta \in R^{q+1}$ - regression parameter,
xi $\in \{1\} \times R^q$ - information on predictor variables;
$\langle , \rangle$ - scalar product in the Euclidean space R^{q+1}.

It is important to note that the information on predictor variables includes an intercept as its first component; therefore, the previous formula can be written in the following form:[31]

$$x_i \mapsto g(\mu_i) = \beta_0 + \langle \beta, x_i \rangle \tag{3}$$

The canonical parameter θ_i then takes the following form:

$$\theta = (b')^{-1}\left(g^{-1}\left(\beta_0 + \langle \beta, x_i \rangle\right)\right) \tag{4}$$

where:
$(b')^{-1}$ - canonical link of the selected exponential family distribution.

Predictor variables in Generalized Linear Models may be continuous or categorical. A categorical variable may be numeric or non-numeric. In pricing practice, most explanatory variables are categorical in nature, and as a result, statistical analysis encounters complications such as sparsity of the basic model matrix or the so-called design matrix. It should be emphasized that the previously mentioned pricing approach relies on information about policyholders that is available at the time of contract inception.

Although Generalized Linear Models have numerous advantages, a study by Lovisa Styrud in 2017 found that this model had poorer overall predictive accuracy compared to results obtained using neural networks.[32] In addition, GLM is unable

[31] Ronald Richman, Mario V. Wüthrich, "LocalGLMnet: interpretable deep learning for tabular data". *Scandinavian Actuarial Journal*, 2022, available at: *https://doi.org/10.1080/03461238.2022.2081816*, accessed on 20 March 2025.

[32] Lovisa Styrud, *Risk Premium Prediction of Car Damage Insurance Using Artificial Neural Networks and Generalized Linear Models*, Royal Institute of Technology, Stockholm, 2017.

to process different types of data and does not perform well when dealing with nonlinear relationships in the data.

2. Development of Models Combining Neural Networks and GLMs for Insurance Pricing

Deep learning models have gained significant popularity in statistical modeling because they lead to regression models whose performance often surpasses that of classical models, such as GLMs. Embrechts and Wüthrich considered *feed-forward neural networks* as an extension of GLMs, representing the regression function in equation (2) as follows:[33]

$$x_i \mapsto g(\mu_i) = \beta_0 + \langle \beta, z^{(d:1)}(x_i) \rangle \tag{5}$$

where:

$\beta = (\beta_1, ..., \beta_{q_d})^T \in R^{q_d}$ - GLM regression parameters;

$\beta_0 \in R$ - intercept;

$z^{(d:1)}$ - composition of $d \in N$ ($d \geq 2$) hidden layers of the neural network $z^{(d:1)} = z^{(d)} \circ \ldots \circ z^{(1)}$.

In this model, the k-th hidden neural network layers $z^{(k)} : R^{q_{k-1}} \to R^{q_k}$ are nonlinear transformations of the raw covariate data, so that the learned representations $z^{(d:1)}(x) \in R^{q_d}$ can be incorporated into the GLM as shown in equation (5).

Recognizing that the model in equation (5) does not lead to GLM improvement, the authors of the aforementioned paper refer to research in which Wüthrich and Merz start from a simple generalized linear model with regression function:[34]

$$x_i \mapsto \mu^{GLM}(x) = \exp\{\langle x, \beta \rangle\} \tag{6}$$

and neural network regression function:

$$x_i \mapsto \mu^{NN}(x) = \exp\{b_3 + B_3' z^{(2)}(x)\} \tag{7}$$

with an exponential activation function, intercept b_3, and weights B_3 in the output layer. The previous functions μ^{GLM} and μ^{NN} are then combined in the CANN (*Combined Actuarial Neural Network*) regression function as follows:

[33] Paul Embrechts, Mario V. Wüthrich, "Recent challenges in actuarial science", *Annual Review of Statistics and Its Application*, 9 (1), 2022, 119–140.

[34] Mario V. Wüthrich, Michael Merz, "Yes, we CANN!", *ASTIN Bull*, 49:1–3, *2019*.

$$x_i \mapsto \mu^{CANN}(x) = \exp\{\langle x, \beta \rangle + b_3 + B_3' z^{(2)}(x)\}. \quad (8)$$

CANN approach can be applied to a wide range of standard parametric actuarial models, and one example is the modeling of claim frequency assuming a Poisson distribution, as demonstrated by Schelldorfer and Wüthrich.[35]

Wilson *et al*. applied this approach to French motor liability insurance datasets, *„freMTPL2freq"* and *„freMTPL2sev"*, included in the R package *CASdatasets*. Various machine learning methodologies, including GLM, *Gradient Boosted Machines* (GBM**)**, *Artificial Neural Networks* (ANN), and a hybrid model combining GLM and ANN, were tested to develop technical models. Results showed that the hybrid model combining *GLM* and *ANN* was best.[36] However, when applying GLMs, it should be kept in mind that they require professional feature engineering to select variables and their interrelationships, and if this is not done, GLMs may achieve weaker results compared to other methods.[37] The greater flexibility of neural networks is one reason for their increasing popularity in actuarial practice.[38]

Richman and Wüthrich introduced the so-called *LocalGLMnet*, a neural network architecture that retains many features of GLMs by enabling variable selection, interpretation of the calibrated deep learning model, and also allowing regression parameters$\beta_j = \beta_j(x)$ to become dependent on feature x. Feed-forward neural networks of depth $d \in N$ with input and output dimensions equal to $q_0 = q_d = q$ are used to model the x-dependent regression parameter:

$\beta: R^q \longrightarrow R^q$

$$x_i \mapsto \beta(x) = z^{(d:1)}(x) = \left(z^{(d)} \circ \ldots \circ z^{(1)}\right)(x) \quad (9)$$

LocalGLMnet is defined as:

$$x_i \mapsto g(\mu) = \beta_0 + \langle \beta(x), x \rangle \quad (10)$$

for a strictly monotone and smooth link function g.[39]

[35] Jürg Schelldorfer, Mario V. Wüthrich, "Nesting Classical Actuarial Models into Neural Networks", 2019, available at SSRN: *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3320525* or *https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3320525_code769240.pdf?abstractid=3320525&mirid=1&type=2*, accessed on 12 February 2025.

[36] Alinta Wilson *et al*., "A Comparison of Generalised Linear Modelling with Machine Learning Approaches for Predicting Loss Cost in Motor Insurance", *Risks,* 12: 62/2024, *https://doi.org/10.3390/risks12040062*.

[37] For more details: Alexander Noll, Robert Salzmann, Mario V.Wüthrich, Case Study: French Motor Third-Party Liability Claims, 2020, available at SSRN: *https://ssrn.com/abstract=3164764* or *http://dx.doi.org/10.2139/ssrn.3164764.*

[38] Mario V. Wüthrich, "Bias regularization in neural network models for general insurance pricing", *European Actuarial Journal*, *10* (1), 2020,179–202.

[39] Mario V. Wüthrich, Michael Merz, *Statistical Foundations of Actuarial Learning and its Applications*, Springer Actuarial, 2022, available at: *https://link.springer.com/book/10.1007/978-3-031-12409-9*.

Harris, Richman, and Wüthrich emphasize that advances in adapting deep learning for actuarial purposes, as illustrated by the *LocalGLMnet* approach, contribute to model transparency. However, it remains necessary to establish clear standards that precisely define what constitutes an acceptable level of compliance with relevant guidelines and regulations in this domain. Given that GLMs are inherently transparent, it is possible to explain how predictions are generated. The coefficients obtained using LocalGLMnet can be analyzed collectively, providing better insight into the neural network's learned relationships.[40]

When applying neural networks, it should be kept in mind that they can lead to the occurrence of bias, meaning that the total neural network predictions may not sum to the total observed claims in the portfolio on which they were calibrated. This may make them unsuitable for application in pricing. According to widely accepted actuarial practice standards, actuaries are responsible for ensuring that models are fit for purpose and free of significant biases, which in the case of machine learning models may arise from the data used for training or the chosen algorithm. Understanding the model equips actuaries with the fundamental tools needed to effectively correct model errors and identify potential problems in data processing or model training.

V Concluding Remarks

Summarizing the discussion regarding pricing regulations in the Republic of Srpska, it can be concluded that the current regulatory framework provides actuaries with a foundational basis for applying AI. It needs to be further adapted and continuously updated in line with modern technological developments. It is important to emphasize that actuaries should continue to develop their skills and professional standards to reduce the risks arising from the use of AI. This paper shows that actuaries have relied on Generalized Linear Models (*GLMs*) for pricing non-life insurance for more than four decades. In recent years, there has been growing interest in the application of neural networks, as research indicates they can provide better projections of claims than other models. However, neural network-based models can lead to bias and are often considered a complete "black box", which complicates interpretation and implementation. Consequently, they have not yet seen widespread adoption in actuarial practice. This paper presented *Combined Actuarial Neural Network (CANN)* and *LocalGLMnet* models, in which their authors attempted to overcome certain shortcomings by combining GLMs with neural networks. Given that these

[40] Roseanne Harris, Ronald Richman, Mario V. Wüthrich, "Reflections on deep learning and the actuarial profession(al)", 2024, available at SSRN: *https://ssrn.com/abstract=4672447 or http://dx.doi.org/10.2139/ssrn.4672447*.

hybrid models are not fully transparent, further research is needed to assess their ability to meet the regulatory requirements for pricing models.

Literature

- Anderson D. et al., "A Practitioner's Guide to Generalized Linear Models", *CAS Study Note*, 2005, 4–39.
- Buhlmann, H., "The actuary: the role and limitations of the profession since the mid-19th century", *Astin bulletin*, Vol. 27, No 2/1997, 165-171.
- Bowman, S. R., Eight Things to Know about Large Language Models, 2023, dostupno na adresi: *https://arxiv.org/abs/2304.00612*, 16.2.2025.
- Brown, R. L., "Minimum Bias with Generalized Linear Models", *Casualty Actuarial Society*, 1988,187–217.
- Caesar, B., "ActuaryGPT: applications of large language models to insurance and actuarial work", *British Actuarial Journal, Cambridge University Press*, 2024, vol. 29, 1-1.
- du Preez V. et al., "From Bias to Black Boxes: Understanding and Managing the Risks of AI – an Actuarial Perspective", *British Actuarial Journal,* 29, 2024.
- Embrechts, P., Wüthrich, M. V., "Recent challenges in actuarial science", *Annual Review of Statistics and Its Application*, Vol. 9, No 1/2022, 119–140.
- Haberman, S., Renshaw, A. E., "Generalized Linear Models in Actuarial Work", *Journal of the Staple Inn Actuarial Society*, 32, 1990, 171-172., dostupno na adresi: *https://www.actuaries.org.uk/system/files/documents/pdf/glm.pdf.*
- Harris, R., Richman, R., Wüthrich, M. V., "Reflections on deep learning and the actuarial profession(al)", 2024, dostupno na adresi: SSRN: *https://ssrn.com/abstract=4672447 or http://dx.doi.org/10.2139/ssrn.4672447*.
- Goldburd M., et al., *Generalized Linear Models for Insurance Rating*, Casualty Actuarial Society, Arlington, 2020.
- Kuo, K., Lupton, D., "Towards Explainability of Machine Learning Models in Insurance Pricing", *Variance,* 2023, *16* (1).
- McCullagh, P., Ashworth Nelder, J., *Generalized linear models*. London, 1983.
- Mitrašević,M., "Aktuarska i finansijska analiza adekvatnosti kapitala kompanija za neživotna osiguranja" (doktorska teza), *Ekonomski fakultet u Beogradu*, 2010.
- Mitrašević, M., Tešić, N., Bradić, K., "Challenges in applying machine learning for predictive modelling", *Innovations in insurance -from traditional to modern market*, (editori: Jelena Kočović, Marija Koprivica, Zorica Mladenović, Radmila Dragutinović Mitrović, Biljana Jovanović Gavrilović), Beograd, 2025, 367-384.

- Nelder, J. A., Maclagan Wedderburn, R. W., "Generalized linear models", *Journal of the Royal Statistical Society*, 1972, 135, 370-384
- Noll, A., Salzmann, R., Wüthrich, M., Case Study: French Motor Third-Party Liability Claims, 2020, dostupno na adresi: SSRN: *https://ssrn.com/abstract=3164764 or http://dx.doi.org/10.2139/ssrn.3164764*.
- Ohlsson, E., Johansson, B., *Non-Life Insurance Pricing with Generalized Linear Models*; Springer: Berlin/Heidelberg, 2010.
- Richman, R., Wüthrich, M. V., "LocalGLMnet: interpretable deep learning for tabular data". *Scandinavian Actuarial Journal*, 2022, dostupno na adresi: *https://www.tandfonline.com/doi/full/10.1080/03461238.2022.2081816*, 20.3.2025.
- Schelldorfer, J., Wüthrich, M. , "Nesting Classical Actuarial Models into Neural Networks", 2019, dostupno na adresi: SSRN: *https://ssrn.com/abstract=3320525* or *http://dx.doi.org/10.2139/ssrn.3320525* ssrn-3320525.pdf, 12.2.2025.
- Styrud, L., *Risk Premium Prediction of Car Damage Insurance Using Artificial Neural Networks and Generalized Linear Models*, Royal Institute of Technology, Stockholm, 2017.
- Wilson A. et al., "A Comparison of Generalised Linear Modelling with Machine Learning Approaches for Predicting Loss Cost in Motor Insurance", *Risks,* 12: 62/2024, *https://doi.org/10.3390/risks12040062*.
- Wüthrich, M. V., "Bias regularization in neural network models for general insurance pricing" *European Actuarial Journal* , *10* (1), 2020,179–202.
- Wüthrich, M. V., Merz, M., *Statistical Foundations of Actuarial Learning and its Applications*, Springer Actuarial, 2022, dostupno na adresi: *https://link.springer.com/book/10.1007/978-3-031-12409-9*.
- Wüthrich, M. V., Merz, M., "Yes, we CANN!", *ASTIN Bull,* 49:1–3, *2019*.
- Actuarial Association of the Republic of Srpska, Seminar on Insurance Rate-Making, 2015, available at: *https://uars.rs.ba/foto-galerija-seminar-mart-2015/* and Actuarial Association of the Republic of Srpska, Pricing of MTPL Insurance, 2016, available at: *https://uars.rs.ba/odredjivanje-cijene-osiguranja-motorna-vozila/*, accessed: 2.6.2025.
- Xu W. et al., "Understanding and Detecting Hallucinations in Neural Machine Translation via Model Introspection", *Transactions of the Association for Computational Linguistics*, 2023, vol. 11, 546–564.

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***Prof. dr Stefan Milojević*[1]**

RESTRIKTIVNI SPORAZUMI U OSIGURANJU – UTICAJ PRAVA EVROPSKE UNIJE I AKTUELNI TRENDOVI

PREGLEDNI RAD

Apstrakt

Osiguranje kao krajnje specifična i visoko regulisana delatnost uživa poseban tretman i kada je reč o pravilima konkurencije. Tako se kategorija izuzeća restriktivnih sporazuma tradicionalno primenjivala u sektoru osiguranja u pravu Evropske unije. Rad se bavi pojmom restriktivnih sporazuma kako bi ukazao na potrebu da razmotre argumenti za njihovo izuzimanje i protiv njihovog izuzimanja iz opšteg režima zaštite konkurencije. Zaključuje se da je zaštita konkurencije u oblasti osiguranja delikatan društveni zadatak, za čije su izvršenje najznačajniji precizni i jasni propisi.

Ključne reči: delatnost osiguranja, saosiguranje i reosiguranje, restriktivni sporazumi, pravo konkurencije.

I Uvod

Predmet istraživanja su restriktivni sporazumi u osiguranju kao pitanje koje pravo osiguranja i pravo konkurencije približava, *pokazuje* njihove međusobne dodirne tačke i pruža mogućnost za potpunije zakonsko uređenje. Neistraženost predmetnog pitanja predstavlja podsticaj da se u radu ponudi teorijskopravna i uporednopravna analiza, koja će imati i praktičnu upotrebnu vrednost. Stoga je tokom pisanja rada analizirana i sudska praksa i praksa tela zaduženog za zaštitu konkurencije (Komisije za zaštitu konkurencije).

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Nakon uvodnih izlaganja, polazi se od specijalnog karaktera delatnosti osiguranja, koja je uređena posebnim propisima kojima se ispoljava državni intervencionizam. Pod tim se misli na regulativu statusnih, nadzornih i ugovornih pitanja, to jest *lex specialis* pristup. Težište istraživanja je na restriktivnim sporazumima, koji predstavljaju modalitet povrede slobodne konkurencije specifičan upravo za oblast osiguranja. Zaštita konkurencije kao neophodan preduslov tržišnog mehanizma može biti dovedena u pitanje u osiguranju najčešće različitim oblicima „dogovaranja" učesnika na tržištu. Stoga se u svim zakonodavstvima izričito pominju konkretni modaliteti restriktivnih sporazuma koji potpadaju pod udar Komisije za zaštitu konkurencije.

Zapravo, na osnovu uvida u redosled koraka evropskih zakonodavnih tela, može se uočiti tendencija postepenog vraćanja na opšta pravila u predmetnoj oblasti. Posle decenija specijalnog tretmana restriktivnih sporazuma u oblasti osiguranja, pod zakonom propisanim uslovima i sa jasnom intencijom Evropske komisije da tim sporazumima dodeli poseban status, uočava se postepeni povratak na opštu regulativu i svrstavanje svih restriktivnih sporazuma, uključujući i one u osiguranju, u isti pravni režim. Koliko je to sa stanovišta interesa tržišta osiguranja smisleno, jedno je od pitanja kojima je u ovom radu posvećena posebna pažnja.

Nakon izlaganja o svim gorepomenutim pitanjima, u zaključku je iznet stav da regulatorni okvir iz oblasti konkurencije treba unaprediti, uz davanje preporuka za njegovo unapređenje. Izneto je mišljenje da su srpski propisi o zaštiti konkurencije, iako inspirisani regulativom EU, prilično nejasni i neprecizni. U praksi se, istina, već pokazalo da mogu izroditi problemske situacije, što u krajnjoj liniji najviše šteti interesima potrošača usluga osiguranja. Stoga se ističe stav da se prilikom primene takvih propisa Komisija za zaštitu konkurencije mora dobro upoznati sa stavom evropskih uzora u pogledu ispoljavanja zaštite konkurencije u oblasti osiguranja. U EU, dakle, postoji svest o tome da priroda delatnosti osiguranja nalaže da osiguravači zaključuju i sporazume koji se ne tolerišu drugim privrednim društvima. Ti sporazumi su opravdani i društveno poželjni upravo zato što bez njih ne bi bilo moguće pružanje pokrića tzv. velikim rizicima ili novim rizicima, odnosno zato što omogućavaju stvaranje kalkulacione baze za što adekvatniju procenu premija osiguranja.

II Generalno o osiguranju као delatnosti sui generis

Ako bi trebalo opisati delatnost osiguranja u jednoj rečenici, ona bi glasila: Osiguranje je visoko regulisana delatnost, pod budnim okom regulatora i posvećena zaštiti korisnika usluga osiguranja. Specifičnost poslovanja osiguravajućih društava proizlazi iz fundamentalne prirode njihovog poslovanja i rizika koji su im imanentni.[2]

[2] Snežana Knežević, „Faktori kvaliteta finansijskog izveštavanja osiguravajućih društava", *Referat na XLII Simpozijumu Saveza računovođa i revizora Srbije,* Zlatibor, 2011, 411–427.

Delatnost osiguranja i poslovanje osiguravajućih društava imaju značajnu ulogu u razvoju finansijskih institucija koje posluju u mnogim zemljama.[3] Budući da smo kao prvu odrednicu istakli detaljnu regulisanost, naglašavamo da se osiguranje razlikuje od ostalih privrednih delatnosti po mnogim karakteristikama (počev od osnivanja, za sve vreme poslovanja, do osnova i načina prestanka) koje opravdavaju zasebnu zakonsku regulativu ove delatnosti. Zakoni kojima se uvažava specifičnost osiguranja su brojni i njima se postiže to da je i licu koje nije stručnjak za ovu oblast jasno da je osiguranje „posebno" i da uživa zakonski pristup koji ga razlikuje od ostatka privrede.[4] Postavlja se pitanje da li specijalan karakter dolazi do izražaja i kada je reč o principu slobodne konkurencije u osiguranju.

Da pođemo od statusne regulative osiguranja. Statusno pravo osiguranja odnosi se na sva pitanja egzistencije društava za osiguranje i regulisano je Zakonom o osiguranju.[5] U srpskom pravu, a to je slučaj i u uporednom pravu, poslovima osiguranja bave se isključivo društva za osiguranje, osnovana u formi akcionarskih društava ili društava za uzajamno osiguranje.[6] Društvo za osiguranje je pravno lice sa sedištem u Republici koje je u registar nadležnog organa upisano na osnovu dozvole NBS za obavljanje poslova osiguranja. Dakle, društva za osiguranje su: 1) pravna lica (fizička lica ne mogu obavljati delatnost osiguranja ako nisu registrovana kao društvo za osiguranje); 2) imaju sedište na teritoriji Republike (to je mesto iz koga se upravlja poslovanjem društva i koje je kao takvo određeno osnivačkim aktom ili odlukom skupštine) i 3) u registar se upisuju na osnovu dozvole NBS za obavljanje poslova osiguranja.

Društva za osiguranje imaju nekoliko zajedničkih obeležja.[7]

Prvo, u svim pravima društva za osiguranje su izostavljena iz statusnog *lex generalis* zakona i uređena posebnim zakonom. Samo izdvajanje pomenutih privrednih subjekata iz zakona koji uređuje sva pitanja osnivanja, funkcionisanja i prestanka rada privrednih društava ukazuje na posebnosti društava za osiguranje.[8] Osobenost samih društava za osiguranje, s jedne strane, i postojanje javnog interesa da se uredi način na koji će se obavljati delatnost osiguranja, kao i način korišćenja

[3] Snežana Knežević, Aleksandra Mitrović, Dušan Sretić, „Specifics of reporting on cash flows in insurance companies", *Menadžment u hotelijerstvu i turizmu*, 2/2018, 21–33.

[4] U tom smislu se u teoriji govori o fragmentaciji ugovornog prava u kontekstu specijalnog pravnog režima ugovora o osiguranju. V. Nataša Petrović Tomić, „Povodom 60 godina od odbrane doktorske disertacije profesora Šulejića: 'Osiguranje od građanske odgovornosti' – pogled u budućnost – šta bi bilo da osiguranje nije došlo da nas spasi od odgovornosti?", u: Marija Karanikić Mirić, Miloš Živković (ured.): *Građansko pravo u pokretu – transformacija pre kodifikacije*, Pravni fakultet, Beograd, 2024, 219–251.

[5] Zakon o osiguranju, *Službeni glasnik RS*, br. 139/2014 i 44/2021 (dalje: ZO).

[6] Imajući u vidu da kod nas trenutno ne postoji nijedno registrovano društvo za uzajamno osiguranje, možemo reći da u Srbiji dominiraju akcionarska društva za osiguranje.

[7] Nataša Petrović Tomić, *Pravo osiguranja*, Sistem, Knjiga prva, Službeni glasnik, 2019, 188–192.

[8] Mirko Vasiljević, „Zakon o privrednim društvima i akcionarska društva za osiguranje/reosiguranje", T*okovi osiguranja*, br. 3/2024, 485-509.

sredstva kojima raspolažu ovi bitni učesnici u privrednom životu, s druge strane, utiču na opredeljenje zakonodavca u prilog posebnog tretmana društava za osiguranje.

Drugo, poslovima osiguranja bave se prvenstveno društva za osiguranje organizovana u formi akcionarskih društava. Iako i društva za uzajamno osiguranje mogu preuzeti deo portfelja rizika koji ugrožavaju jednu privredu, društva za osiguranje tipa akcionarskog društva zbog većih finansijskih kapaciteta predstavljaju zastupljeniju formu osiguravajućih kuća kada je reč o pokriću velikih (komercijalnih) rizika.

Treće, poslovima osiguranja mogu se baviti samo društva za osiguranje koja su dobila dozvolu nadležnog organa za obavljanje te delatnosti. Sistem dozvola usvojen u pogledu osnivanja društava za osiguranje predstavlja svakako jednu od najznačajnijih razlika društava za osiguranje u odnosu na druga privredna društva. Interes države da obezbedi najpre kontrolu, a zatim i stalni rast tih značajnih privrednih grana doveo je do poveravanja nadležnom javnom organu ne samo ovlašćenja u vezi s dodeljivanjem i oduzimanjem dozvola za rad društvima osiguranja već i do vršenja stalnog nadzora nad njihovim radom. Drugim rečima, u oblasti statusnog prava osiguranja postoji državni intervencionizam diktiran osobenostima predmetne delatnosti.

Četvrto, u pravu EU, a delimično i u našem pravu, usvojeno je pravilo da jedno društvo za osiguranje ne može istovremeno obavljati i poslove životnih i poslove neživotnih osiguranja.[9]

Peto, *lex specialis* propis postavlja okvire korporativnog upravljanja u društvima za osiguranje. Kada je reč o organima upravljanja, oni su u ZO tako određeni da čine dvodomni sistem uprave.[10] Obavezni organi upravljanja u društvu za osiguranje su: skupština, izvršni i nadzorni odbor. Međutim, ZO se ograničava na navođenje vrsta i nadležnosti organa upravljanja, dok su brojna pitanja u vezi sa upravljanjem u ovim društvima ostala van zakonske optike.[11]

Šesto, osobenost društava za osiguranje od privrednih društava koja su u opštem kompanijskopravnom režimu ogleda se i u regulativi stečaja. Naime, stečaj

[9] Ovo pravilo je izraz nastojanja da se institucionalizuje princip specijalizacije društava za osiguranje. Specijalizacija za određene poslove predstavlja jedan od načina obezbeđenja veće konkurentnosti društava za osiguranje u uslovima pojave konkurencije na tržištu osiguranja. To je i u interesu korisnika usluga osiguranja. Tako u Nemačkoj, primera radi, osiguravač koji se bavi poslovima osiguranja pravne zaštite, pored drugih osiguranja koja se s njim preklapaju (kao što je osiguranje od odgovornosti), mora u opšte uslove uneti odredbe o sprečavanju sukoba različitih osiguranja. V.: Slavko Đorđević, Darko Samardžić, *Nemačko ugovorno pravo osiguranja sa prevodom zakona* (VVG), IRZ, Beograd 2014, 42.

[10] Tatjana Jevremović Petrović, „Korporativno upravljanje u društvima za osiguranje", *Tokovi osiguranja,* br. 2/2025, 273–303.

[11] Reč je o brojnim pitanjima poput: načina izbora u organe upravljanja, mandata, sukob interesa, klauzula konkurencije, odgovornosti za štetu izazvanu vršenjem funkcija itd. Sva ta pitanja – ukoliko eventualno nisu uređena statutom društva za osiguranje – biće rešavana primenom odredbi ZPD. Tako i: Predrag Šulejić, „Korporativno upravljanje u organizacijima za osiguranje", u: Mirko Vasiljević, Vuk Radović (urednici), *Korporativno upravljanje*, Pravni fakultet univerziteta u Beogradu, Beograd, 2008, 322.

društava za osiguranje nije uređen opštim stečajnim izvorom (u našem slučaju Zakonom o stečaju),[12] već u posebnom stečajnom izvoru sektorskog karaktera.

III Pravo konkurencije i delatnost osiguranja

Jedno od načela koje obeležava pravo konkurencije bez sumnje je načelo slobodne konkurencije. Da li i u specifičnoj oblasti kao što je osiguranje važi načelo slobodne konkurencije? Princip slobodne konkurencije na tržištu obavezuje i društva za osiguranje, ali osobenost ovog sektora dolazi do izražaja i kroz odstupanje od primene principa zaštite konkurencije u izvornom obliku. Uporednopravno posmatrano, u pravu Evropske unije (dalje: EU) postoji tradicija primene izuzeća restriktivnih sporazuma u osiguranju od primene opštih pravila konkurencije.[13] Postavlja se pitanje zašto je to tako. Generalno posmatrano, iako narušavaju konkurenciju, neki od tih sporazuma imaju i pozitivan efekat na ekonomsku efikasnost, zbog čega su ocenjeni kao društveno poželjni.[14]

Postavlja se pitanje koja je razumna mera odstupanja od opštih pravila konkurencije zarad uvažavanja specifičnosti osiguravajućeg sektora te da li je to u interesu društvenog blagostanja i napretka? Ako pođemo od pretpostavke da je konkurencija na tržištu neophodna jer stvara konkurentski pritisak učesnicima na tržištu terajući ih da povećavaju ekonomsku efikasnost, možemo se zapitati koji se ciljevi postižu odstupanjem od konkurencije. Drugo, koliko su oni značajni ako se zarad njihovog ostvarenja može dovesti u pitanje ravnoteža na tržištu? Odgovor na ta pitanja može se dati uvažavanjem karakteristika osiguravajućeg sektora kao osvedočeno različitog od ostalih sektora privrede, s jedne strane, i uvažavanjem tradicije drugačijeg tretmana sporazuma osiguravača od strane institucija EU, s druge strane.

Da bismo razumeli potrebu da se u okviru slobodne konkurencije zaštiti specifičnost osiguranja, moramo poći od ključne karakteristike ugovora o osiguranju, a to je aleatornost. Taj ugovor se razlikuje od drugih ugovora po tome što izvršenje obaveze jedne strane (osiguravača) zavisi od nastanka neizvesne okolnosti (osiguranog rizika).[15] Drugim rečima, osiguravač prodaje obećanje da će

[12] Zakon o stečaju, *Službeni glasnik RS*, br. 104/2009, 99/2011 – dr zakon, 71/2012 – odluka US, 83/2014, 113/2017 i 44/2018 (dalje: ZS). U čl. 14 st. 2 izričito se kaže da se odredbe tog zakona ne primenjuju na stečajni postupak banaka i osiguravajućih organizacija, osim odredaba kojima se uređuju pitanja koja nisu uređena posebnim zakonom.

[13] Detaljno o svim pitanjima konkurencije u delatnosti osiguranja: Z. Tomić, N. Petrović Tomić, „Narušavanja konkurencije u osiguranju restriktivnim sporazumima", *Pravo i privreda*, br. 7–9/2013, 13–51.

[14] Meinrad Dreher, „Das Versicherungskartellrecht nach der Sektoruntersuchung der EG-Kommission zu den Unternehmensversicherungen", *VersicherungsRecht*, No. 1/2008, 16.

[15] Osiguranik, naime, ulaže svoja sredstva u kupovinu osiguravajućeg pokrića, a zauzvrat od osiguravača dobija obećanje da će on izvršiti isplatu naknade, to jest sume osiguranja ako se u budućnosti desi događaj predviđen kao osigurani slučaj. Strogom i striktnom regulativom delatnosti osiguranja nastoji se u što

u trenutku nastanka događaja koji je po pravilu neprijatan, imati dovoljno sredstava koja garantuju ispunjenje ugovornih obaveza. Osim toga, delatnost osiguranja je jedna od retkih koja u trenutku nastanka nove usluge osiguranja ne zna koliko će ona koštati. Neizvesnost oko nastanka i posledica osiguranog rizika, pogotovo u sferi pružanja pokrića privrednih rizika, otežava adekvatnu procenu iznosa premija i rezervi potrebnih za izvršenje obaveze od strane osiguravača. Stoga je u takvim vrstama osiguranja, posmatrano iz ugla ekonomske logike, mnogo korisnija saradnja osiguravača od slobodne konkurencije. Efekti koji se postižu saradnjom osiguravača koriste i osiguranicima, budući da je rizik insolventnosti osiguravača utoliko manji ukoliko se premije odrede na osnovu razmene informacija i iskustava više osiguravača. Poslovi osiguranja uopšte ne bi mogli biti realizovani bez saradnje osiguravača. Zato je opravdan veći stepen tolerancije u pogledu oblika saradnje osiguravača. Suština prava konkurencije je da se njime štiti tržište od onih oblika narušavanja slobodne konkurencije koji dugoročno narušavaju društveni napredak. Cilj politike konkurencije je da doprinese ekonomskom napretku i dobrobiti društva, a naročito koristi potrošača.[16] Dakle, postoje oblici narušavanja konkurencije čiji su dugoročni efekti spojivi s ciljevima zaštite konkurencije, zbog čega za njih važi poseban pravni režim. Kada se tome doda interes krajnje osetljive kategorije stejkholdera kakvi su potrošači, postaje jasno da osiguranje s razlogom uživa poseban tretman. Najzad, u prilog posebnog tretmana osiguranja govori i podatak da je osiguranje visoko regulisana delatnost, u kojoj su zakonom ili podzakonskim aktima uređena sva pitanja pravnog položaja, te je stoga logično da se i pitanju konkurencije pristupa na drugačiji način.

IV Restriктivni sporazumi po pozitivnom pravu

Pravo Srbije, po ugledu na pravo Evropske unije, zabranjuje povrede konkurencije, tačnije radnje učesnika na tržištu koje za cilj ili posledicu imaju ili mogu imati značajno ograničavanje, narušavanje ili sprečavanje konkurencije.[17] Povrede konkurencije mogu se javiti u obliku restriktivnih sporazuma ili zloupotrebe dominantnog položaja učesnika na tržištu. Uz to, Zakon o zaštiti konkurencije propisuje obavezu kontrole onih koncentracija učesnika na tržištu koje mogu značajno ograničiti, narušiti ili sprečiti konkurenciju na tržištu Republike Srbije ili njegovom delu, a naročito ako bi to ograničavanje, narušavanje ili sprečavanje bilo rezultat stvaranja ili jačanja dominantnog položaja.[18] U oblasti osiguranja najzastupljeniji su restriktivni sporazumi.

većoj meri pružiti garancija da će osiguravač zaista biti u stanju da ispuni dato obećanje. Detaljnije: John Birds, Birds' *Modern Insurance Law*, Seventh Edition, Sweet & Maxwell, London 2007, 22.

[16] Hans-Wolfgang Micklitz**,** Jules Stuyck, Evelyne Terryn (eds), *Cases, Materials and Text on Consumer Law,* Hart Publishing, Portland 2010, 3–6.

[17] Zakon o zaštiti konkurencije, *Službenik glasnik RS*, br. 51/2009 i 95/2013 (dalje u tekstu: ZZK), čl. 9.

[18] ZZK, čl. 19 i 61.

To su sporazumi između učesnika na tržištu koji imaju za cilj ili posledicu značajno ograničavanje, narušavanje ili sprečavanje konkurencije na teritoriji Republike Srbije.[19]

Zakonodavac navodi neke oblike restriktivnih sporazuma: ugovori, pojedine odredbe ugovora, izričiti ili prećutni dogovori, usaglašene prakse, kao i odluke oblika udruživanja učesnika na tržištu.[20] Nabrojani oblici restriktivnih sporazuma zabranjeni su i ništavi, a naročito su to sporazumi kojima se neposredno ili posredno utvrđuju kupovne ili prodajne cene ili pak drugi uslovi trgovine; ograničava ili kontroliše proizvodnja, tržište, tehnički razvoj ili investicije; dele tržišta ili izvori nabavke i sl. Sporazumi između konkurenata (odluke udruženja) kojima se utvrđuju kupovne ili prodajne cene ili drugi uslovi trgovine, ograničava ili kontroliše proizvodnja, tržište, tehnički razvoj ili investicije ili dele tržišta ili izvori nabavke jesu sporazumi koji su prema članu 7 sav 1 i 2 ZZK naročito zabranjeni, jer uvek bitno ograničavaju konkurenciju. Najproblematičniji deo regulative restriktivnih sporazuma upravo je odredba o tome da se i *usaglašene prakse i odluke oblika udruživanja učesnika na tržištu smatraju restriktivnim sporazumima*. Postojanje usaglašene prakse teško je dokazati; učesnicima na tržištu uvek ostaje mogućnost da svoje postupke opravdavaju tržišnim parametrima. Drugi oblik restriktivnih sporazuma su odluke oblika udruživanja učesnika na tržištu. Odluke donete u okviru profesionalnog udruženja mogu poslužiti kao paravan za postizanje restriktivnog sporazuma, koji je samim tim teže dokazati i koji može uspešnije funkcionisati.

Kako se Komisija za zaštitu konkurencije (dalje: Komisija) snalazi u primeni i tumačenju nejasnih pravnih standarda i nepreciznih zakonskih odredbi? Normama poput citirane stvara se neizvesnost u pogledu poteza državnih vlasti.[21] Ako pozitivno zakonodavstvo promenjuje neprecizne norme ili nejasne pravne standarde, nastaje regulatorni rizik za privredne subjekte.[22] To je rizik od neizvesne primene istih zakonskih normi i pravnih standarda od slučaja do slučaja. Država propisima treba da osigura privredne subjekte od regulatornog rizika i kreira privredni ambijent podsticajan za obavljanje komercijalnih delatnosti.

Iz pravnog aspekta, kada se kaže restriktivni sporazum, obično se pomisli na *kartele*. Karteli su horizontalni sporazumi između učesnika na tržištu koji posluju na istom nivou lanca prometa.[23] Njima se konkurenti dogovaraju, izričito ili prećutno, da jedni drugima više ne konkurišu, to jest da uklone slobodnu konkurenciju na tržištu.[24] Kako se takvim sporazumima eliminiše konkurencija, jasno je zašto

[19] ZZK, čl. 10 st. 1.
[20] ZZK, čl. 10 st. 2.
[21] Isto i: Boris Begović, Vladimir Pavić, „Jasna i neposredna opasnost: prikaz novog Zakona o zaštiti konkurencije", *Anali,* br. 2/2009, 73.
[22] *Ibid*, 74.
[23] Boris Begović, Vladimir Pavić, Uvod, 44.
[24] Dogovor se obično odnosi na cene proizvoda ili usluga, količine koje će biti ponuđene na tržištu i geografsku podelu tržišta.

se zabrana odnosi prvenstveno na tu kategoriju restriktivnih sporazuma.[25] Pored kartela, značajni su i *sporazumi o saradnji između konkurenata*. Ti sporazumi mogu imati različit tretman, već prema tome da li imaju negativan efekat na konkurenciju. Naime, moguće je da konkurenti zaključe sporazum o saradnji koji nije usmeren ka sprečavanju međusobne konkurencije (primera radi, sporazumi o razmeni rezultata zasebnih istraživanja i razvoja). Osim toga, čak i da postoji narušavanje konkurencije, ono je ograničeno samo na određeni segment poslovanja (npr. istraživanje i razvoj), tako da ne isključuje konkurenciju u ostalim segmentima poslovanja i u odnosu na ostale učesnike na tržištu. Drugim rečima, sporazumi koji nisu kartelski mogu unaprediti tržišnu utakmicu, zbog čega se jedino na njih može odnositi privilegija izuzeća.

Naš zakonodavac ne pravi razliku između kartela i ostalih restriktivnih sporazuma. Isto važi i u pogledu njihove pravne sudbine. Oni su po pravilu ništavi, osim ako „doprinose unapređenju proizvodnje i prometa, odnosno podsticanju tehničkog ili ekonomskog napretka, a potrošačima obezbeđuju pravičan deo koristi pod uslovom da ne nameću učesnicima na tržištu ograničenja koja nisu neophodna za postizanje cilja sporazuma, odnosno da ne isključuju konkurenciju na relevantnom tržištu ili njegovom bitnom delu".[26] Kod nas, dakle, restriktivni sporazumi nisu ništavi per se. Primenjuje se tzv. „test efekata" koji pruža mogućnost da se, bar kada je reč o sporazumima koji nisu karteli, ovi ne ponište bez uzimanja u obzir eventualnih pozitivnih efekata na konkurenciju i privredni napredak.

Zadatak Komisije je da analizira posledice koje horizontalni sporazum može izazvati i da na temelju njihove procene odluči da li sporazum može opstati ili ne. Ako se proceni da restriktivni sporazum nije protivan ciljevima zaštite konkurencije, ovaj se može izuzeti od zabrane konkurencije i sankcije ništavosti. Potrebno je razlikovati kolektivno i pojedinačno izuzeće. U našem pravu se kolektivno izuzeće može dobiti primenom *Uredbe o sporazumima o specijalizaciji između učesnika na tržištu koji posluju na istom nivou proizvodnje ili distribucije, a koji se izuzimaju od zabrane*.[27] Izuzeća na osnovu uredaba o grupnom izuzeću su „automatska", tj. nije potrebno

[25] Zato se u nekim pravima karteli tretiraju kao apsolutno zabranjeni. Dakle, svaki kartelski sporazum je ništav, bez potrebe da se utvrđuje kakvi su njegovi efekti.

[26] ZZK, čl. 11.

[27] Uredba o sporazumima o specijalizaciji između učesnika na tržištu koji posluju na istom nivou proizvodnje ili distribucije koji se izuzimaju od zabrane, *Službeni glasnik RS*, br. 11/2010 (dalje: Uredba). To su: 1) sporazumi o jednostranoj specijalizaciji kojima se jedan učesnik u sporazumu obavezuje da obustavi proizvodnju relevantnih proizvoda ili da se uzdržava od proizvodnje tih proizvoda i da te proizvode kupuje od drugog učesnika u sporazumu, a drugi učesnik u sporazumu se obavezuje da te proizvode proizvodi i prodaje; 2) sporazumi o uzajamnoj specijalizaciji kojima se dva ili više učesnika u sporazumu obavezuju da prestanu da proizvode ili da se uzdrže od proizvodnje određenih ali različitih proizvoda i da ih kupuju od drugih učesnika u sporazumu koji se obavezuju da ih prodaju; 3) sporazumi o zajedničkoj proizvodnji kojima se dva ili više učesnika u sporazumu obavezuju da zajednički proizvode određene proizvode. Izuzeće od zabrane sporazuma iz stava 1 ovog člana primenjuje se i na pojedine odredbe koje su sadržane u tim sporazumima, a koje ne predstavljaju primarni cilj takvih sporazuma, ali se neposredno

podnositi zahtev za izuzeće nadležnom organu. Učesnici u restriktivnom sporazumu treba da utvrde svoj tržišni udeo i provere da li se on nalazi ispod praga propisanog odgovarajućom uredbom. Kod horizontalnih sporazuma o specijalizaciji tržišni udeo ne sme prelaziti 20 posto, kod horizontalnih sporazuma o istraživanju i razvoju – 25 posto, dok kod vertikalnih sporazuma tržišni udeo ne sme preći 25 posto. Čak i ukoliko je tržišni udeo ispod propisanih pragova, sporazum neće biti izuzet ukoliko sadrži neku od tzv. crnih klauzula, kao što je klauzula o podeli tržišta To što se radi o sporazumu koji se ubraja u listu za kolektivno izuzeće ne znači da će on zaista biti izuzet. Moguće je da je protivzakonit, ako na osnovu procene svih okolnosti proizlazi da njegovi negativni efekti (narušavanje konkurencije) pretežu nad pozitivnim efektima (privredni napredak). Iz Uredbe, dakle, proizlazi da ni horizontalni sporazumi o specijalizaciji koji spadaju među sporazume na koje se kolektivno izuzeće odnosi neće uživati privilegiju izuzeća ako na relevantnom tržištu postoji više sporazuma o specijalizaciji, a njihov kumulativni efekat dovodi do toga da sporazum ne ispunjava opšte uslove za izuzeće iz člana 11.[28] Kada se radi o sporazumima koji se ne mogu podvesti pod privilegiju kolektivnog izuzeća, naš zakon daje mogućnost učesniku na tržištu da se obrati Komisiji za zaštitu konkurencije (dalje: Komisija) sa zahtevom da restriktivni sporazum izuzme od zabrane.

Zahtev za pojedinačno izuzeće od zabrane može se podneti KZK i u njemu treba dokazati da su ispunjena četiri zakonom propisana uslova za izuzeće: (i) sporazum doprinosi unapređenju proizvodnje i prometa, odnosno podsticanju tehničkog ili ekonomskog napretka; (ii) sporazum potrošačima obezbeđuje pravičan deo koristi; (iii) sporazum ne nameće učesnicima na tržištu ograničenja koja nisu neophodna za postizanje cilja sporazuma; i (iv) sporazum ne isključuje konkurenciju na relevantnom tržištu ili njegovom bitnom delu.[29] Period na koji se odnosi pojedinačno izuzeće ne može biti duži od osam godina.[30]

na njih odnose i neophodne su za njihovo sprovođenje, kao što su odredbe kojima se ustupaju ili daju na korišćenje prava intelektualne svojine.

[28] Uredba, čl. 5 st. 3.

[29] ZZK, čl. 11.

[30] „U praksi KZK nailazimo i na primer izuzeća od zabrane sporazuma o zajedničkom učešću u postupku javne nabavke. Takvi sporazumi po pravilu dovode do narušavanja konkurencije, ukoliko se sporazum između konkurenata javlja radi podnošenja simulirane ponude (ponuda je viša od ponude unapred određenog ponuđača), uzdržavanja od podnošenja ponuda (jedan ili više ponuđača se saglašavaju da se uzdrže od podnošenja ponude ili da povuku već podnetu ponudu), rotirajuće ponude (učesnici na tržištu nastavljaju da učestvuju u pozivima za podnošenje ponuda, ali pristaju da se smenjuju kao pobednici, odnosno da podnose najnižu ponudu) ili podele tržišta (ponuđači dele tržište, prihvatajući da se ne nadmeću kod određenih naručilaca ili u određenim geografskim područjima). Međutim, ponekad je sporazum između konkurenata neophodan jer nijedan od njih samostalno ne bi ispunio uslove za učešće na tenderu. Tako su društva 'Uniqa osiguranje' i 'Wiener Stadtische' podneli zahtev za pojedinačno izuzeće sporazuma grupe ponuđača o zajedničkom učešću u postupku javne nabavke naručioca Opšta bolnica Kikinda. Javna nabavka se odnosila na uslugu osiguranja imovine i zaposlenih. Izuzeće je zatraženo

V Regulativa restriktivnih sporazuma u pravu osiguranja Evropske unije

Načelno, u pravu Evropske unije postoje isti oblici povrede slobodne konkurencije od strane društava osiguranja kao i u našem pravu.[31] Za sektor osiguranja bili su najkarakterističniji sporazumi kojima se narušava slobodna konkurencija na tržištu osiguranja.[32] Za razliku od prava Evropske unije, *u Republici Srbiji nikada nije postojao poseban režim izuzeća sporazuma u oblasti osiguranja, već su oni oduvek bili u opštem režimu izuzeća.*

1. Razvoj pravnog uređenja restriktivnih sporazuma u sektoru osiguranja: od posebnog tretmana do opšteg režima

Restriktivni sporazumi u osiguranju podvrgnuti su trenutno opštem pravnom režimu konkurencije, to jest primeni čl. 101 Ugovora o funkcionisanju Evropske unije. Ta odredba zabranjuje sporazume, odluke udruženja kompanija i usklađene prakse koje mogu značajno ograničiti, narušiti ili sprečiti konkurenciju na unutrašnjem tržištu

na period od jedne godine. Kao relevantno tržište utvrđeno je tržište pružanja usluga neživotnog osiguranja na teritoriji Srbije. Na tom tržištu u posmatranom trenutku je poslovalo petnaest konkurenata. Za učešće u javnoj nabavci bili su propisani dodatni uslovi: (i) osnovni kapital veći od milijardu dinara; (ii) posedovanje sertifikata ISO9001:2008; (ii) uslov da ponuđač u protekle tri godine nije poslovao s gubitkom. Nijedna strana u sporazumu koji je podnet na izuzeće nije ispunjavala prvi uslov. Povrh toga, 'Uniqa' nije imala ISO sertifikat i poslovala je s gubitkom. Nakon ispitivanja podnetog zahteva, KZK je odlučila da sporazum izuzme, budući da bi u odsustvu sporazuma svaki od učesnika bio eliminisan sa tendera zbog nedostataka ponude. KZK je zaključila da odnosni sporazum ne sadrži nijednu restriktivnu klauzulu; naprotiv, sporazumom se omogućava konkurencija jer bez njega dva učesnika ne bi ni mogla da se takmiče na ovom tenderu." V. Dušan Popović, „Zaštita konkurencije u oblasti osiguranja", u: Nataša Petrović Tomić (ured.), *Novi proizvodi osiguranja, tehnološke inovacije i zaštita korisnika u osiguranju*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2025, 118–119.

[31] Pitanje konkurencije u sektoru osiguranja evoluiralo je u skladu sa evolucijom u poimanju konkurencije na jedinstvenom tržištu EU. Princip optimalne alokacije resursa kao centralna vrednost diktirao je da se prilikom procene sporazuma kojima pribegavaju društva za osiguranje mnogo više pažnje obraća na ekonomske nego na pravne kriterijume. Stoga je na jedinstvenom tržištu EU Komisija ovlašćena da određene sporazume izuzme iz opšteg režima, imajući u vidu upravo osobenosti pojedinih sektora.

[32] Oni su dugo bili jedini poznati način kome društva za osiguranje pribegavaju, da bi se kasnije u ovom specifičnom sektoru javile i koncentracije. Koncentracije u oblasti osiguranja nisu nikakva novina u poslednjih nekoliko decenija. One su povezane s fenomenom evropske grupacije i bankoosiguranja kao načina pružanja finansijskih usluga. U oblasti EU postavilo se pitanje na osnovu kojih se kriterijuma koncentracija kvalifikuje kao evropska ili nacionalna. Polazi se od vrednosti bruto premija, što podrazumeva kako sve primljene iznose tako i iznose koji će biti primljeni na osnovu ugovora o osiguranju zaključenih od strane društava za osiguranje ili za njihov račun, uključujući i premije za osiguranja za koja je zaključeno reosiguranje. Uključivanje premija za reosigurani deo rizika je logično, jer se samo na osnovu svih zaključenih osiguranja može proceniti pozicija društva osiguranja na tržištu. Detaljnije: Jean-Luc Bellando et al., *Entreprises et Organismes d'Assurances*, L. G. D. J., 3 édition 2011, 607.

EU. Pod time se podrazumevaju: karteli (primera radi, sporazumi kojima se dogovara visina premija ili vrši podela tržišta ili klijenata); dogovori o uslovima osiguranja (koji mogu eliminisati konkurenciju ili inovacije); razmena osetljivih informacija između osiguravača i sporazumi koji ograničavaju ulazak novih konkurenata na tržište. Svi ti sporazumi su zabranjeni, osim ako ne ispunjavaju uslove iz čl. 101 (3) – izuzeće od zabrane konkurencije.

Ako Evropska komisija ili nacionalna tela za zaštitu konkurencije utvrde postojanje restriktivnog sporazuma, nastaju sledeće pravne posledice. Prvo, sporazum se smatra ništavim i nevažećim. Drugo, kompanije mogu biti kažnjene novčanom kaznom i do 10% ukupnog godišnjeg prihoda. Treće, u nacionalnim zakonodavstvima postoje i tužbe za naknadu štete koje mogu podneti potrošači ili konkurenti.[33] Iz prakse Suda pravde EU proizlazi da taj sud u pitanjima restriktivnih sporazuma u osiguranju balansira između očuvanja slobodne konkurencije i prepoznavanja specifičnosti sektora osiguranja. Sud je pokazao svest o tome da mere i sporazumi koji imaju za cilj unapređenje tržišnih uslova ne treba da postanu izgovor za narušavanje konkurencije. To je putokaz koji treba da sledi i naša Komisija za zaštitu konkurencije, kao i sudska praksa.

Da bismo razumeli kako se menjala politika zaštite konkurencije u osiguranju, treba da ukratko prikažemo redosled uredbi koje nabrajaju sporazume društava za osiguranja sa kartelno pravnim dejstvom izuzeća.[34] Zajednički imenitelj pomenutih sporazuma i razlog što su bili izuzeti iz opšteg režima jeste njihov prokonkurentni karakter.[35] Oni se, naime, zaključuju u cilju podsticanja potražnje za uslugama osiguranja jačanjem ponude osiguranja, čime dugoročno doprinose ekonomskoj efikasnosti. To ih čini prihvatljivim iz ugla ostvarenja javnog poretka u oblasti konkurencije.

Međutim, nakon decenije politike zaštite konkurencije u osiguranju zasnovane na prilično liberalnim kriterijumima, praksa je pokazala da i u pogledu društava za osiguranje treba zauzeti malo restriktivniji stav.[36] Uredbom 267/2010, iz opšteg

[33] U predmetu Courage Ltd v. Crehen (C-453/99), ESP je potvrdio pravo pojedinca da zahteva naknadu štete za posledice restriktivnih sporazuma, naglašavajući važnost sankcionisanja takvog ponašanja.

[34] Prvom uredbom bili su izuzeti sledeći sporazumi: zajedničko utvrđivanje tarifa premija zasnovano na zajedničkim statistikama ili zajedničko utvrđivanje broja osiguranih slučajeva; donošenje tipskih uslova osiguranja; zajedničko pokriće određenih rizika; regulisanje osiguranih slučajeva; utvrđivanje i prihvatanje sigurnosne opreme; registri koji se odnose na pogoršane rizike i razmena informacija koje se na to odnose, pod uslovom da su ovakvi registri i podaci poverljivi. V.: *Règlement CEE n. 1534-91 du Conseil, du 31 mai 1991, concernant l'application du l'article 85 paragraphe 3 du traité à certaine categorie d'accords, de decisions et de pratiques concertées dans le domaine des assurances*, JO n. L. 143 du 07/06/1991.

[35] Donošenjem uredbi izbegava se proveravanje pojedinačnih slučajeva, koji bi sa kartelnopravnog stanovišta bili nedopustivi. Uredbe o grupnim izuzećima, pri tom, važe samo za određeni period, nakog čega se njihova kartelnopravna kompatibilnost ponovo proverava.

[36] Stoga je Komisija sledećom (drugom) uredbom oblast zaštićenih sporazuma ograničila na: sporazume o utvrđivanju i zajedničkom obračunu premija, tabela i studija; donošenje model uslova i tipskih uslova osiguranja; zajedničko pokriće određenih rizika i izradu pravila o sigurnosnoj opremi. V.: *Règlement CE n.*

režima zaštite konkurencije izuzete su samo dve grupe sporazuma: 1) sporazumi koji se odnose na prikupljanje i distribuciju podataka, sastavljanje tabela i studija i 2) sporazumi o zajedničkom snošenju određenih rizika.[37] Svi ostali sporazumi ostaju izvan izuzeća, što znači da se na njih primenjuju opšta pravila prava konkurencije. Nakon toga sledi tzv. Blok izuzeća za osiguranje (engl. Insurance Block Exemption Regulation – IBER), koji je važio do 31. marta 2022. godine. Prema IBER, određene vrste dogovora između osiguravača su bile omogućene, pod uslovom da su od koristi za potrošače i tržište. To su sledeći dogovori: 1) razmena statističkih podataka radi procene rizika; 2) zajednički razvoj modela i tabela smrtnosti i 3) zajednička pokrića (reosiguranje i saosiguranje) velikih rizika. Kako Evropska komisija nije produžila IBER nakon 2022. godine, pomenuti sporazumi sada podležu opštem režimu (čl. 101 Ugovora o osnivanju EU).

Iz toga ne treba zaključiti da su trenutno u pravu EU zabranjeni svi dogovori između osiguravača. Osiguravajuća društva mogu, u skladu s pravilima EU, vršiti razmenu informacija koje se odnose na sastavljanje tabela i studija, pod uslovom da se radi o transparentnoj i nenarušavajućoj razmeni podataka koja ima za cilj jačanje tržišta osiguranja i koja doprinosi dobrobiti potrošača.

2. Sporazumi koji se odnose na prikupljanje i distribuciju podataka, sastavljanje tabela i studija

Reč je o sporazumima koji imaju najširu primenu u oblasti prava osiguranja.[38] Ideja koja se vrlo rano razvila u oblasti osiguranja jeste ta da treba razlikovati zakonitu saradnju prilikom sastavljanja tabela i obračuna premija od nezakonite saradnje, tj. utvrđivanja visine komercijalnih premija. Reč je, dakle, o obliku saradnje društava za osiguranje u vidu sporazuma o zajedničkom istraživanju i razvoju, koji se u oblasti osiguranja ispoljava na specifičan način. Saradnja između društava za osiguranje ili u okviru udruženja osiguravača u pogledu kompilacija i razmene informacija ima za cilj da omogući obračun prosečne premije za pokriće rizika koji se desio u prošlosti, ili, kada je reč o životnom osiguranju, utvrđivanje tabela smrtnosti, verovatnoće nastanka bolesti, invalidnosti ili nesrećnog slučaja.[39] Kao rezultat takve saradnje

358/2003 de la Commission du 27 février 2003, concernant l'application du l'article 85 paragraphe 3 du traité à certaine categorie d'accords, de decisions et de pratiques concertées dans le domaine des assurances, JO n. L. 53/8 du 28/02/2003.

[37] *Règlement CE n. 267 de la Commission du 24 mars 2010, concernant l'application du l'article 85 paragraphe 3 du traité à certaine categorie d'accords, de decisions et de pratiques concertées dans le domaine des assurances*, JO n. L. 83/1 du 30/03/2010.

[38] Darko Samardžić, „Kartelno-pravni izuzeci u sektoru osiguranja po novoj uredbi o grupnim izuzećima Evropske unije od 2010. godine", *Promene u pravu osiguranja Srbije u okviru evropskog (EU) razvoja prava osiguranja* (zbornik radova), Palić 2011, 76.

[39] Privilegija izuzeća od zaštite konkurencije obuhvata kompilacije i razmene informacija: a) koje se zasnivaju na podacima što se odnose na više godina osiguranja kao period posmatranja; b) tiču se istih

bolje se upoznaje rizik i pojednostavljuje njegova procena od strane pojedinačnih društava osiguranja.[40] Isto važi i za studije o verovatnom uticaju spoljašnjih okolnosti na nastanak ili težinu osiguranog slučaja, kao i na rentabilnost određenih ulaganja. Ti oblici saradnje uživaju privilegiju izuzeća samo u meri u kojoj se njima ne postiže utvrđivanje komercijalnih premija.[41]

Ti sporazumi profilišu delatnost osiguranja u odnosu na druge privredne grane. Zajedničko prikupljanje podataka treba da proširi tzv. *kalkulacionu bazu*. Što je ona veća, to će biti pouzdanija procena rizika i troškova potrebnih za njihovo pokriće. Za razliku od drugih privrednih društava, društva za osiguranje ne mogu utvrditi cenu svojih usluga samo na osnovu troškova i marže. Zapravo, cena osiguranja nije u potpunosti poznata u trenutku zaključenja ugovora. Ona zavisi od verovatnoće nastupanja osiguranog slučaja, kao i od načina njegovog ispoljavanja. Delatnost osiguranja se razlikuje od ostalih upravo po tome što se u trenutku plasiranja nove usluge osiguranja ne može sa sigurnošću znati koliko će on zaista koštati. To je naročito nepovoljno za osiguravače koji tek ulaze na tržište te iza kojih ne stoje grupacije međunarodnog karaktera. Rizik se, dakle, procenjuje na osnovu analize ranijih osiguranih rizika, zbog čega je dragocen uvid u statističke podatke o nastupanju osiguranih rizika u prošlosti. Stoga je bitno priznati pravo društvima za osiguranje da sarađuju u cilju tačne procene rizika i utvrđivanja adekvatnih premija osiguranja.[42]

Dakle, sporazumi o zajedničkim istraživanjima i razmenama informacija, kao i zajedničko sprovođenje studija nisu restriktivni u smislu slobodne konkurencije sve dok su zasnovani na anonimnim podacima, nisu obavezujući u odnosu na društva za osiguranje i sadrže podatke koji imaju samo indikativnu vrednost.[43] U tom smislu indikativna je odluka Verband der Sachversicherer, vezana za nemačko osiguranje

ili uporedivih rizika; v) nastaju na osnovu podataka dovoljnih za releventnu statističku obradu i 4) omogućavaju da se utvrdi naročito: broj osiguranih slučajeva u toku posmatranog perioda, broj individualnih rizika osiguranih svake godine osiguranja u toku posmtranog perioda, ukupan iznos naknada isplaćenih ili dugovanih na osnovu nastanka osiguranih slučajeva, iznos osiguranog kapitala za svaku godinu osiguranja u toku posmtranog perioda. Kompilacije i tabele su obuhvaćene privilegijom ako: 1) sadrže anonimne podatke (ne označavaju ni osiguravače ni osiguranike); 2) sadrže oznaku da nisu obavezujući i prinudni; 3) ne sadrže ni naznaku o visini komercijalnih premija; 4) ako su dostupne pod razumnim i nediskriminatornim uslovima svakom društvu osiguranja koje zatraži kopiju, uključujući i ona koja ne posluju na geografskom tržiptu ili tržištu usluga na koje se kompilacije odnose i 5) ako su dostupne, osim iz razloga zaštite javne bezbednosti, pod razumnim i nediskriminatornim uslovima potrošačkim organizacijama koje zatraže pristup kompilacijama.

[40] Thomas. Oster, „Droit de la concurrance et assurance: cartograpfie des risques au lendemain de l'enquête sectorielle de la Commission européenne et de l'adoption du nouveau règlement d'exemption catégorielle", *Revue Générale du Droit des Assurances,* No. 4/2012, 966.

[41] Jean-Luc Bellando et al., 610.

[42] Torsten Körber, Jens Ole Rauh, „Kartellrechtlicher Zugang der Kunden- und Verbraucherverbände zu den gemeinsamen Statistiken der Versicherungswirtschaft", *VersicherungsRecht,* 16/2012, 670–678.

[43] Razmene informacija koje se vrši da bi se postigli neki drugi ciljevi ne potpadaju pod privilegiju izuzeća.

od rizika požara.[44] Predmet spora bila je odluka nemačkog udruženja osiguravača o povećanju premije osiguranja za rizik od požara u industrijskim delatnostima, koju su automatski prihvatila sva društva za osiguranje. Evropski sud pravde presudio je da je to vid narušavanja slobodne konkurencije na tržištu osiguranja EU. Ali u obrazloženju odluke izneti su brojni argumenti iz kojih se vidi svest suda da se sporazumi osiguravača moraju posmatrati kroz tzv. test efekata. Sud je, poredeći argumente koje su nemački osiguravači istakli u svoju odbranu, nastojao da utvrdi je li veća korist ili šteta od zaključenja ovakvih sporazuma. Što se tiče pozitivnih efekata sporazuma osiguravača u oblasti osiguranja, naročito su istaknuti: uspostavljanje stabilnih uslova na tržištu osiguranja; uklanjanje nesigurnosti, veća dostupnost reosiguranja, mogućnost društava osiguranja da koriste tarife prilagođene preuzetim rizicima itd.[45]

„Kod ovakvih sporazuma, identitet osiguravajućih kuća ili osiguranika nije smeo biti označen u tabelama/studijama. Kada se podaci prikupe i distribuiraju, morala se staviti napomena da oni nisu obavezujući. Sporazumi koji se odnose na prikupljanje i distribuciju podataka, sastavljanje tabela i studija nisu smeli sadržavati podatke o obimu bruto premija. Podaci, tabele ili studije morali su biti učinjeni dostupnim, pod razumnim, pristupačnim i nediskriminatornim uslovima, svakom društvu za osiguranje koje to zatraži, čak i ukoliko ono ne posluje na istom geografskom tržištu ili tržištu proizvoda na koje se ti podaci, tabele ili studije odnose. Da bi sporazum mogao biti izuzet od zabrane, udruženja potrošača i organizacije korisnika usluga morala su imati pristup podacima/tabelama/studijama pod razumnim, pristupačnim i nediskriminatornim uslovima, ukoliko svoj zahtev precizno obrazlože, osim ukoliko bi odbijanje pristupa bilo opravdano razlozima zaštite javne bezbednosti. Sporazumi nisu smeli da sadrže tzv. crnu klauzulu, na primer tako što bi se strane obavezale međusobno ili obavezale treća lica da ne koriste podatke/tabele koje nisu obuhvaćene predmetom sporazuma ili tako što bi se obavezale međusobno ili obavezale treća lica da ne odstupaju od rezultata studija koje su predmet sporazuma."[46]

Zajedničke kompilacije i razmene informacija društava za osiguranje mogu imati dvostruko prokonkurentno dejstvo i kao takvi biti prihvatljivi. Oni, najpre, omogućavaju i najmanjim, kao i konkurentno najslabijim društvima osiguranja, da se upoznaju s rizicima. Drugo, oni favorizuju ulazak novih društava na tržište osiguranja. Društvima koja tek treba da se pozicioniraju na tržištu osiguranja izuzetno koriste podaci drugih društava koja posluju na tom tržištu. Ona će s većom verovatnoćom tačnosti moći da procene svoje šanse na takvom tržištu osiguranja. Isto tako, rezultati studija i razmene informacija mogu koristiti i organizacijama potrošača. Na osnovu uvida u takve podatke, potrošači se upoznaju sa uslovima pod kojima je dostupna osiguravajuća zaštita. Da bi se ostvario taj pozitivan efekat sporazuma, neophodno

[44] Judgment of the Court of 27 January 1987, Verband der Sachversicherer e.V. v, Case 45/85.
[45] Jean-Luc Bellando et al., 610.
[46] Uredba EU o grupnom izuzeću sporazuma u oblasti osiguranja, čl. 2–4.

je da sva društva za osiguranje imaju pristup rezultatima sporazuma, čak i ako nisu članovi asocijacije koja je zaključila sporazum.[47] Osim toga, potrebno je i da informacije budu dostupne pod razumnim i nediskriminatornim uslovima i društvima koja ne posluju na istom tržištu. Odbijanje saopštavanja tih podataka je, stoga, legitimno samo ako to nalažu razlozi javne bezbednosti.

„Da tretman restriktivnih sporazuma u oblasti osiguranja nije drastično promenjen čak ni nakon ukidanja posebnog režima izuzeća u pravu Evropske unije, potvrđuje nam nedavna odluka Evropske komisije u postupku vođenom protiv udruženja „Insurance Ireland".[48] Naime, udruženje „Insurance Ireland" je svojim članovima nudilo pristup bazi „Insurance Link Information Exchange System", koja je sadržavala podatke što olakšavaju otkrivanje prevara na tržištu osiguranja motornih vozila. Evropska komisija je sprovela nenajavljeni uviđaj 2017. godine, a zatim 2019. godine pokrenula postupak protiv udruženja, tokom kog je 2021. objavila Obaveštenje o bitnim činjenicama. Reagujući na Obaveštenje, Udruženje je podnelo predlog obaveza (engl. commitments) kojih će se pridržavati u cilju otklanjanja opasnosti od narušavanja konkurencije. Evropska komisija je prihvatila predlog obaveza i prekinula postupak. Neke od obaveza podrazumevale su da pristup bazi ne sme biti uslovljen članstvom u udruženju, da cena pristupa mora biti utvrđena nediskriminatorno i po troškovnom principu, da postoji mogućnost žalbe nezavisnom telu ukoliko je odbijen pristup bazi, kao i da kriterijumi za članstvo u udruženju moraju biti nediskriminatorni i transparentni. Obaveze se moraju poštovati tokom 10 godina, a kazna za njihovo nepoštovanje iznosi do 10 posto svetskog prihoda udruženja ili do 1 posto ukupnog godišnjeg prihoda svih članova udruženja ostvarenog na relevantnom tržištu."[49]

VI Zaključak

Delatnost osiguranja je specifična u odnosu na druge privredne delatnosti i pokazuje ogroman privredni potencijal u savremenom okruženju. Ali to ne povlači da se na društva za osiguranje ne primenjuju pravila zaštite konkurencije. Naprotiv, osiguranje je vrlo interesantno iz ugla prava konkurencije budući da su se u ovom sektoru razvile (i još uvek se razvijaju) brojne prakse za koje nije uvek izvesno da li dovode do narušavanja slobodne konkurencije na tržištu osiguranja, počev od sporazuma o premijama, raspodeli tržišta, bojkotu, za koje nema spora da su protivni slobodnoj konkurenciji, do sporazuma o razmeni informacija o istraživanju i razvoju, za koje je nesporno da su prokonkurentni. Između te dve krajnosti su sporazumi

[47] Ibid.

[48] Evropska komisija, predmet br. AT.40511, 29. jul 2022. god. Dostupno na adresi: *https://competition-cases.ec.europa.eu/cases/AT.40511*, posećeno: 12.8.2024. Za podrobniju analizu horizontalnih sporazuma o saradnji u pravu konkurencije Evropske unije vid. Nicolas Petit, *Droit européen de la concurrence,* Paris, 2013, 537–548.

[49] Dušan Popović, 117.

i prakse koji su najproblematičniji, poput donošenja tipskih uslova, razmene podataka u cilju boljeg upoznavanja rizika, zajedničkog pokrića tzv. starih rizika. Te prakse mogu biti izvor narušavanja konkurencije na tržištu osiguranja i kvalifikovati se kao restriktivni. Međutim, nije isključeno i da ti sporazumi doprinose jačanju konkurencije, bar između društava obuhvaćenih sporazumom i ostalih društava za osiguranje, kao i poboljšanju ponude osiguranja i zaštiti korisnika usluga osiguranja. Dakle, svaki kontakt između konkurenata ne mora biti restriktivni sporazum, već se njegov domašaj mora ceniti na osnovu tzv. test efekata. Ukoliko su pozitivni efekti takvog sporazuma (u vidu podsticanja konkurencije, stvaranja koristi za potrošače osiguranja itd) veći od negativnih efekata (stvaranje restrikcija na tržištu osiguranja) utoliko je opravdano izuzimanje takvog sporazuma od primene opštih pravila konkurencije.

U radu se zastupa stav da su naši propisi o zaštiti konkurencije, iako inspirisani regulativom EU, prilično nejasni i neprecizni. U praksi se već pokazalo da mogu izroditi problemske situacije, što u krajnjoj liniji najviše šteti interesima potrošača usluga osiguranja. Stoga smatramo da se prilikom primene takvih propisa Komisija mora dobro upoznati sa stavom evropskih uzora u pogledu ispoljavanja zaštite konkurencije u oblasti osiguranja. Dovoljno je uzeti u obzir podatak da u EU postoji tradicija drugačijeg tretmana sporazuma osiguravača, što na osnovu posebnih uredbi, što na osnovu prakse ESP. U EU, dakle, postoji svest o tome da priroda delatnosti osiguranja nalaže da osiguravači zaključuju i sporazume koji se ne tolerišu drugim privrednim društvima. Ti sporazumi su opravdani i društveno poželjni upravo zato što bez njih ne bi bilo moguće pružanje pokrića tzv. velikim rizicima ili novim rizicima, odnosno zato što omogućavaju stvaranje kalkulacione baze za što adekvatniju procenu premija osiguranja.

Literatura

- Beckmann, R., M.,„Allgemeine Versicherungsbedingungen und AGB-Recht", Roland Michael Beckmann, Annemarie Matusche-Beckmann (h.r.g), VersicherungsrechtsHandbuch, 2. Auflage, Verlag C. H. Beck, München, 2009.
- Begović, B., Pavić, V., „Jasna i neposredna opasnost: prikaz novog Zakona o zaštiti konkurencije", *Anali*, br. 2/2009.
- Begović, B., Pavić, V., *Uvod u pravo konkurencije*, Pravni fakultet Univerziteta u Beogradu, 2012.
- Bellando, J.-L.,Bigot, J., Cabrillac, S., Jadaud, B., Moreau, J., i Parleani, G., *Entreprises et Organismes d'Assurances,* L. G. D. J., 3 édition, 2011.
- Bigot, J., „Les ambiguïtés de la coassurance", *Revue Générale du Droit des Assurances*, No. 1/2012.
- Birds, J., *Birds' Modern Insurance Law*, Seventh Edition, Sweet & Maxwell, London, 2007.

- Dreher, M., „Das Versicherungskartellrecht nach der Sektoruntersuchung der EG-Kommission zu den Unternehmensversicherungen", *VersicherungsRecht*, No. 1/2008.
- Đorđević, S., Samardžić, D., *Nemačko ugovorno pravo osiguranja sa prevodom zakona (VVG)*, IRZ, Beograd, 2014.
- Groutel, H., Leduc, F., Pierre, P., Asselain, M., *Traité du contrat d'assurance terrestre*, LexisNexis, Paris, 2008.
- Jevremović Petrović, T., „Korporativno upravljanje u društvima za osiguranje", *Tokovi osiguranja,* br. 2/2025, 273–303.
- Jovanović, S., „Višestruko osiguranje, saosiguranje i reosiguranje u svetlu postojećih zakonskih propisa", *Privreda i pravo osiguranja u tranziciji*, Udruženje za pravo osiguranja, Palić, 2004.
- Knežević, S., Mitrović, A., Sretić, D., „Specifics of reporting on cash flows in insurance companies", *Menadžment u hotelijerstvu i turizmu*, 2/2018, 21–33.
- Knežević, S., Faktori kvaliteta finansijskog izveštavanja osiguravajućih društava. *Referat na XLII Simpozijumu Saveza računovođa i revizora Srbije,* Zlatibor, 2011, 411–427.
- Körber, T., Rauh, J., O., „Kartellrechtlicher Zugang der Kunden- und Verbraucherverbände zu den gemeinsamen Statistiken der Versicherungswirtschaft", *VersicherungsRecht,* 16/2012.
- Krajeski, D., *Droit des assurances*, 2 édition, Montchrestien, Paris, 2008.
- Lambert-Faivre, Y., Leveneur, L., *Droit des assurances*, Dalloz, 13 édition, Paris, 2011.
- Mance, J., Goldrein, I., Merkin, R., *Insurance Disputes,* L.L.P., London, Hong Kong, 2003.
- Micklitz, H.-W., Stuyck, J., Terryn, E., (editors), *Cases, Materials and Text on Consumer Law,* Hart Publishing, Portland, 2010.
- Oster, T., „Droit de la concurrance et assurance: cartographie des risques au lendemain de l'enquête sectorielle de la Commission européenne et de l'adoption du nouveau règlement d'exemption catégorielle", *Revue Générale du Droit des Assurances*, No. 4/2012.
- Petrović Tomić, N., „Povodom 60 godina od odbrane doktorske disertacije profesora Šulejića: 'Osiguranje od građanske odgovornosti' – pogled u budućnost – šta bi bilo da osiguranje nije došlo da nas spasi od odgovornosti?", u: Marija Karanikić Mirić, Miloš Živković (ured.): *Građansko pravo u pokretu – transformacija pre kodifikacije*, Pravni fakultet, Beograd, 2024, 219–251.
- Petrović Tomić, N., *Osiguranje od odgovornosti direktora i članova upravnog odbora akcionarskog društva*, Pravni fakultet, Beograd, 2011.
- Petrović Tomić, N., *Pravo osiguranja*, Sistem, Knjiga prva, Službeni glasnik, 2019.

- Petrović Tomić, N., „Reosiguranje – Suština, domašaj i značaj", *Anali*, br. 2/2015, 78–93.
- Popović, D., „Zaštita konkurencije u oblasti osiguranja", u: Nataša Petrović Tomić (ured.), *Novi proizvodi osiguranja, tehnološke inovacije i zaštita korisnika u osiguranju*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2025, 111–126.
- Samardžić, D., „Kartelno-pravni izuzeci u sektoru osiguranja po novoj uredbi o grupnim izuzećima Evropske unije od 2010. godine", *Promene u pravu osiguranja Srbije u okviru evropskog (EU) razvoja prava osiguranja* (zbornik radova), Palić, 2011.
- Tomić, Z., Petrović Tomić, N., „Narušavanja konkurencije u osiguranju restriktivnim sporazumima", *Pravo i privreda,* br. 7–9/2013, 13–51.
- Turgné, F., *L'arbitrage en matière d'assurance et de réassurance*, Economica, Paris, 2007.
- Wandt, M., *Versicherungsrecht*, 5. Auslage, Carl Heymanns Verlag, Köln, 2010.
- Vasiljević, M., „Zakon o privrednim društvima i akcionarska društva za osiguranje/reosiguranje", *Tokovi osiguranja*, br. 3/2024, 485–509.
- Šulejić, P., „Korporativno upravljanje u organizacijima za osiguranje", u: Mirko Vasiljević, Vuk Radović (urednici), *Korporativno upravljanje*, Pravni fakultet univerziteta u Beogradu, Beograd, 2008.
- Šulejić, P., *Pravo osiguranja*, Pravni fakultet, Beograd, 2005.

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RESTRICTIVE AGREEMENTS IN INSURANCE – IMPACT OF EUROPEAN UNION LAW AND CURRENT TRENDS

REVIEW SCIENTIFIC PAPER

Abstract

Insurance, by its very nature, is a specific and highly regulated activity and, as such, enjoys special treatment under competition rules. Thus, the exemption of restrictive agreements has traditionally been applied within the insurance sector under EU law. The paper examines the concept of restrictive agreements in order to highlight the need to consider both the arguments for and against their exclusion from the general regime of competition protection. It is concluded that the protection of competition in the field of insurance is a delicate societal task, for the execution of which precise and clear regulations are the most important.

Keywords: *insurance industry, coinsurance and reinsurance, restrictive agreements, competition law*

I Introduction

The subject of research is restrictive agreements in insurance as an issue that brings insurance law and competition law closer together, *demonstrates* their points of intersection, and provides an opportunity for more comprehensive statutory regulation. The lack of research on this issue represents an incentive to offer a theoretical-legal and comparative-legal analysis in the paper, which will also have practical applicability. Therefore, during the writing of the paper, both case law

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and the practice of the authority responsible for the protection of competition (the Commission for Protection of Competition) were analyzed.

Following the introductory remarks, the paper proceeds from the special character of the insurance industry, which is governed by special regulations that manifest state interventionism. This refers to the regulation of status, supervisory, and contractual issues, that is, a *lex specialis* approach. The focus of the research is on restrictive agreements, which represent a modality of violation of free competition characteristic of the insurance sector. Protection of competition as a necessary precondition for the market mechanism can be called into question in insurance most often through various forms of "collusion" among market participants. Therefore, all legislation explicitly mentions specific modalities of restrictive agreements that fall within the remit of the Commission for the Protection of Competition.

In fact, based on insight into the sequence of steps taken by European legislative bodies, a tendency toward gradual return to general rules in this area can be observed. After decades of special treatment of restrictive agreements in the field of insurance, under statutorily prescribed conditions and with the clear intention of the European Commission to grant special status to these agreements, a gradual shift back to the general regulatory framework can be observed, placing all restrictive agreements, including those in insurance, into the same legal regime. The extent to which this approach is justified from the standpoint of the interests of the insurance market is one of the questions to which this paper devotes particular attention.

After addressing all of the aforementioned issues, the conclusion presents the position that the regulatory framework in the field of competition should be improved, with recommendations for its enhancement. It is argued that Serbian competition protection regulations, although inspired by EU regulation, are quite unclear and imprecise. In practice, it has already been demonstrated that they can generate problematic situations, ultimately causing the greatest harm to the interests of insurance service consumers. Accordingly, it is emphasized that, when applying such regulations, the Commission for Protection of Competition must closely acquaint itself with the positions adopted by European counterparts regarding the implementation of competition protection in the field of insurance. Within the EU, there is awareness that the nature of the insurance industry requires insurers to conclude agreements that are not tolerated by other commercial companies. These agreements are justified and socially desirable precisely because, without them, it would be impossible to provide coverage for so-called large risks or emerging risks, and because they enable the establishment of an actuarial basis for more accurate premium assessment.

II Insurance as a Sui Generis Activity

If the insurance activity were to be described in a single sentence, it would read as follows: Insurance is a heavily regulated activity, subject to close regulatory oversight and dedicated to protecting of insurance service users. The specificity of insurance companies' operations arises from the fundamental nature of their business and the risks inherent therein.[2] The insurance industry and the activities of insurance companies play a significant role in the development of financial institutions operating in many countries.[3] Given that we have emphasized detailed regulation as the first characteristic, it should be emphasized that insurance differs from other commercial activities in many characteristics (from establishment, through the entire course of business, to the grounds and procedures for termination) that justify a distinct statutory framework governing this industry. The laws that recognize the specificity of insurance are numerous, and through them, even persons who are not experts in this field clearly understand that insurance is "special" and benefits from a legislative approach that distinguishes it from the rest of the economy.[4] The question arises whether this special character is also expressed when it comes to the principle of free competition in insurance.

Let us begin with the status regulation of insurance. Insurance status law relates to all issues of the existence of insurance companies and is governed by the Law on Insurance.[5] In Serbian law, as is the case in comparative legal systems, insurance business is conducted exclusively by insurance undertakings established in the form of joint-stock companies or mutual insurance companies.[6] An insurance undertaking is a legal entity with its registered office in the Republic, entered in the register of the competent authority based on a license issued by the National Bank of Serbia to carry out insurance activities. Thus, insurance undertakings are: 1) legal persons (natural persons cannot conduct insurance activities if they are not registered as an insurance company); 2) have their registered office within the territory of the Republic (namely, the place from which the company's activities are managed and which is designated as such by the founding act or by a resolution of the general

[2] Snežana Knežević, „Faktori kvaliteta finansijskog izveštavanja osiguravajućih društava", *Referat na XLII Simpozijumu Saveza računovođa i revizora Srbije,* Zlatibor, 2011, 411–427.

[3] Snežana Knežević, Aleksandra Mitrović, Dušan Sretić, „Specifics of reporting on cash flows in insurance companies", *Menadžment u hotelijerstvu i turizmu*, 2/2018, 21–33.

[4] In this regard, legal theory refers to the fragmentation of contract law in the context of the special legal regime governing insurance contracts. See Nataša Petrović Tomić, „Povodom 60 godina od odbrane doktorske disertacije profesora Šulejića: 'Osiguranje od građanske odgovornosti' – pogled u budućnost – šta bi bilo da osiguranje nije došlo da nas spasi od odgovornosti?", in Marija Karanikić Mirić and Miloš Živković (eds.), *Građansko pravo u pokretu – transformacija pre kodifikacije*, Faculty of Law, Belgrade, 2024, 219–251.

[5] Insurance Law, *Official Gazette of the Republic of Serbia*, Nos. 139/2014 and 44/2021 (hereinafter: IL).

[6] Given that there are currently no registered mutual insurance companies in Serbia, joint-stock insurance companies may be said to predominate.

meeting); and 3) are entered into the register on the basis of a license granted by the National Bank of Serbia authorizing them to conduct insurance activities.

Insurance undertakings share several common features.[7]

First, across legal systems, insurance undertakings are excluded from the status *lex generalis* law and regulated by a special law. The very exclusion of the mentioned commercial entities from the law governing the establishment, operation, and dissolution of commercial companies indicates the peculiarities of insurance companies.[8] The specificity of insurance undertakings, on the one hand, and the existence of public interest in regulating the manner in which the insurance industry will be conducted, as well as the use of the funds managed by these key participants in economic life, on the other hand, have prompted the legislature to grant insurance undertakings special treatment.

Second, insurance activities are primarily conducted by insurance undertakings organized as joint-stock companies. Although mutual insurance companies can also assume part of the risk portfolio threatening an economy, joint-stock insurance companies, due to their greater financial capacity, are more prevalent organizational form for covering large (commercial) risks.

Third, insurance activities may be conducted only by insurance undertakings that have obtained permission from the competent authority. The licensing system governing the establishment of insurance undertakings certainly represents one of the most significant differences between insurance companies and other commercial companies. The state's interest in ensuring oversight, and then continued growth of these significant economic branches has resulted in the competent public authority being entrusted not only with the power to grant and revoke operating licenses, but also with ongoing supervisory authority. In other words, the field of insurance status law is marked by state interventionism dictated by the peculiarities of the activity concerned.

Fourth, under EU law and, to a limited extent, domestic law, the rule has been adopted that a single insurance undertaking cannot simultaneously conduct both life and non-life insurance business.[9]

[7] Nataša Petrović Tomić, *Pravo osiguranja*, Sistem, Knjiga prva, *Official Gazette*, 2019, 188–192.

[8] Mirko Vasiljević, „Zakon o privrednim društvima i akcionarska društva za osiguranje/reosiguranje", T*okovi osiguranja*, No. 3/2024, 485-509.

[9] This rule reflects an effort to institutionalize the principle of specialization among insurance undertakings. Specialization in particular lines of business constitutes one of the means of enhancing insurers' competitiveness in the context of increasing competition in the insurance market. It is also in the interest of insurance service users. Thus, in Germany, for example, an insurer providing legal expenses insurance, in addition to other classes of insurance that overlap with it (such as liability insurance), must include in its general policy conditions provisions aimed at preventing conflicts between different lines of insurance. See: Slavko Đorđević and Darko Samardžić, *Nemačko ugovorno pravo osiguranja sa prevodom zakona* (VVG), IRZ, Belgrade, 2014, 42.

Fifth, the *lex specialis* regulation establishes the framework for corporate governance in insurance undertakings. When it comes to management bodies, they are determined in the IL in such a way that they constitute a two-tier management system.[10] The mandatory management bodies in an insurance undertaking are: the general meeting, the executive board, and the supervisory board. However, the IL is limited to listing the types and competencies of management bodies, while numerous issues related to management in these companies have remain beyond its scope.[11]

Sixth, the peculiarity of insurance undertakings compared to commercial companies operating under the general company-law regime is also reflected in bankruptcy regulation. Namely, the bankruptcy of insurance undertakings is not regulated by the general bankruptcy regime (in our case, the Bankruptcy Law),[12] but rather by a special sector-specific bankruptcy regime.

III Competition Law and the Insurance Industry

One of the principles that characterizes competition law is undoubtedly the principle of free competition. Does the principle of free competition also apply in a specific field, such as insurance? The principle of free competition in the market applies to insurance undertakings as well, but the peculiarity of this sector is also reflected in certain departures from the application of the competition protection principle in its original form. From a comparative law perspective, European Union law (hereinafter: EU) reflects a tradition of exempting restrictive agreements in insurance from the application of general competition rules.[13] This raises the question of why this is so. Generally speaking, although they disrupt competition, some of these agreements also have positive effects on economic efficiency, which is why they are assessed as socially desirable.[14]

[10] Tatjana Jevremović Petrović, „Korporativno upravljanje u društvima za osiguranje", *Tokovi osiguranja,* No. 2/2025, 273–303.

[11] These include numerous matters such as the procedures for appointment to management bodies, terms of office, conflicts of interest, non-compete clauses, and liability for damage arising from the performance of corporate functions, among others. Where such matters are not governed by the articles of association of the insurance undertaking, they are resolved through the application of the provisions of the Company Law. See also Predrag Šulejić, „Korporativno upravljanje u organizacijima za osiguranje", in Mirko Vasiljević and Vuk Radović (eds.), *Korporativno upravljanje*, Faculty of Law, University of Belgrade, Belgrade, 2008, 322.

[12] Bankruptcy Law, *Official Gazette of the Republic of Serbia*, Nos. 104/2009, 99/2011 – other law, 71/2012 – Constitutional Court decision, 83/2014, 113/2017, and 44/2018 (hereinafter: BL). Article 14(2) expressly provides that the provisions of this Law do not apply to bankruptcy proceedings involving banks and insurance undertakings, except for those provisions governing matters not regulated by a special statute.

[13] For a detailed discussion of competition issues in the insurance sector, see Z. Tomić and N. Petrović Tomić, „Narušavanja konkurencije u osiguranju restriktivnim sporazumima", *Pravo i privreda*, Nos. 7–9/2013, 13–51.

[14] Meinrad Dreher, „Das Versicherungskartellrecht nach der Sektoruntersuchung der EG-Kommission zu den Unternehmensversicherungen", *VersicherungsRecht*, No. 1/2008, 16.

The question that arises is what constitutes a reasonable measure of deviation from general competition rules in order to accommodate the specificity of the insurance sector, and is this in the interest of social welfare and progress? If we assume that market competition is necessary because it creates competitive pressure on market participants, forcing them to increase economic efficiency, we can ask what goals are achieved by deviating from it. Moreover, how significant are these goals if achieving them could upset the market balance? These questions can be answered by taking into account the characteristics of the insurance sector, which are demonstrably different from those of other sectors of the economy, on the one hand, and, on the other, the tradition of EU institutions in treating agreements among insurers differently.

In order to understand the need to protect the specificity of insurance within the framework of free competition, we must start with the key characteristic of the insurance contract, which is its aleatory nature. This contract differs from other contracts in that the performance of one party's obligation (the insurer) depends on the occurrence of an uncertain circumstance (the insured risk).[15] In other words, the insurer sells a promise that, at the time of the occurrence of an event, usually unpleasant, it will have sufficient funds to guarantee the fulfillment of contractual obligations. In addition, the insurance industry is one of the few that do not know how much a new insurance service will cost at the moment a new insurance service is offered. Uncertainty about the occurrence and consequences of insured risk, especially in the sphere of providing coverage for commercial risks, complicates the accurate assessment of premiums and reserves necessary for the insurer to meet its obligations. Therefore, in such types of insurance, from the standpoint of economic logic, cooperation among insurers is much more beneficial than free competition. The effects of insurer cooperation also benefit policyholders, given that the risk of insurer insolvency is lower when premiums are determined based on the exchange of information and experience across multiple insurers. Insurance activities could not be realized at all without the cooperation of insurers. Therefore, a higher level of tolerance regarding forms of cooperation among insurers is justified. The essence of competition law is to protect the market from those forms of violation of free competition that, in the long term, disrupt social progress. The goal of competition policy is to contribute to economic progress and the welfare of society, and particularly consumer welfare.[16] Accordingly, there are forms of violation of competition whose long-term effects are compatible with the objectives of competition protection and

[15] The policyholder allocates funds to purchase insurance coverage and, in return, receives the insurer's promise to pay compensation, i.e. the sum insured, should the event defined as the insured occurrence materialize in the future. The strict regulatory framework governing insurance activities seeks, to the greatest extent possible, to ensure that the insurer will indeed be capable of fulfilling that promise. For more details: John Birds, *Birds' Modern Insurance Law*, Seventh Edition, Sweet & Maxwell, London, 2007, 22.

[16] Hans-Wolfgang Micklitz, Jules Stuyck, Evelyne Terryn (eds), *Cases, Materials and Text on Consumer Law,* Hart Publishing, Portland 2010, 3–6.

are therefore subject to a special legal regime. When the interest of an extremely sensitive category of stakeholders, such as consumers, is added to this, it becomes clear why insurance justifiably enjoys special treatment. Finally, the special treatment of insurance is also supported by the fact that insurance is a highly regulated activity, in which all issues are governed by law or by-laws, and therefore it is logical that the issue of competition is also approached differently.

IV Restrictive Agreements under Positive Law

Serbian law, following the example of European Union law, prohibits violations of competition, more precisely, actions of market participants that have as their object or effect, or may have, a significant restriction, distortion, or prevention of competition.[17] Violations of competition law can take the form of restrictive agreements or the abuse of dominant market positions by market participants. In addition, the Law on Protection of Competition prescribes the obligation to control those concentrations of market participants that may significantly restrict, distort, or prevent competition in the market of the Republic of Serbia or its part, especially if that restriction, distortion, or prevention would be the result of the creation or strengthening of a dominant position.[18] In the field of insurance, restrictive agreements are most prevalent. These are agreements between market participants that, as their object or effect, impose a significant restriction, distortion, or prevention of competition within the territory of the Republic of Serbia.[19]

The legislator lists some forms of restrictive agreements: contracts, specific contractual provisions, explicit or tacit agreements, concerted practices, as well as decisions adopted by associations of market participants.[20] The listed forms of restrictive agreements are prohibited and null and void, particularly agreements that directly or indirectly fix purchase or selling prices or other trading conditions; restrict or control production, the market, technical development, or investments; divide markets or sources of supply, and the like. Agreements between competitors (association decisions) that fix purchase or selling prices or other trading conditions, limit or control production, the market, technical development, or investments, or divide markets or sources of supply are agreements that are particularly prohibited pursuant to Article 7 paragraphs 1 and 2 of the Law on Protection of Competition, as they always significantly restrict competition. The most problematic part of the regulation of restrictive agreements is precisely the provision that *concerted practices and decisions of associations*

[17] Law on the Protection of Competition, *Official Gazette of the Republic of Serbia*, Nos. 51/2009 and 95/2013 (hereinafter: LPC), Art. 9.
[18] LPC, Art. 19 and 61.
[19] LPC, Art. 10 para. 1.
[20] LPC, Art. 10 para. 2.

of market participants are also considered restrictive agreements. The existence of concerted practice is difficult to prove; market participants always have the option to justify their actions by market parameters. Another form of restrictive agreements is decisions adopted by associations of market participants. Decisions made within a professional associations can serve as a cover for achieving a restrictive agreement, which is therefore more difficult to prove and potentially more effective in practice.

How does the Commission for Protection of Competition (hereinafter: the Commission) manage in the application and interpretation of unclear legal standards and imprecise legal provisions? Norms such as the one cited create uncertainty regarding actions by public authorities.[21] If positive legislation promotes imprecise norms or unclear legal standards, regulatory risk arises for economic entities.[22] This is the risk of the uncertain application of the same legal provisions and legal standards from case to case. Through its regulatory framework, the state should protect economic entities from regulatory risk and create a business environment conducive to commercial activities.

From a legal aspect, when the term restrictive agreement is mentioned, *cartels* are usually thought of. Cartels are horizontal agreements between market participants that operate at the same level of the supply chain.[23] Through such agreements, competitors agree, explicitly or tacitly, that they will no longer compete with each other, that is, that they will eliminate free competition in the market.[24] Since such agreements eliminate competition, it is clear why the prohibition applies primarily to this category of restrictive agreements.[25] In addition to cartels, c*ooperation agreements between competitors* are also significant. These agreements can have different treatment, depending on whether they have a negative effect on competition. Namely, it is possible for competitors to conclude a cooperation agreement that is not aimed at preventing mutual competition (e.g. agreements concerning the exchange of independent research and development results). Moreover, even if there is a distortion of competition, it is limited only to a certain segment of business (e.g. research and development), so it does not exclude competition in other segments of business and in relation to other market participants. In other words, non-cartel agreements may improve market competition, which is why only such agreements can be subject to the privilege of exemption.

[21] See also: Boris Begović, Vladimir Pavić, „Jasna i neposredna opasnost: prikaz novog Zakona o zaštiti konkurencije", *Anali*, No. 2/2009, 73.

[22] *Ibid*, 74.

[23] Boris Begović, Vladimir Pavić, Uvod, 44.

[24] These arrangements usually concern prices of goods or services, quantities to be offered on the market, or the geographic allocation of markets.

[25] In some jurisdictions, cartels are treated as *per se* prohibited. Therefore, every cartel agreement is void without the need to establish its effects.

Domestic legislator does differentiate cartels and other restrictive agreements. The same applies to their legal fate. As a rule, such agreements are null and void, unless they "contribute to the improvement of production and trade, or to the promotion of technical or economic progress, and provide consumers with a fair share of the benefits, provided that they do not impose restrictions on market participants that are not necessary for achieving the goal of the agreement, or that they do not exclude competition in the relevant market or a substantial part thereof".[26] In our country, therefore, restrictive agreements are not null and void *per se*. The so-called "effects test" is applied, allowing agreements, particularly those that do not constitute cartels, to avoid nullity where their potential positive effects on competition and economic progress are taken into account.

The Commission's task is to analyze the consequences that a horizontal agreement can cause and, based on its assessment, decide whether the agreement may remain in force. If it is assessed that the restrictive agreement is not contrary to the objectives of competition protection, it can be exempted from the prohibition of competition and the sanction of nullity. It is necessary to distinguish between block exemptions and individual exemptions. Under Serbian law, a block exemption can be obtained by applying the *Regulation on specialization agreements between market participants operating at the same level of production or distribution, which are exempted from the prohibition*.[27] Exemptions based on block exemption regulations are "automatic", i.e. it is not necessary to submit a request for exemption to the competent authority. Participants in a restrictive agreement should determine their market share and verify that it falls below the threshold prescribed by the corresponding regulation. For horizontal specialization agreements, the market share must not exceed 20%; for horizontal research and development agreements 25%; while for vertical agreements the market share must not exceed 25%. Even if the market share falls below the prescribed thresholds, the agreement will not be exempted if it contains any of the so-called hardcore restrictions, such as market-sharing clauses.

[26] LPC, Art. 11.

[27] Regulation on specialization agreements between market participants operating at the same Level of production or distribution is exempted from prohibition, *Official Gazette of the Republic of Serbia*, No. 11/2010 (hereinafter: the Regulation). These include: 1) unilateral specialization agreements, whereby one party undertakes to cease or refrain from producing the relevant products and to purchase them from another party to the agreement, while the other party undertakes to manufacture and sell those products; 2) reciprocal specialization agreements, whereby two or more parties undertake to cease or refrain from producing certain, but different, products and to purchase them from other parties to the agreement that undertake to sell them; 3) joint production agreements, whereby two or more parties undertake to produce certain products jointly. The exemption from the prohibition applicable to the agreements referred to in paragraph 1 of this Article also extends to specific provisions contained in such agreements that do not constitute the primary object of those agreements, but are directly related to and necessary for their implementation, such as provisions assigning or licensing intellectual property rights.

The fact that it is an agreement that is included in the list for block exemption does not guarantee that it will actually be exempt. It is possible that it is unlawful if an overall assessment demonstrates that its negative effects (distortion of competition) outweigh the positive effects (economic progress). It follows from the Regulation that even horizontal specialization agreements falling within the scope of the block exemption will not qualify for exemption where multiple specialization agreements exist in the relevant market and their cumulative effect prevents the agreement from satisfying the general conditions for exemption set out in Article 11.[28] When it comes to agreements that cannot be subsumed under the privilege of block exemption, our law gives market participants the option to approach the Commission for Protection of Competition (hereinafter: the Commission) with a request to exempt the restrictive agreement from the prohibition.

A request for individual exemption from the prohibition can be submitted to the Commission for Protection of Competition, where it must be proven that four legally prescribed conditions for exemption are met: (i) the agreement contributes to the improvement of production and trade, or to promoting technical or economic progress; (ii) the agreement provides consumers with a fair share of the benefits; (iii) the agreement does not impose restrictions, on market participants, that are not necessary for achieving the goal of the agreement; and (iv) the agreement does not exclude competition in the relevant market or a substantial part thereof.[29] The period to which the individual exemption applies cannot be longer than eight years.[30]

[28] Regulation, Art. 5, para. 3.

[29] LPC, Art. 11.

[30] "In the practice of the Commission for Protection of Competition (CPC), for example, the exemption of agreements concerning joint participation in public procurement procedures may also be found. As a rule, such agreements lead to the distortion of competition where competitors enter into arrangements for the submission of cover bids (a bid higher than that of a pre-selected bidder), bid suppression (one or more bidders agree to refrain from submitting a bid or to withdraw an already submitted bid), bid rotation (market participants continue to participate in calls for tenders but agree to alternate as winners, i.e. to submit the lowest bid), or market allocation (bidders divide the market by agreeing not to compete for certain contracting authorities or within specific geographic areas). However, cooperation between competitors may sometimes be necessary, as none of them would independently satisfy the conditions for participation in a tender. Thus, the insurers "Uniqa osiguranje" and "Wiener Städtische" applied for an individual exemption for an agreement between a group of bidders concerning joint participation in a public procurement procedure conducted by the General Hospital in Kikinda. The procurement concerned property and employee insurance services, and the exemption was sought for a period of one year. The relevant market was defined as the market for the provision of non-life insurance services within the territory of Serbia, in which fifteen competitors were active at the time. Additional eligibility requirements for participation in the procurement included: (i) minimum share capital exceeding one billion dinars; (ii) possession of ISO 9001:2008 certification; and (iii) the condition that the bidder had not operated at a loss during the preceding three years. Neither party to the agreement satisfied the first requirement; moreover, "Uniqa" lacked ISO certification and had operated at a loss. After reviewing the application, the CPC granted the exemption, noting that, in the absence of the agreement, each participant would

V Regulation of Restrictive Agreements in European Union Insurance Law

In principle, under European Union law, there are the same forms of violation of free competition by insurance undertakings as in our law.[31] For the insurance sector, agreements that distort free competition in the insurance market were most characteristic.[32] Unlike the law of the European Union, *in the Republic of Serbia, there has never been a special regime for exempting insurance agreements; rather, they have always been subject to the general exemption regime*.

1. Development of legal regulation of restrictive agreements in the insurance sector: from special treatment to general regime

Restrictive agreements in insurance are currently subject to the general legal regime of competition, that is, to the application of Article 101 of the Treaty on the Functioning of the European Union. This provision prohibits agreements, decisions of associations of undertakings, and concerted practices that can significantly restrict, distort, or prevent competition within the EU internal market. This includes: cartels (for example, agreements that fix premium levels or allocate the market or clients); agreements on insurance conditions (which can eliminate competition or innovation); exchange of sensitive information between insurers; and agreements

have been eliminated from the tender due to deficiencies in their bids. The CPC concluded that the agreement contained no restrictive clauses; on the contrary, it enabled competition, since without it the two undertakings would not have been able to compete in the tender at all." See: Dušan Popović, „Zaštita konkurencije u oblasti osiguranja", in Nataša Petrović Tomić (ed.), *Novi proizvodi osiguranja, tehnološke inovacije i zaštita korisnika u osiguranju, Faculty of Law*, University of Belgrade, Belgrade, 2025, 118–119.

[31] The issue of competition in the insurance sector has evolved in parallel with the evolving understanding of competition within the EU single market. The principle of optimal resource allocation, as a central value, has led to greater emphasis on economic rather than purely legal criteria when assessing agreements entered into by insurance undertakings. Accordingly, the European Commission has been empowered to exempt certain agreements from the general regime, taking into account the specific features of individual sectors.

[32] For a long time, they were the only known mechanism relied upon by insurance undertakings; later, concentrations also emerged in this specific sector. Concentrations in the insurance industry have not been a novelty in recent decades, rather, they are closely associated with the phenomenon of European group structures and bancassurance as a model for the provision of financial services. Within the EU, the question arose as to the criteria on the basis of which a concentration is classified as European or national. The assessment is based on the value of gross written premiums, encompassing both amounts already received and those to be received under insurance contracts concluded by insurance undertakings or on their behalf, including premiums relating to policies that have been reinsured. The inclusion of premiums corresponding to the reinsured portion of risk is logical, since only the aggregate volume of concluded insurance enables an accurate assessment of an insurer's market position. For more details, see: Jean-Luc Bellando *et al*., *Entreprises et Organismes d'Assurances*, L.G.D.J., 3e édition 2011, 607.

that restrict the entry of new competitors into the market. All such agreements are prohibited unless they meet the conditions of Article 101(3), which provides for exemption from the prohibition.

If the European Commission or national competition protection bodies establish the existence of a restrictive agreement, the following legal consequences occur. First, the agreement is considered null and void. Second, companies can be fined up to 10% of their total annual revenue. Third, national legislations also provide for actions for damages that may be brought by consumers or competitors.[33] From the practice of the Court of Justice of the EU, it follows that this court balances between preserving free competition and recognizing the specificity of the insurance sector in matters concerning restrictive agreements in insurance. The Court has shown awareness that measures and agreements aimed at improving market conditions should not become an excuse for distorting competition. This is a guideline that should also be followed by our Commission for the Protection of Competition, as well as by case law.

In order to understand how insurance competition protection policy has changed, it is necessary to briefly outline the sequence of regulations that list agreements between insurance undertakings that have the effect of a cartel law exemption.[34] The common denominator of the mentioned agreements and the reason for their exemption from the general regime is their pro-competitive character.[35] They are, namely, concluded in order to encourage demand for insurance services by strengthening the supply of insurance, thereby contributing to long term economic efficiency and rendering them acceptable from the perspective of achieving public order in the field of competition.

However, after a decade of competition protection policy in insurance based on fairly liberal criteria, practice has shown that even with regard to insurance undertakings, a more restrictive stance should be taken.[36] By Regulation 267/2010,

[33] In *Courage Ltd v. Crehan* (C-453/99), the Court of Justice of the European Union (CJEU) confirmed the right of individuals to claim damages for harm resulting from restrictive agreements, emphasizing the importance of sanctioning such conduct.

[34] The first regulation exempted the following agreements: the joint establishment of premium tariffs based on common statistics or the joint determination of the number of insured events; the adoption of standard policy conditions; the joint coverage of certain risks; claims settlement arrangements; the specification and acceptance of safety equipment; and registers relating to aggravated risks, together with the exchange of related information, provided that such registers and data remained confidential. See: *Règlement CEE n. 1534-91 du Conseil, du 31 mai 1991, concernant l'application du l'article 85 paragraphe 3 du traité à certaines catégories d'accords, de décisions et de pratiques concertées dans le domaine des assurances*, JO n. L. 143 du 07/06/1991.

[35] The adoption of such regulations eliminates the need to assess individual cases that would otherwise be impermissible from a cartel-law perspective. Block exemption regulations, moreover, apply only for a limited period, after which their compatibility with competition law is reassessed.

[36] Accordingly, in the subsequent (second) regulation, the Commission limited the scope of protected agreements to the following: agreements on the establishment and joint calculation of premiums, tables,

only two groups of agreements were exempted from the general competition protection regime: 1) agreements related to the collection and distribution of data, compilation of tables and studies, and 2) agreements on joint assumption of certain risks.[37] All other agreements remain outside the exemption and thus subject to the general rules of competition law. This is followed by the so-called Insurance Block Exemption Regulation (IBER), which was in force until March 31, 2022. According to IBER, certain types of agreements between insurers were permitted, provided they benefited consumers and the market. These are the following agreements: 1) exchange of statistical data for risk assessment; 2) joint development of models and mortality tables; and 3) joint coverage (reinsurance and coinsurance) of large risks. Since the European Commission did not extend IBER after 2022, such agreements are now subject to the general regime (Article 101 of the Treaty on the Establishment of the EU).

From this, it should not be concluded that all agreements between insurers are currently prohibited under EU law. Insurance undertakings can, in accordance with EU rules, exchange information related to the compilation of tables and studies, provided that exchange is transparent and non-distortive, aimed at strengthening the insurance market, and contributes to consumer welfare.

2. Agreements related to the collection and distribution of data, compilation of tables and studies

These are agreements that have the broadest application in the field of insurance law.[38] The idea that emerged early in the field of insurance is the need to distinguish lawful cooperation in compiling tables and calculating premiums from unlawful cooperation, i.e. fixing commercial premiums. This therefore, constitutes a form of cooperation among insurance undertakings in the shape of joint research and development agreements, manifested in a specific manner within the insurance industry. Cooperation between insurance undertakings or within associations of insurers regarding the compilation and exchange of information is intended to facilitate the calculation of the average premium for a risk coverage that occurred

and studies; the adoption of model and standard policy conditions; the joint coverage of certain risks; and the development of rules on safety equipment. See: *Règlement CE n. 358/2003 de la Commission du 27 février 2003, concernant l'application du l'article 85 paragraphe 3 du traité à certaine categorie d'accords, de decisions et de pratiques concertées dans le domaine des assurances, JO n. L. 53/8 du 28/02/2003*.

[37] *Règlement CE n. 267 de la Commission du 24 mars 2010, concernant l'application de l'article 85, paragraphe 3, du traité à certaines catégories d'accords, de décisions et de pratiques concertées dans le domaine des assurances*, JO n. L. 83/1 du 30/03/2010.

[38] Darko Samardžić, „Kartelno-pravni izuzeci u sektoru osiguranja po novoj uredbi o grupnim izuzećima Evropske unije od 2010. godine", *Promene u pravu osiguranja Srbije u okviru evropskog (EU) razvoja prava osiguranja* (zbornik radova), Palić 2011, 76.

in the past, or, when it comes to life insurance, determining mortality tables, the assessment of the probability of illness, disability, or accident.[39] As a result of such cooperation, the risk is better understood and its assessment by individual insurance undertakings is simplified.[40] The same applies to studies examining the likely impact of external factors on the occurrence or severity of the insured event, as well as on the profitability of particular investments. These forms of cooperation enjoy the privilege of exemption only to the extent that they do not achieve the fixing of commercial premiums.[41]

These agreements distinguish the insurance industry in relation to other branches of the economy. Joint data collection should expand the so-called *calculation base*. The larger it is, the more reliable the risk assessment and the costs necessary for its coverage will be. Unlike other commercial undertakings, insurance companies cannot determine the price of their services solely based on costs and margins. In fact, the price of insurance is not completely known at the time the contract is concluded. It depends on the probability of the occurrence of the insured event and the manner in which it materializes. The insurance industry differs from other sectors precisely because, at the time a new insurance product is launched, it cannot be determined with certainty what its actual cost will be. This is particularly unfavorable for insurers who are just entering the market without the backing of international groups. The risk is, therefore, assessed based on the analysis of previous insured risks, which makes access to statistical data on the occurrence of insured events especially valuable. Therefore, it is important to recognize the right of insurance undertakings to cooperate for the purpose of accurate risk assessment and the establishment of adequate premiums.[42]

[39] The privilege of exemption from competition rules encompasses compilations and exchanges of information that: a) are based on data covering multiple insurance years as the observation period; b) relate to identical or comparable risks; c) are derived from data sufficient for statistically reliable processing; and d) enable, in particular, the determination of: the number of insured events during the observation period, the number of individual risks insured in each insurance year within that period, the aggregate amount of claims paid or payable as a result of insured events, and the insured capital for each insurance year within the observation period. Compilations and tables benefit from the exemption provided that they: 1) contain anonymous data (identifying neither insurers nor policyholders); 2) clearly state that they are non-binding; 3) contain no indication of commercial premium levels; 4) are made available under reasonable and non-discriminatory conditions to any insurance undertaking requesting a copy, including those not operating in the relevant geographic or product market; and 5) subject to considerations of public security, are accessible under reasonable and non-discriminatory conditions to consumer organizations requesting access.

[40] Thomas. Oster, „Droit de la concurrence et assurance: cartographie des risques au lendemain de l'enquête sectorielle de la Commission européenne et de l'adoption du nouveau règlement d'exemption catégorielle", *Revue Générale du Droit des Assurances,* No. 4/2012, 966.

[41] Jean-Luc Bellando *et al*., 610.

[42] Torsten Körber, Jens Ole Rauh, „Kartellrechtlicher Zugang der Kunden- und Verbraucherverbände zu den gemeinsamen Statistiken der Versicherungswirtschaft", *VersicherungsRecht,* 16/2012, 670–678.

Thus, agreements on joint research and exchange of information, as well as joint implementation of studies, are not restrictive in the sense of free competition as long as they are based on anonymous data, are not binding on insurance undertakings, and contain data of a purely indicative nature.[43] In this sense, the Verband der Sachversicherer decision is indicative, concerning German fire risk insurance.[44] The subject of the dispute concerned the decision by the German association of insurers to increase the insurance premium for industrial fire-risk insurance, which was automatically accepted by all insurance undertakings. The European Court of Justice held that this is a form of distortion of free competition in the EU insurance market. However, the reasoning of the judgment reveals the Court's awareness that insurers' agreements must be assessed under the so-called effects test. Comparing the arguments that German insurers put forward in their defense, the Court tried to determine whether there is greater benefit or harm from concluding such agreements. Regarding the positive effects of insurer agreements in the field of insurance, the following were particularly emphasized: establishment of stable conditions in the insurance market; elimination of uncertainty; greater availability of reinsurance; the ability of insurance undertakings to apply tariffs aligned with the risks assumed, etc.[45]

"In such agreements, neither insurance companies or policyholders could be identified in the tables/studies. Once data were collected and distributed, a disclaimer had to state that they were non-binding. Agreements related to the collection and distribution of data, compilation of tables and studies could not contain information on gross premium volumes. Data, tables, or studies had to be made available, under reasonable, accessible, and non-discriminatory conditions to any insurance undertaking that requested it, even if it did not operate in the same geographic or product market. For an agreement to be exempted from the prohibition, consumer associations and user organizations had to be granted access to data/tables/studies under reasonable, accessible, and non-discriminatory conditions, if they precisely justified their request, except if refusal of access would be justified by reasons of public security protection. Such agreements must not contain so-called hardcore restrictions, for example, by obliging the parties or third parties not to use data/tables that are not covered by the scope of the agreement, or by preventing them from deviating from the results of the studies covered by the agreement."[46]

Joint compilations and exchanges of information can have a dual pro-competitive effect, and as such, can be acceptable. First, they enable even the smallest and least competitive insurance undertakings to become familiar with risks. Second,

[43] Information exchanges carried out for purposes other than those described do not qualify for the benefit of exemption.

[44] Judgment of the Court of 27 January 1987, Verband der Sachversicherer e.V. v, Case 45/85.

[45] Jean-Luc Bellando *et al*., 610.

[46] Commission Regulation (EU) on block exemptions in the insurance sector, Articles 2–4.

they favor the entry of new companies into the insurance market. Companies that are just to position themselves in the insurance market benefit significantly from the data of other companies operating in that market. They will be able to assess their chances in such an insurance market with a greater probability of accuracy. Likewise, study results and information exchanges can also be useful to consumer organizations. Based on insight into such data, consumers become familiar with the conditions under which insurance protection is available. In order to achieve these positive effects, it is necessary that all insurance companies have access to the agreement's results, even if they are not members of the association that concluded it.[47] In addition, it is necessary that the information be available under reasonable and non-discriminatory conditions to companies that do not operate in the same market as well. Refusal to disclose such data is, therefore, legitimate only if required by public-security considerations.

"That the treatment of restrictive agreements in the field of insurance has not drastically changed even after the abolition of the special exemption regime in the EU law is confirmed by the European Commission's recent decision in the proceedings against the association "Insurance Ireland".[48] Namely, the association "Insurance Ireland" offered its members access to the "Insurance Link Information Exchange System" database, which contained data facilitating the detection of fraud in the motor vehicle insurance market. The European Commission conducted an unannounced inspection in 2017 and initiated proceedings against the association in 2019, during which it published a Statement of Objections in 2021. Responding to the Statement, the Association offered a proposal of commitments that would be adhered to in order to eliminate the danger of distortion of competition. The European Commission accepted the proposal of commitments and terminated the proceedings. Some of the commitments meant that access to the database must not be conditioned on membership in the association, that the access price must be determined in a non-discriminatory manner and on a cost basis, that there must be a possibility of appeal to an independent body if access to the database is denied, and that the membership criteria in the association must be non-discriminatory and transparent. Commitments must be respected for 10 years, and the penalty for their non-compliance amounts to up to 10% of the association's world-wide turnover or up to 1% of the total annual turnover generated by its members in the relevant market."[49]

[47] *Ibid.*

[48] European Commission, Case No. AT.40511, 29 July 2022. Available at: *https://competition-cases.ec.europa.eu/cases/AT.40511,* accessed on 12 August 2024. For a more detailed analysis of horizontal cooperation agreements in European Union competition law, see Nicolas Petit, *Droit européen de la concurrence*, Paris, 2013, 537–548.

[49] Dušan Popović, 117.

VI Conclusion

The insurance industry is distinct from other economic activities and has enormous economic potential in the contemporary environment. However, this does not entail that competition protection rules do not apply to insurance undertakings. On the contrary, the insurance sector is particularly interesting from the perspective of competition law, given that numerous practices have developed (and are still developing) in this sector for which it is not always certain whether they lead to the distortion of free competition in the insurance market. These range from agreements on premiums, market allocation, boycotts, for which there is no dispute that they are contrary to free competition, to agreements on exchange of information on research and development, for which there is no dispute that they are pro-competitive. Between these two extremes are agreements and practices that are most problematic, such as the adoption of standard terms, data exchanges aimed at improving risk assessment, and joint coverage of so-called mature risks. These practices can distort competition in the insurance market and may be classified as restrictive. However, it is not excluded that these agreements contribute to strengthening competition, at least between undertakings covered by the agreement and other insurance undertakings, as well as to improving the supply of insurance and protecting users of insurance services. Thus, every contact between competitors does not have to constitute a restrictive agreement, rather its scope must be assessed based on the so-called effects test. If the positive effects of such an agreement (in terms of encouraging competition, creating benefits for insurance consumers, etc.) outweigh the negative effects (creating restrictions in the insurance market), then exempting such an agreement from the application of general competition rules is justified.

The paper argues that domestic competition protection regulations, although inspired by EU regulation, remain unclear and imprecise. In practice, it has already been shown that they can cause problematic situations that ultimately harm the interests of insurance consumers most. Therefore, we believe that when applying such regulations, the Commission must become well acquainted with the position of European models on the enforcement of competition law in the field of insurance. It is sufficient to take into account the fact that in the EU there is a tradition of different treatment of insurer agreements, whether based on specific regulations or based on the practice of the Court of Justice of the EU. In the EU, therefore, there is awareness that the nature of the insurance industry requires insurers to conclude agreements that are not tolerated by other commercial companies. These agreements are justified and socially desirable precisely because, without them, it would not be possible to provide coverage for so-called large or emerging risks, or because they establish the calculation basis necessary for a more adequate assessment of insurance premiums.

Literature

- Beckmann, R., M.,„Allgemeine Versicherungsbedingungen und AGB-Recht", Roland Michael Beckmann, Annemarie Matusche-Beckmann (h.r.g), VersicherungsrechtsHandbuch, 2. Auflage, Verlag C. H. Beck, München, 2009.
- Begović, B., Pavić, V., „Jasna i neposredna opasnost: prikaz novog Zakona o zaštiti konkurencije", *Anali*, br. 2/2009.
- Begović, B., Pavić, V., *Uvod u pravo konkurencije*, Pravni fakultet Univerziteta u Beogradu, 2012.
- Bellando, J.-L.,Bigot, J., Cabrillac, S., Jadaud, B., Moreau, J., i Parleani, G., *Entreprises et Organismes d'Assurances,* L. G. D. J., 3 édition, 2011.
- Bigot, J., „Les ambiguïtés de la coassurance", *Revue Générale du Droit des Assurances*, No. 1/2012.
- Birds, J., *Birds' Modern Insurance Law*, Seventh Edition, Sweet & Maxwell, London, 2007.
- Dreher, M., „Das Versicherungskartellrecht nach der Sektoruntersuchung der EG-Kommission zu den Unternehmensversicherungen", *Versicherungs-Recht*, No. 1/2008.
- Đorđević, S., Samardžić, D., *Nemačko ugovorno pravo osiguranja sa prevodom zakona (VVG)*, IRZ, Beograd, 2014.
- Groutel, H., Leduc, F., Pierre, P., Asselain, M., *Traité du contrat d'assurance terrestre*, LexisNexis, Paris, 2008.
- Jevremović Petrović, T., „Korporativno upravljanje u društvima za osiguranje", *Tokovi osiguranja,* br. 2/2025, 273–303.
- Jovanović, S., „Višestruko osiguranje, saosiguranje i reosiguranje u svetlu postojećih zakonskih propisa", *Privreda i pravo osiguranja u tranziciji*, Udruženje za pravo osiguranja, Palić, 2004.
- Knežević, S., Mitrović, A., Sretić, D., „Specifics of reporting on cash flows in insurance companies", *Menadžment u hotelijerstvu i turizmu*, 2/2018, 21–33.
- Knežević, S., Faktori kvaliteta finansijskog izveštavanja osiguravajućih društava. *Referat na XLII Simpozijumu Saveza računovođa i revizora Srbije,* Zlatibor, 2011, 411–427.
- Körber, T., Rauh, J., O., „Kartellrechtlicher Zugang der Kunden- und Verbraucherverbände zu den gemeinsamen Statistiken der Versicherungswirtschaft", *VersicherungsRecht,* 16/2012.
- Krajeski, D., *Droit des assurances*, 2 édition, Montchrestien, Paris, 2008.
- Lambert-Faivre, Y., Leveneur, L., *Droit des assurances*, Dalloz, 13 édition, Paris, 2011.
- Mance, J., Goldrein, I., Merkin, R., *Insurance Disputes,* L.L.P., London, Hong Kong, 2003.

- Micklitz, H.-W., Stuyck, J., Terryn, E., (editors), *Cases, Materials and Text on Consumer Law,* Hart Publishing, Portland, 2010.
- Oster, T., „Droit de la concurrance et assurance: cartographie des risques au lendemain de l'enquête sectorielle de la Commission européenne et de l'adoption du nouveau règlement d'exemption catégorielle", *Revue Générale du Droit des Assurances*, No. 4/2012.
- Petrović Tomić, N., „Povodom 60 godina od odbrane doktorske disertacije profesora Šulejića: 'Osiguranje od građanske odgovornosti' – pogled u budućnost – šta bi bilo da osiguranje nije došlo da nas spasi od odgovornosti?", u: Marija Karanikić Mirić, Miloš Živković (ured.): *Građansko pravo u pokretu – transformacija pre kodifikacije*, Pravni fakultet, Beograd, 2024, 219–251.
- Petrović Tomić, N., *Osiguranje od odgovornosti direktora i članova upravnog odbora akcionarskog društva*, Pravni fakultet, Beograd, 2011.
- Petrović Tomić, N., *Pravo osiguranja*, Sistem, Knjiga prva, Službeni glasnik, 2019.
- Petrović Tomić, N., „Reosiguranje – Suština, domašaj i značaj", *Anali*, br. 2/2015, 78–93.
- Popović, D., „Zaštita konkurencije u oblasti osiguranja", u: Nataša Petrović Tomić (ured.), *Novi proizvodi osiguranja, tehnološke inovacije i zaštita korisnika u osiguranju*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2025, 111–126.
- Samardžić, D., „Kartelno-pravni izuzeci u sektoru osiguranja po novoj uredbi o grupnim izuzećima Evropske unije od 2010. godine", *Promene u pravu osiguranja Srbije u okviru evropskog (EU) razvoja prava osiguranja* (zbornik radova), Palić, 2011.
- Tomić, Z., Petrović Tomić, N., „Narušavanja konkurencije u osiguranju restriktivnim sporazumima", *Pravo i privreda,* br. 7–9/2013, 13–51.
- Turgné, F., *L'arbitrage en matière d'assurance et de réassurance*, Economica, Paris, 2007.
- Wandt, M., *Versicherungsrecht*, 5. Auslage, Carl Heymanns Verlag, Köln, 2010.
- Vasiljević, M., „Zakon o privrednim društvima i akcionarska društva za osiguranje/reosiguranje", *Tokovi osiguranja*, br. 3/2024, 485–509.
- Šulejić, P., „Korporativno upravljanje u organizacijima za osiguranje", u: Mirko Vasiljević, Vuk Radović (urednici), *Korporativno upravljanje*, Pravni fakultet univerziteta u Beogradu, Beograd, 2008.
- Šulejić, P., *Pravo osiguranja*, Pravni fakultet, Beograd, 2005.

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NAPLATA POTRAŽIVANJA BANKE KOD NASTUPANJA OSIGURANOG SLUČAJA SMRTI KORISNIKA KREDITA

PREGLEDNI NAUČNI RAD

Apstrakt

U radu se analizira problematika naplate potraživanja banke u slučaju smrti korisnika kredita kad je ugovor o kreditu zaključen uz policu osiguranja koja pokriva rizik smrti gdje je ugovoreno da je banka korisnik osiguranja ili je polica vinkulirana u korist banke. Ukoliko se nakon nastanka osiguranog slučaja – smrti ustanovi da je zdravlje korisnika kredita, odnosno osiguranika, od ranije bilo narušeno, dešava se da osiguratelj odbije zahtjev za isplatu naknade korisniku osiguranja - banci, pozivajući se na načelne odredbe o isključenjima iz pokrića sukladno ugovoru i uvjetima osiguranja.

Analizom raspoloživih izvora i sudske prakse, u ovom radu pokušat će se istražiti je li banka u slučaju smrti korisnika kredita dužna iscrpiti sve mogućnosti naplate preostalog duga po kreditu od osiguratelja po osnovu police osiguranja ili ima pravo izbora redoslijeda naplate, odnosno može li zahtijevati naplatu duga od nasljednika bez obzira na zaključeni ugovor o osiguranju i bez prethodnog dokazivanja da naplata od osiguratelja nije bila moguća.

Ključne riječi: naplata potraživanja, banka, osiguranje, korisnik kredita, smrt.

I Uvod

Suvremeni način života i tržišne okolnosti utječu na potrebe prosječnog potrošača koji u toku svog životnog i radnog vijeka često uzima potrošačke kredite

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radi financiranja planiranih ili neplaniranih troškova. Međutim, nerijetko se događa da dužnik koji je uredno otplaćivao kredit umre ili postane kreditno nesposoban iz različitih razloga koji se mogu ticati samog dužnika (zdravlje i život dužnika, gubitak posla i sl.), ali i drugih razloga (npr. financijska kriza, pandemija i sl.).[2] Jedan od instrumenata koji uz ugovor o kreditu zahtijeva banka, a kojim se osnažuje izvjesnost namirenja potraživanja, jeste zaključenje ugovora o osiguranju s osiguravajućim društvom gdje je osiguranik korisnik kredita, odnosno dužnik iz ugovornog odnosa s bankom. Navedeni ugovori nastali su kao rezultat praktične potrebe za adekvatnim obezbjeđenjem naplate kredita i predstavljaju jedan od mehanizama koji jamči naplatu potraživanja banke, a istovremeno pruža zaštitu korisniku kredita od budućih neizvjesnih događaja kojima može biti izložen za vrijeme trajanja najčešće dugoročnog ugovornog odnosa s bankom. Svakako, nesumnjiv je i interes osiguravajućeg društva koje prikuplja značajna sredstva na ime premije osiguranja i zauzvrat pruža zaštitu od različitih rizika – prvenstveno smrti, a ponekad i trajne nesposobnosti za rad i gubitka zaposlenja.[3] Iako se najčešće uz rizik smrti ugovara i pokriće privremene nesposobnosti za rad i gubitka zaposlenja, zbog ograničenosti teme, u ovom radu analizira se osigurateljna zaštita korisnika kredita od rizika smrti.

1. Vrste ugovora o osiguranju korisnika kredita

Prema zakonskoj definiciji, ugovorom o kreditu banka se obavezuje korisniku kredita staviti na raspolaganje određeni iznos novčanih sredstava na određeno ili neodređeno vrijeme, za neku namjenu ili bez utvrđene namjene, a korisnik se obvezuje plaćati ugovorene kamate i iskorišteni iznos novca vratiti u vrijeme i na način kako je ugovoreno.[4] Kod ugovaranja osiguranja zaštite korisnika potrošačkih kredita imamo dva pravna odnosa koji su međusobno zavisni, a to su ugovor o kreditu i ugovor o osiguranju. Ugovor o kreditu zaključuje banka ili druga kreditna institucija kao davatelj kredita s korisnikom kredita – fizičkom osobom, odnosno potrošačem. Izbor vrste osiguranja zavisi od kreditnog aranžmana, pa se kod stambenih kredita često zaključuje ugovor o osiguranju imovine kod kojeg je predmet osiguranja nekretnina (kuća ili stan) gdje se novčana sredstva za kupnju obezbjeđuju putem stambenog kredita, pa se banka želi zaštititi od eventualnog rizika propasti stvari. Kod namjenskog kredita za kupovinu motornog vozila ili radne mašine obično se kao jedno od sredstava obezbjeđenja potraživanja zahtijeva polica kasko osiguranja vinkulirana u korist banke.

[2] Loris Belanić, Gabriela Mihelčić, „Određena pitanja iz osiguranja izvjesnosti namirenja tražbine kredita", *Zbornik radova s VI. međunarodnog savjetovanja "Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična dostignuća"*, 315.

[3] Nataša Petrović Tomić, Ugovor o osiguranju sposobnosti vraćanja kredita, Anali Pravnog fakulteta u Beogradu, god. LXV, br. 2/2017, 92.

[4] Zakon o obligacionim odnosima, čl. 1065.

Ugovori o osiguranju koji pokrivaju rizik smrti korisnika, a koji služe kao instrumenti namirenja potraživanja banke javljaju se u praksi u različitim modalitetima. Najčešći su ugovor o osiguranju sposobnosti vraćanja kredita koji spada u neživotna osiguranja (vrsta rizika 14.02 – osiguranja drugih vrsta potraživanja) i ugovor o osiguranju života korisnika kredita (vrsta rizika 19.02 – osiguranje života za slučaj smrti).[5]

U sklopu tematskog ispitivanja koje je provela krovna organizacija europskih udruženja osiguratelja i penzionih institucija – *European Insurance and Occupational Pensions Authority -EIOPA*, a koje je obuhvaćalo 174 osiguravajuća društva i 145 banaka širom Europe u trajanju od dvije godine (2018-2020),[6] utvrđeno je da udio šteta u premiji kod osiguranja korisnika potrošačkih kredita iznosi 18%, a kod korisnika kreditnih kartica samo 8%, što potvrđuje da je osiguranje sposobnosti vraćanja kredita podjednako profitabilan posao za banke i osiguravajuća društva. U Bosni i Hercegovini ne postoji jednoobrazan model izvještavanja od strane entitetskih regulatornih agencija pa je teško ustanoviti tačan broj polica i iznos premije ovih vrsta osiguranja na nivou države, kao i omjer šteta i premije.[7] Međutim, iz objava Narodne banke Srbije (NBS)[8] i Hrvatske agencije za nadzor financijskih usluga (HANFA)[9] vidljivo je da je ova vrsta osiguranja jako rasprostranjena posebno kod potrošačkog kreditiranja, te da se u navedenim državama godišnje ugovori približno 100 000 ovih polica.

1.1. Ugovor o osiguranju sposobnosti vraćanja kredita

Ugovor o osiguranju sposobnosti vraćanja kredita pokriva rizik smrti dužnika, te rizik nemogućnosti vraćanja kredita ukoliko dužnik u toku trajanja ugovora o kreditu izgubi posao ili postane nesposoban za rad. Ukoliko su jednim ugovorom, odnosno policom, pokriveni svi navedeni rizici, tumačenjem uvjeta osiguravajućih

[5] U Federaciji BiH vrste rizika su definirane Odlukom o rasporedu vrsta rizika po grupama i vrstama osiguranja, Sl. novine FBiH, broj 82/17.

[6] EIOPA, Credit Protection Insurance (CPI) Sold Via Banks, studija objavljena 28.09.2022., tematski pregled studije dostupan na: https://www.eiopa.europa.eu/publications/thematic-review-credit-protection-insurance-cpi-sold-banks_en. Posjećeno: 05.01.2026.

[7] Agencija za nadzor osiguranja FBiH u svojim izvještajima iznosi podatke o ukupnom broju polica i iznosu premije zbirno za pojedine grupe osiguranja (osiguranje kredita, životno osiguranje), pa se ne mogu ustanoviti navedeni podaci koji se odnose na osiguranja koja potpadaju pod spomenute vrste rizika 14.02 i 19.02. U Republici Srpskoj periodični izvještaji obuhvaćaju podatke koji su raščlanjeni prema vrstama rizika unutar pojedine grupe osiguranja, pa tako za u 2025.godini naplaćeno je 13.743.938,00 KM (oko 7 miliona eur) premije riziko životnog osiguranja (rizik 19.02), a isplaćeno je 2.902,162,00 KM šteta (oko 1,5 milion eur).

[8] NBS, https://www.nbs.rs/sr/scripts/showcontent/index.html?id=17992&konverzija=no. Posjećeno: 25.01.2026.

[9] HANFA, https://www.hanfa.hr/statistika/drustva-za-osiguranje-i-drustva-za-reosiguranje/. Posjećeno: 25.01.2026.

društava dolazimo do zaključka da se radi o imovinskom osiguranju jer mu je primarna funkcija naknada štete.[10]

Osiguranje sposobnosti vraćanja kredita ima korijene u *common law* pravnoj tradiciji,[11] ali se vremenom raširilo kao značajan mehanizam zaštite korisnika kredita i u državama kontinentalno-europskog područja.[12] Iako se može zaključiti individualno, u pravilu se ugovor o osiguranju sposobnosti vraćanja kredita zaključuje kolektivno, pri čemu je ugovaratelj osiguranja banka koja s korisnicima kredita zaključuje police osiguranja, pod uvjetom da su podobni za osiguranje u smislu uvjeta, odnosno općih pravila osiguravajućeg društva za navedenu vrstu osiguranja. Ugovor s korisnikom kredita - osiguranikom sklapa se potpisivanjem izjave o pristupanju ugovoru – pristupnice i plaćanjem premije od strane osiguranika. Ovo osiguranje je imovinsko jer pruža zaštitu imovine i imovinskih interesa osiguranika, odnosno štiti ga od financijskih gubitaka kojima može biti izložen osiguranik lično ili njegovi zakonski nasljednici ukoliko se ostvari neki od rizika predviđenih ugovorom.[13]

Uvjeti osiguranja sposobnosti vraćanja kredita pretežno propisuju izvjesna ograničenja u pogledu osobe osiguranika koja se prvenstveno odnose na pristupnu dob (obično od 18 do 65 godina) i okolnosti koje se odnose na njegovo zaposlenje i radni status. Kao jedna od pretpostavki koja se u uvjetima često navodi jeste da *je osiguranik dobrog zdravlja i da nije pod medicinskim tretmanom ili nadzorom*. Uvjetima je striktno određeno da osiguratelj nije dužan utvrđivati istinitost podataka navedenih u pristupnici (pretpostavlja se da to nije dužna ni banka), ali da po ostvarenju osiguranog slučaja može tražiti dokumentaciju koja uključuje i zdravstveni karton osiguranika, radi provjere istinitosti navoda o zdravstvenom stanju iz pristupnice.[14]

1.2.Ugovor o osiguranju života korisnika kredita

Drugi modalitet ugovora koji služi kao sredstvo obezbjeđenja vraćanja kredita je ugovor o životnom osiguranju korisnika kredita kojim je pokriven rizik smrti korisnika kredita. Kod ove vrste osiguranja najčešće nije pokriven rizik doživljenja, te nije predviđena štedna komponenta. S obzirom na to da pokriva samo rizik smrti, u osiguranjeljnoj terminologiji se naziva „riziko životno osiguranje". Ugovorom o životnom osiguranju osiguratelj se obavezuje osiguraniku ili osobi koju on odredi

[10] N. Petrović Tomić, 94.

[11] Francesco Amici, „Credit Protection Insurance: Too Good to Be True? Actual Challenges and Future Applications", *Dialoghi di dirito dell'economia*, 1/2025, 224.

[12] Ova vrsta osiguranja se na engleskom jeziku naziva *Credit Protection Insurance* (skraćeno: CPI).

[13] N. Petrović Tomić, 95.

[14] Vidi npr. Opći uvjeti grupnog osiguranja sposobnosti vraćanja kredita korisnika nenamjenskih gotovinskih kredita, Sava osiguranje d.d. Zagreb, čl. 4., dostupno na adresi: https://www.slatinska-banka.hr/wp-content/uploads/S.O-19.02-2-Grupno-osiguranje-sposobnosti-za-vracanje-kredita-6.9.2022.cdr_.pdf. Posjećeno: 06.01.2026.

isplatiti osiguranu svotu ili rentu u slučaju smrti osiguranika ili u slučaju doživljenja određenog vremena, a ugovaratelj osiguranja obavezuje se platiti premiju osiguranja.[15] Individualno ili kolektivno zaključen ugovor o osiguranju života s policom vinkuliranom u korist banke ima istu funkciju kao i ugovor o osiguranju sposobnosti vraćanja kredita, a to je isplata duga korisnika kredita banci u slučaju njegove smrti. Međutim, u praksi je osiguranje sposobnosti vraćanja kredita mnogo povoljnije za osiguranika jer nudi i pokriće za slučaj gubitka posla ili nesposobnosti za rad, te je za razliku od osiguranja života, maksimalno pojednostavljen postupak njegovog ugovaranja, bez provođenja liječničkog pregleda.

Ugovor o riziko osiguranju života pruža osiguranje korisnika kredita od rizika smrti s padajućom osiguranom svotom, što znači da se osigurana svota razmjerno smanjuje s trajanjem kredita, odnosno njegovom otplatom. S obzirom na klasifikaciju i sadržaj obaveze osiguratelja, ova vrsta osiguranja spada u osiguranja osoba, tj. svotna osiguranja. Za razliku od osiguranja sposobnosti vraćanja kredita, uvjeti riziko životnog osiguranja ponekad sadrže veoma nepreciznu odredbu u pogledu podobnosti za zaključenje ugovora, po kojoj se mogu osigurati *zdrave osobe* pristupne dobi od 18 do 75 godina koje su zaključile ugovor o kreditu s bankom,[16] a ako osoba nije potpuno zdrava, može se osigurati primjenom posebnih uvjeta za osiguranje uvećanih rizika.

II Ocjena rizika i informiranje osiguranika – korisnika kredita

Prijava okolnosti značajnih za ocjenu rizika jedna je od temeljnih obaveza ugovaratelja kod svih vrsta ugovora o osiguranju. Obaveza prijave okolnosti važnih za ocjenu rizika predugovorne je prirode, a počiva na načelima dobre vjere (*bona fides*) te savjesnosti i poštenja *(Treu und Glauben*).[17] Ugovor o osiguranju često se naziva ugovorom krajnje dobre vjere (*uberrimae fidei*) što podrazumijeva maksimalnu transparentnost ugovornih strana. Kod ugovora o osiguranju to se odnosi na obvezu ugovaratelja na pružanje preciznih i tačnih informacija o okolnostima značajnim za ocjenu rizika, te obavezu osiguratelja na pravodobno i korektno informiranje ugovaratelja o sadržaju osiguranja. Dakle, u predugovornoj fazi temeljna obveza ugovaratelja osiguranja je prijava osiguratelju svih okolnosti koje su značajne za ocjenu rizika, a koje su mu poznate ili mu nisu mogle ostati nepoznate.[18] Osiguratelj koji preuzima obavezu čiji je nastanak uvjetovan nepoznatim okolnostima mora se

[15] Predrag Šulejić, *Pravo osiguranja*, Dosije, Beograd, 2005., str. 471.

[16] Čl. 2. Uvjeta za osiguranje života za slučaj smrti korisnika kredita s padajućom svotom osiguranja „Croatia osiguranja" d.d. Mostar (u arhivi autorice)

[17] Barbara Preložnjak, „Pravna priroda ugovora o osiguranju života vezanog uz investicijske fondove", *Zbornik Pravnog fakulteta u Zagrebu*, 61, (3) 967-1010 (2011), 975.

[18] Čl. 907. ZOO

pouzdati da ga ugovaratelj osiguranja neće dovesti u zabludu u pogledu činjenica koje su odlučne za ocjenu rizika.

Kod osiguranja sposobnosti vraćanja kredita predugovorna obaveza prijave okolnosti značajnih za ocjenu rizika je na strani korisnika kredita – osiguranika. To je zbog toga što, unatoč nesumnjivom korisnom učinku ugovaranja osiguranja sposobnosti vraćanja kredita, uvjeti osiguranja često sadrže brojna isključenja. Na primjer, kod rizika smrti isključeni su slučajevi ranije narušenog zdravstvenog stanja osiguranika, a kod gubitka posla često isključenje je ukoliko se rizik ostvari za vrijeme sezonskog ili privremenog rada. Međutim, iz tehnike sklapanja ugovora o osiguranju zaključenog preko tzv. banko kanala, vidljivo je da se radi o tipičnom ugovoru po pristupu gdje osiguranik popunjavanjem pristupnice daje osnovne informacije o svom zdravstvenom stanju, a ujedno potpisuje odobrenje banci i osiguravajućem društvu da od liječnika i zdravstvenih ustanova mogu pribaviti dokumentaciju ili informacije potrebne osiguratelju za donošenje odluke o prihvatu u osiguranje ili o osnovanosti zahtjeva za isplatu osigurane svote ukoliko se dogodi osigurani slučaj. Prilikom ugovaranja osiguranja banka često ne pruža dovoljno informacija korisniku kredita – osiguraniku o sadržaju pokrića i prešućuje okolnosti koje potpadaju pod isključenja.[19]

Uvjeti osiguranja sposobnosti vraćanja kredita naslanjaju se na odredbe ZOO-a i sadrže istovjetne odredbe kojima detaljno propisuju obaveze korisnika kredita u pogledu prijave okolnosti značajnih za ocjenu rizika, kao i posljedice u slučaju prešućivanja ili neistinitog prijavljivanja istih. Međutim, analizom spomenutih Uvjeta primjećuje se da **ne sadrže obavezu Banke na informiranje osiguranika** o njegovim dužnostima prijave navedenih okolnosti i posljedicama koje mogu nastati kad se ostvari osigurani slučaj ukoliko kod ugovaranja rizika smrti ne prijavi ili prešuti okolnosti koje se tiču njegovog prethodnog zdravstvenog stanja.

1. Poništenje ugovora o osiguranju zbog neprijavljivanja okolnosti značajnih za ocjenu rizika

Uvjeti nekih osiguravajućih društava u BiH propisuju trenutačni raskid, gubitak svih prava i automatsku ništavost ugovora o osiguranju sposobnosti vraćanja kredita, uz pravo osiguratelja na naknadu štete, ukoliko se nakon nastanka osiguranog slučaja – smrti ustanovi da su neki od podataka dati prilikom popunjavanja pristupnice bili netačni i nepotpuni. Ova odredba je sporna iz više razloga. Naime, odredbe ZOO-a o obavezi prijave okolnosti značajnih za ocjenu rizika i posljedicama neprijavljivanja nisu dispozitivnog karaktera i stoga se ne mogu uvjetima osiguranja mijenjati, pogotovo ne na štetu osiguranika. Naprotiv, radi se o imperativnim normama gdje se u cilju zaštite slabije strane propisuju pretpostavke za poništenje

[19] F. Amici, 231.

i raskid ugovora ukoliko ugovaratelj nije ispunio svoju navedenu predugovornu obavezu. Osim toga, mora se provesti sudski postupak kojim se ustanovljava da je ugovor ništav i sve posljedice koje pritom nastaju.

Kod riziko osiguranja života, ograničenja i isključenja iz pokrića odnose se samo na slučajeve samoubistva, namjernog ubistva, smrti uslijed ratnih operacija i djelovanja alkohola i narkotičkih sredstava. Dakle, kod ove vrste osiguranja davanje neistinitih i nepotpunih informacija o zdravlju osiguranika u pristupnici ne povlači za sobom i ništavost ugovora o osiguranju. Iako to nije eksplicitno navedeno, može se zaključiti da netačnost i nepotpunost podataka u pristupnici osiguratelj može ustanoviti tek uvidom u zdravstveni karton i drugu medicinsku dokumentaciju osiguranika, što se u pravilu dešava tek po ostvarenju osiguranog slučaja.

Zakon o obligacionim odnosima pravi razliku između namjerne i nenamjerne netačne prijave i prešućivanja okolnosti te u prvom slučaju daje pravo osiguratelju na zahtijevanje poništenja ugovora s učinkom *ex tunc*, a u drugom slučaju na raskid ugovora koji djeluje *ex nunc*. Članom 908. ZOO propisane su posljedice **namjernog** netačnog prijavljivanja ili prešućivanja okolnosti značajnih za ocjenu rizika. Ako je ugovaratelj osiguranja namjerno učinio netočnu prijavu ili namjerno prešutio neku okolnost takve prirode da osiguratelj ne bi zaključio ugovor da je znao za pravo stanje stvari, osiguratelj može zahtijevati poništenje ugovora. Rok za zahtjev za poništenje je tri mjeseca od dana saznanja za netačnost prijave. Iz citiranih zakonskih odredbi vidljivo je da sankcija u vidu ništavosti ugovora o osiguranju zavisi od volje osiguratelja. Ukoliko osiguratelj tužbom zahtijeva poništenje ugovora, a naknadio je štetu nesavjesom osiguraniku, može tražiti povrat izvršene naknade i pritom zadržati naplaćenu premiju. Bitno je da na strani osiguranika postoji namjera za prešućivanje bitnih okolnosti, a teret dokazivanja postojanja te namjere je na osiguratelju. Ako je netačna prijava okolnosti učinjena **bez namjere**, sankcija je blaža. Prema čl. 909. ZOO, ako je ugovaratelj osiguranja učinio netačnu prijavu ili je propustio dati dužno obavještenje, a to nije učinio namjerno, osiguratelj može, po svom izboru, u roku od mjesec dana od saznanja za netačnost ili nepotpunost prijave, izjaviti da raskida ugovor ili predložiti povećanje premije srazmjerno većem riziku.

Ugovor o osiguranju korisnika kredita ne može se svrstati u apsolutno ništave ugovore iz čl. 103. ZOO koji su protivni prinudnim propisima i javnom poretku, te čiju ništavost može isticati svaka zainteresirana osoba u bilo kojem trenutku. Naprotiv, poništenje ugovora može tražiti samo osiguratelj i to u gore navedenim taksativno određenim slučajevima i rokovima. Dakle, radi se o pobojnom (rušljivom) ugovoru. Tumačenjem članka 908. ZOO zaključuje se da se ne radi o ugovoru koji ne proizvodi nikakav pravni učinak, već se ugovornoj strani – osiguratelju ostavlja mogućnost da tužbom zahtijeva poništenje. Dakle, namjera zakonodavca je bila da netačnu prijavu ili prešućivanje okolnosti značajnih za ocjenu rizika smatra manom volje koja povlači za sobom pobojnost ugovora o osiguranju. Shodno tome, osiguratelj bi imao pravo

podnijeti tužbu u roku od jedne godine od dana saznanja za razloge pobojnosti odnosno u objektivnom roku od tri godine od zaključenja ugovora (čl. 117. ZOO). Ovdje se može pojaviti problem zastare jer je ugovor o osiguranju korisnika kredita u pravilu dugoročan, pa se može dogoditi da je u trenutku saznanja osiguratelja za netačnost prijave već istekao objektivni rok od tri godine.

U dva predmeta sudovi Republike Srbije su odlučivali o tužbama za poništenje ugovora koje je podnijelo osiguravajuće društvo protiv banke i nasljednika umrlog korisnika kredita. U prvom slučaju osiguratelj je podnio tužbu nakon izvršenog uvida u medicinsku dokumentaciju po prijavi odštetnog zahtjeva, prije isteka roka od tri mjeseca od saznanja za prešućene okolnosti. Sud je usvojio tužbeni zahtjev pozivajući se na odredbu čl. 908. i poništio ugovor o osiguranju jer je korisnica kredita prilikom zaključenja ugovora prešutila da je bolovala od maligne bolesti.[20] U drugom predmetu sud se rukovodio općim odredbama o pobojnosti ugovora i odbio tužbeni zahtjev osiguratelja jer je istekao subjektivni rok od saznanja za razlog pobojnosti, tj. od dana kad je izvještajem liječnika cenzora konstatirano da je smrt nastupila kao posljedica bolesti čije je postojanje osiguranik prešutio prilkom ugovaranja osiguranja, a osim toga protekao je i objektivni rok od tri godine od zaključenja ugovora.[21]

Iz svega navedenog možemo zaključiti da odredbe uvjeta osiguranja kojima se propisuje trenutačni raskid, gubitak svih prava i automatska ništavost ugovora o osiguranju sposobnosti vraćanja kredita, uz pravo osiguratelja na naknadu štete, ukoliko se nakon smrti osiguranika utvrdi da su neki od podataka dati prilikom zaključenja ugovora bili netačni i nepotpuni ne proizvodi pravni učinak automatski kako je u istoj navedeno, već se **mora provesti sudski postupak za poništenje ugovora po tužbi podnesenoj od strane osiguratelja**, s tim da postoji opasnost od odbijanja tužbenog zahtjeva ukoliko sud primijeni isključivo opću odredbu o pobojnosti ugovora po kojoj je objektivni rok od 3 godine od zaključenja ugovora.

2. Legislativna podloga obaveze obavještavanja osiguranika – korisnika kredita

U Bosni i Hercegovini propis na državnoj razini, odnosno Zakon o zaštiti potrošača BiH, sadrži odredbu po kojoj banka kao kreditor ima obavezu dostaviti u pismenoj formi obavijest za korisnika kredita u kojoj je sadržana informacija o troškovima osiguranja zaključenog u vezi s kreditom.[22] Prevelik plasman potrošačkih kredita početkom ovog stoljeća bio je jedan od motiva za donošenje novog entitetskog specijalnog propisa u Federaciji BiH, odnosno **Zakona o zaštiti**

[20] Presuda Osnovnog suda u Bečeju, P-135/17 od 23.04.2018.

[21] Presuda Osnovnog suda u Novom Sadu, P-4659/15 potvrđena Presudom Višeg suda u Novom Sadu, Gž-1766/2017

[22] Čl. 54. i 55. Zakona o zaštiti potrošača u BiH, Sl. glasnik BiH, br. 25/2006, 88/2015

korisnika financijskih usluga[23] koji se pretežno oslanja na Direktivu 2008/48/EZ o ugovorima o potrošačkom kreditiranju.[24] Zakon polazi od restriktivnog pristupa poimanja potrošača kao fizičke osobe i detaljno regulira obaveze predugovornog i posteriornog informiranja, kao i pravo na odustanak.[25] Međutim, polje primjene *ratione materia*e obuhvaća usluge bankarstva, leasinga, mikrokreditiranja i posebnih financijskih pogodbi, ali ne i usluge osiguranja.[26] U pogledu informiranja korisnika kredita o obavezi zaključenja ugovora o sporednim uslugama, u koje naročito spada ugovor o osiguranju, navedenim Zakonom propisana je obaveza banke prema kojoj, ukoliko je za zaključenje ugovora o kreditu *obavezno* i zaključenje ugovora o sporednim uslugama – naročito ugovora o osiguranju, postojanje takve obaveze mora se iskazati jasno i na vidljiv način, zajedno s iskazivanjem efektivne kamatne stope. Dakle, citirane odredbe se odnose samo na transparentnost cijene usluga osiguranja[27] i dužnost informiranja korisnika kredita o obavezi zaključenja ugovora o sporednim uslugama.[28] Iako se radi o uslugama koje pretežno prodaje banka kao zastupnik osiguravajućeg društva, nije propisana obaveza obavještavanja korisnika o samom sadržaju tih usluga.

III Europski pravni okvir vezivanja ugovora o kreditu i ugovora o osiguranju

Direktiva (EU) 2016/97 o distribuciji osiguranja (*Insurance Distribution Directive*, u daljem tekstu: IDD)[29] uspostavlja niz materijalnih i procesnih ograničenja s ciljem sprječavanja nepravičnih praksi i jačanja zaštite potrošača.[30] Polazeći od temeljne

[23] Zakon o zaštiti korisnika financijskih usluga, Službene novine Federacije BiH, br. 31/14

[24] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ 2008, L 133/66. Odredbom čl. 5. navedene Direktive propisano je da potrošač prije zaključenja ugovora mora dobiti jasne informacije, uključujući obavezu zaključenja sporednih usluga, naročito osiguranja, njihov trošak i utjecaj na ukupan iznos kredita.

[25] Detaljnu analizu Zakona o zaštiti korisnika financijskih usluga FBiH vidi u: A. Petrović, „Novo pravno uređenje financijskih usluga u BiH – koliko su korisnici stvarno zaštićeni?", *Zbornik Pravnog fakulteta u Nišu*, broj 70, god. LIV, 810.

[26] Jasmina Đokić, „Pravni okvir zaključenja ugovora o osiguranju na daljinu*", Zbornik 31. susreta osiguravača i reosiguravača – SORS,* Sarajevo, 2021. str. 171; Nenad Grujić, „Pravne dileme u vezi sa načinima zaključenja ugovora o osiguranju na daljinu – putem mobilne aplikacije i internet prezentacije", *Tokovi osiguranja*, br. 1/2024, 105-118.

[27] Zakon o zaštiti korisnika financijskih usluga FBiH, čl. 11. i 14.

[28] Zakon o zaštiti korisnika financijskih usluga FBiH, čl. 15.

[29] Direktiva (EU) 2016/97 Europskog parlamenta i Vijeća od 20. siječnja 2016. o distribuciji osiguranja (preinačeni tekst) Tekst značajan za EGP, *SL L 26, 2.2.2016, 19–59*

[30] Jasmina Đokić, „Customers Protection in Insurance Distribution Directive: an Overview on Harmonization of Legislation in Bosnia and Herzegovina", *Balkan Yearbook of European and International Law,* Springer, 2021, 125.

obaveze distributera osiguranja da djeluju pošteno, profesionalno i u najboljem interesu potrošača, IDD dopušta vezivanje kredita i osiguranja samo pod uvjetom da takva praksa ne dovodi do narušavanja ravnoteže ugovornih strana niti do nametanja potrošaču proizvoda koji nije primjeren njegovim stvarnim potrebama. Posebna pravila o tzv. paketnoj prodaji *(cross-selling)* zahtijevaju od distributera osiguranja da potrošača jasno i razumljivo informira o mogućnosti zaključenja ugovora o osiguranju neovisno o ugovoru o kreditu.[31] Time se ograničava prikriveno vezivanje i osigurava stvarni, a ne samo formalni pristanak potrošača na zaključenje ugovora o osiguranju uz kredit.

IDD uspostavlja dodatne standarde postupanja i obaveze distributera u predugovornoj fazi.[32] Posmatrano iz ugla banke kao distributera, to prvenstveno znači da je banka prije zaključenja ugovora dužna ispitati zahtjeve i potrebe potrošača te predložiti osiguranje koje je primjereno iznosu, trajanju i rizicima konkretnog ugovora o kreditu. Osiguranje koje je opterećeno širokim isključenjima ili čiji uvjeti u praksi znatno ograničavaju mogućnost isplate osigurane svote ne može se smatrati legitimnim sredstvom zaštite potrošača, te njegovo nametanje uz kredit može predstavljati nepravično vezivanje u smislu IDD.

Problem neinformiranosti osiguranika kod osiguranja zaštite kredita razmatran je i u ranije spomenutoj studiji koju je provela EIOPA. Na temelju analize različitih vrsta osiguranja koje se ugovaraju za stambene i potrošačke kredite u državama članicama, uz statističke podatke o plaćenim štetama po vrstama ugovaranja (grupno ili pojedinačno), opći zaključak je da je kod grupnog ugovaranja putem banke i plaćanja premije uz ostale troškove kredita postotak plaćenih šteta znatno manji nego kod pojedinačnog ugovaranja. Razlog za prevelik broj odbijenih zahtjeva od strane osiguratelja je slaba informiranost osiguranika u predugovornoj fazi.[33] Preporuke i smjernice EIOPA-e koje se odnose na osiguranje zaštite kredita (*credit protection insurance*), ukazuju na potrebu smanjenja asimetrije informacija, jačanja kvalitete savjetovanja i sprječavanja sistemskog odbijanja odštetnih zahtjeva kod grupnih osiguranja.

1. Banka kao zastupnik osiguravajućeg društva – pitanje obaveze informiranja

U Bosni i Hercegovini je entitetskim Zakonima o bankama omogućeno bankama da obavljaju poslove zastupanja u osiguranju, s tim da su u Republici

[31] Čl. 24. IDD

[32] Čl. 20. IDD

[33] EIOPA, Credit Protection Insurance (CPI) Sold Via Banks, studija objavljena 28.09.2022., tematski pregled studije dostupan na: https://www.eiopa.europa.eu/publications/thematic-review-credit-protection-insurance-cpi-sold-banks_en. Posjećeno: 05.01.2026.

Srpskoj banke ovlaštene obavljati poslove zastupanja, odnosno posredovanja u osiguranju[34], a u Federaciji BiH je regulirano da banke mogu obavljati samo usluge posredovanja u poslovima osiguranja.[35] Međutim, s obzirom na sadržaj i vrstu poslova prodaje osigurateljnih usluga koje obavljaju banke, ne može se govoriti o uslugama posredovanja već isključivo o zastupanju u osiguranju te je stoga navedena zakonska formulacija u FBiH potpuno pogrešna.

Teoretski, u BiH osiguranje može individualno ugovoriti sam korisnik kredita, ali u praksi korisnik nije tako slobodan već ulogu ugovaratelja osiguranja preuzima banka. Pritom je uloga banke trostruka: osim što je ugovaratelj grupnog osiguranja korisnika kredita, banka se pojavljuje i kao zastupnik osiguravajućeg društva i vrši usluge zastupanja za ugovorenu naknadu (proviziju), a ujedno je i korisnik osiguranja ukoliko se dogodi osigurani slučaj. Još jedna specifičnost ove vrste ugovora je što banka kao ugovaratelj osiguranja nema dužnost plaćanja premije koja je propisana općim pravilima ZOO-a već ta obaveza je na osiguraniku, odnosno korisniku kredita.

Iz tehnike sklapanja ugovora kod obje vrste osiguranja može se zaključiti da se radi o adhezionim ugovorima, tj. ugovorima po pristupu gdje je, prema trenutno važećim propisima u Bosni i Hercegovini, osiguranikova pregovaračka moć ograničena jer je ugovorom između banke i osiguravajućeg društva narušeno pravo izbora osiguranika hoće li uopće zaključiti ugovor o osiguranju i s kojim osiguravajućim društvom će sklopiti takav ugovor. Krovni ugovori između banke i osiguratelja daju banci ekskluzivno pravo na zastupanje pri ugovaranju osiguranja uz ugovorenu naknadu – proviziju.

Banka kao ekskluzivni zastupnik osiguravajućeg društva ima sve dužnosti koje imaju zastupnici u osiguranju u skladu sa ZOO i Zakonom o posredovanju u privatnom osiguranju FBiH,[36] odnosno Zakonom o zastupanju u osiguranju i posredovanju u osiguranju i reosiguranju Republike Srpske,[37] a to je pokretanje, pripremanje, predlaganje i izvršavanje pripremnih radova do zaključenja ugovora, ili samo zaključenje ugovora, u ime i za račun društva za osiguranje.

Pošto ga osiguratelj ovlašćuje na obavljanje svih navedenih poslova, podrazumijeva se da službenik Banke – u svojstvu zastupnika osiguratelja - prije zaključenja ugovora ima dužnost informirati korisnika kredita, odnosno budućeg

[34] Zakon o bankama Republike Srpske, *Službeni glasnik RS,* br. br. 4/2017, 19/2018 – ispravka, 54/2019, 65/2024, i 45/2025, u čl. 3. propisuje da među poslove banke spada zastupanje, odnosno posredovanje u osiguranju, u skladu sa propisima koji uređuju zastupanje i posredovanje u osiguranju.

[35] Zakon o bankama FBiH, *Službene novine FBiH,* br. 27/17, 22/25, propisuje da u bankarske poslove spadaju između ostalih i posredovanje u poslovima osiguranja, u skladu sa propisima koji uređuju posredovanje u osiguranju.

[36] Čl. 906. ZOO i čl. 6. Zakona o posredovanju u privatnom osiguranju FBiH, *Službene novine FBiH*, br. 22/2005, 8/2010 i 30/2016

[37] Čl. 4. Zakona o zastupanju u osiguranju i posredovanju u osiguranju i reosiguranju Republike Srpske, *Službeni glasnik RS*, br. 47/17.

osiguranika, o sadržaju osigurateljnog pokrića, tj. rizicima koji su pokriveni, a koji su isključeni, kome se plaća naknada ukoliko se rizik ostvari itd. Posebna pažnja treba biti posvećena pojašnjenju dužnosti prijave okolnosti značajnih za ocjenu rizika.

Kako je već navedeno, prijava okolnosti značajnih za ocjenu rizika, koje su osiguraniku poznate ili mu nisu mogle biti nepoznate, predstavlja obavezu osiguranika sadržanu u čl. 907. ZOO, a ujedno predstavlja i odraz postupanja po načelu savjesnosti i poštenja u zasnivanju obligacionog odnosa kao imperativne norme sadržane u čl. 12. ZOO.

Međutim, ponovit ćemo da uvjeti osiguravajućih društava ne sadrže obavezu Banke na informiranje osiguranika o dužnostima i posljedicama davanja neistinitih i nepotpunih informacija o svom zdravstvenom stanju, već se na osiguranika prebacuje teret jamčenja istinitosti i potpunosti datih podataka. Obaveza informiranja osiguranika/korisnika kredita trebala bi se sastojati od upoznavanja potonjega s odredbama uvjeta osiguranja. Davanjem suglasnosti u pristupnici ugovaratelj osiguranja – banka i osiguratelj imaju odobrenje, ali i obavezu da od korisnika kredita/osiguranika kao i od svih liječnika i zdravstvenih ustanova koje je osiguranik konzultirao po pitanjima svog fizičkog ili mentalnog zdravlja pribave dokumentaciju ili informacije potrebne osiguratelju za donošenje odluke o prihvatu osiguranika u osiguranje. Od prikupljenih informacija trebala bi zavisiti odluka osiguratelja o prihvatljivosti korisnika kredita za pristup osiguranju ili eventualno o pristupu osiguranju po posebnim uvjetima (anormalni rizik). Međutim, ugovori o osiguranju korisnika kredita se u praksi često zaključuju „po automatizmu" što podrazumijeva da službenik banke ne primjenjuje individualizirani pristup pri zaključenju ugovora o osiguranju. Naprotiv, ukoliko je zaključenje ugovora o osiguranju predviđeno kao jedan od kolaterala kojim se obezbjeđuje naplata kredita, pristupnica za osiguranje se korisniku uručuje s ostalim dokumentima koje on potpisuje ne obraćajući pažnju na njihov sadržaj i moguće posljedice pa pritom ponekad i nesvjesno netačno odgovara na pitanja o eventualno ranije narušenom zdravstvenom stanju.

S obzirom na to da, kako smo vidjeli, aktualni europski propis u velikoj mjeri dopušta autonomiju ugovaranja osiguranja i na taj način ograničava monopolističko postupanje banaka i osiguravajućih društava, nužno je buduće normativno usklađivanje domaćih entitetskih Zakona o zastupanju i posredovanju u osiguranju s IDD kako bi se detaljnije normirala obaveza djelovanja u najboljem interesu potrošača, transparentno i sveobuhvatno predugovorno informiranje svih distributera osiguranja, uključujući banke koje djeluju kao zastupnici osiguratelja. Budući propisi bi trebali izričito predvidjeti obavezu banke da korisniku kredita, na jasan i razumljiv način, pruži informacije o obimu osigurateljnog pokrića, isključenjima iz osiguranja i posljedicama netačne ili nepotpune prijave okolnosti značajnih za ocjenu rizika.

2. Zakon o zaštiti korisnika finansijskih usluga Srbije

U Republici Srbiji nedavno je donesen novi Zakon o zaštiti korisnika finansijskih usluga[38] koji značajno unaprjeđuje zaštitu korisnika kredita koji se zaključuju uz ugovor o osiguranju. Pritom pravi razliku između tzv. prakse vezivanja usluga i prakse objedinjavanja usluga gdje „vezivanje" podrazumijeva zaključenje ugovora o kreditu u paketu s uslugama osiguranja ili drugim uslugama kao obaveznim uvjetom za zaključenje ugovora (ugovor o kreditu ne bi bilo moguće ugovoriti bez tih dodatnih usluga), a „objedinjavanje" znači da se ugovor o kreditu može zaključiti i bez navedenih kolaterala, ali ne nužno pod istim uvjetima u odnosu na one s vezanim uslugama. Zaključenju police osiguranja posvećen je član 53. citiranog Zakona kojim se nastoji postići svojevrsna ravnoteža između interesa banaka i osiguravajućih društava s jedne i korisnika kredita s druge strane. Očigledno je da su ove odredbe sačinjene u cilju harmonizacije s citiranim pravilima IDD. Naime, Zakon daje pravo banci da zahtijeva od korisnika kredita zaključenje određene vrste osiguranja, ali da pritom treba voditi računa o proporcionalnosti iznosa kredita i zahtijevane police osiguranja. S druge strane, korisniku kredita daje pravo izbora: on može zaključiti policu osiguranja individualno i kod drugog osiguratelja, a ne samo pristupiti grupnom ugovoru o osiguranju kod osiguratelja kojeg mu preporučuje banka, a banka je dužna takvu policu prihvatiti. Jedino ograničenje koje je propisano u vezi s prethodnim zdravstvenim stanjem korisnika kredita jeste da pri izdavanju police osiguranja vezane za ugovor o kreditu ne smiju se koristiti lični podaci o dijagnozama onkoloških bolesti korisnika kredita ukoliko je od završetka liječenja proteklo više od 15 godina. Budući da pristupnice osiguravajućih društava najčešće sadrže pitanje o ranijim onkološkim bolestima, za očekivati je da će se tekst pristupnica i uvjeti osiguravajućih društava trebati prilagoditi ovoj odredbi, odnosno da će se pri ocjeni rizika korisnika kredita moći koristiti samo podaci o onkološkim bolestima liječenim najviše 15 godina prije zaključenja ugovora o kreditu.

Zakon ipak omogućava vezivanje usluga za ugovor o kreditu ukoliko banka učini izvjesnim da bi to vezivanje dovelo do jasne koristi za korisnike kredita, s tim da postupak takvog ugovaranja treba biti odobren od strane Narodne banke Srbije u posebnoj proceduri koja će biti propisana od strane NBS. Dakle, Zakonom se ograničava svojevoljno nametanje zaključenja tačno određene police osiguranja kod osiguratelja kojeg odredi banka, ali se takvo vezivanje može odobriti ako je u interesu korisnika kredita, a banka ima teret dokazivanja toga interesa pred NBS. Zakon o zaštiti korisnika finansijskih usluga Srbije je propis novijeg datuma, pa će zasigurno biti zanimljivo pratiti hoće li ovakva stroga regulacija utjecati na razvoj bankoosiguranja.

[38] Zakon o zaštiti korisnika finansijskih usluga Republike Srbije, *Službeni glasnik RS*, br. 17/25

IV Redoslijed naplate potraživanja banke u slučaju smrti korisnika kredita

Da bismo odgovorili na pitanje kojim redoslijedom banka može namirivati svoje potraživanje u slučaju smrti korisnika kredita, prvenstveno polazimo od vrste i svrhe zaključenja ugovora o osiguranju. Ukoliko se kod ugovora o osiguranju sposobnosti vraćanja kredita i riziko životnom osiguranju korisnika kredita radi o kolektivnom ugovoru, pozicija korisnika kredita je ograničena na način da mu se nameće dužnost sklapanja ugovora o osiguranju kako bi mu kredit bio odobren.

Ovdje ćemo postaviti pitanje: šta bi se dogodilo ukoliko bi korisnik namjenskog ili stambenog kredita odbio zaključenje ugovora o osiguranju? Bi li mu zahtjev za kredit bio odbijen? Kad je jedna od ugovornih obaveza predviđenih ugovorom o kreditu plaćanje jednokratne premije osiguranja, dolazi se do zaključka da mu kredit ne bi bio odobren jer je polica osiguranja jedan od obaveznih kolaterala predviđenih ugovorom o kreditu, te je jasno i nedvosmisleno naveden iznos novčane obveze korisnika kredita u pogledu premije osiguranja i način ispunjenja te obaveze (npr. premija se plaća iz sredstava odobrenog kredita ili premija se plaća unaprijed).

Uvidom u Uvjete osiguranja sposobnosti vraćanja kredita[39] i Uvjete riziko životnog osiguranja korisnika kredita[40] nekoliko osiguravajućih društava u regiji mogu se ustanoviti slična pravila postupanja u slučaju smrti korisnika kredita. U suštini se može zaključiti da, radi ostvarenja prava iz ugovora o osiguranju, obavezu prijave osiguranog slučaja snosi bilo koja osoba koja može dokazati nedvojbeni pravni interes.[41] To znači da osigurani slučaj može prijaviti banka kao korisnik osiguranja, ali i nasljednici osiguranika jer imaju opravdan interes da ostatak duga po kreditu bude isplaćen od strane osiguravajućeg društva.

Iako osiguranje korisnika kredita u bilo kojem od modaliteta predstavlja značajan vid zaštite interesa korisnika kredita jer štiti njegove nasljednike od financijskog opterećenja u slučaju njegove smrti, banke koja u tom slučaju naplaćuje ostatak duga po kreditu od osiguratelja kao solventnog dužnika, kao i osiguravajućeg društva koje ostvaruje značajna sredstva po osnovu premije, ponekad se po nastanku osiguranog slučaja smrti korisnika kredita javljaju određeni nesporazumi. Naime, osiguratelj u procesu obrade odštetnog zahtjeva utvrđuje istinitost i vjerodostojnost podataka o zdravstvenom stanju osiguranika/korisnika kredita uvidom u medicinsku

[39] Npr. Uvjeti za osiguranje otplate nenamjenskih kredita, Croatia osiguranje d.d. Zagreb (u arhivi autora).

[40] Npr. Opšti uslovi osiguranja života za slučaj smrti korisnika kredita Lovćen osiguranje a.d. Podgorica, Opći uvjeti za životno osiguranje korisnika stambenih potrošačkih kredita Generali osiguranja d.d. Zagreb (u arhivi autora).

[41] Loris Belanić, „Ugovor o osiguranju sposobnosti vraćanja kredita prema uslovima osiguranja hrvatskih društava za osiguranje, kritika i prijedlozi reforme u poredbenom pravu", *Evropska revija za pravo osiguranja*, br. 1/2012, 74.

dokumentaciju i zdravstveni karton. Ukoliko u tom postupku ustanovi da je zdravlje osiguranika od ranije bilo narušeno, ponekad osiguratelj odbija zahtjev, pozivajući se na odredbe o isključenjima iz pokrića sukladno ugovoru i uvjetima osiguranja koji su sastavi dio ugovora.

Cijeneći svrhu i cilj zaključenja ugovora o osiguranju korisnika kredita, može se zaključiti da, kad je pristup grupnom osiguranju jedan od uvjeta zaključenja ugovora o kreditu, ukoliko se ostvari rizik smrti korisnika kredita, redoslijed primjene prisilnih mjera u svrhu naplate potraživanja banke u slučaju smrti korisnika kredita podrazumijeva prvenstvenu naplatu po osnovu police osiguranja, a eventualno preostali iznos primjenom ostalih mjera prisilne naplate navedenih u ugovoru o kreditu. Dakle, banka je dužna iscrpiti sve mogućnosti naplate od osiguravajućeg društva, a tek ukoliko takva naplata izostane, može koristiti druga sredstva prinudne naplate.

1. Sudska praksa o redoslijedu naplate potraživanja banke

Ukazujemo na nedosljednost stavova sudske prakse u Bosni i Hercegovini o pitanju redoslijeda naplate potraživanja banke.

U prvom primjeru banka kao tužitelj u sporu protiv nasljednika umrlog korisnika kredita nije dokazala da je, prije podnošenja tužbe protiv nasljednika, podnijela zahtjev protiv osiguravajućeg društva pošto je uz ugovor o kreditu zaključena i polica grupnog osiguranja otplate gotovinskih kredita. Stoga je u drugostepenom postupku tužbeni zahtjev odbijen s obrazloženjem da je polica bila vinkulirana u korist banke, što predstavlja sredstvo obezbjeđenja otplate kredita, na što je banka kao tužitelj pristala, pa u takvoj situaciji *„nije ovlaštena potraživati naknadu štete od sljednika korisnika kredita već od osiguranja, jer je u konačnici to osiguranje je u tu svrhu i uplaćeno od strane korisnika kredita."*[42]

U drugom predmetu također se radilo o sudskom sporu između banke i nasljednika jer je osiguravajuće društvo u vansudskom postupku odbilo zahtjev banke pozivajući se na uvjete osiguranja po kojima se duševno bolesne osobe ne mogu osigurati, a u postupku obrade odštetnog zahtjeva ustanovilo je da je korisnik kredita bolovao od psihičkih smetnji. Međutim, prema tumačenju suda, tuženi nasljednici nisu dužni isplatiti ostatak duga po kreditu jer je njihov prednik zaključio policu osiguranja kao sredstvo obezbjeđenja.[43]

[42] Presuda Kantonalnog suda u Zenici, 42 0 1 P 019832 23 Gž od 5.9.2023. godine

[43] Presuda Okružnog suda u Banjoj Luci, 71 0 P 314359 22 Gž od 8.6.2022. godine, iz obrazloženja Presude: *. Iz samih Opštih uslova za osiguranje lica od posljedica nesretnog slučaja proizlazi obaveza osiguravajuće kuće da isplati osiguranu svotu, odnosno iznos ostatka duga po kreditu koji je zaključio prednik tuženih sa tužiteljem. Osiguravajuća kuća sa kojom tužitelj ima poslovnu saradnju je imala mogućnost da utvrdi zdravstveno stanje osiguranika, o čemu je prvostepeni sud dao jasno i decidno obrazloženje. U obavezi prema tužitelju je... jer je sam tužitelj kao sredstvo obezbjeđenja tražio od prednika tuženih da zaključi ugovor o osiguranju, jer bi*

Kao što vidimo, u prvom slučaju banka nije dokazala da se uopće obraćala osiguratelju radi naplate potraživanja, a u drugom banka nije iscrpila sve mogućnosti naplate od osiguratelja.

2. Vrhovni sud FBiH – tri različita tumačenja

Vrhovni sud FBiH je tumačio redoslijed naplate banke u slučaju smrti korisnika kredita te je u tri novije presude donesene u kratkom vremenskom intervalu zauzeo različite stavove. U prvom predmetu je utvrdio da *„u slučaju osiguranja kredita i vinkuliranja police osiguranja u korist davatelja kredita nastupanjem osiguranog slučaja-smrti korisnika kredita nastaje primarna obaveza davatelja kredita da ostvarenje prava iz vinkulirane police osiguranja ostvari u odnosu na davatelja osiguranja, a supsidijarno, ukoliko u njegovom ostvarenju ne uspije, od nasljednika korisnika kredita, tako da se ne može tražiti ostvarenje supsidijarnog zahtjeva, sve dok se ne iscrpi primarni zahtjev iz osnova vinkulirane police osiguranja..."*[44]

Međutim, nedugo nakon citirane presude, Vrhovni sud FBiH je o istovrsnoj pravnoj stvari donio drukčiju presudu po kojoj nije nužno da banka prije pokušaja naplate od nasljednika pokrene sudski postupak protiv osiguratelja. U slučaju negativnog ishoda vansudskog postupka vođenog protiv osiguratelja, banka može pokrenuti sudski postupak protiv nasljednika, ali je **banka dužna u tom postupku dokazati da je osiguratelj opravdano odbio zahtjev**, odnosno da osiguranik prilikom zaključivanja police osiguranja nije dao tačne podatke o svom zdravstvenom stanju čime nastupa razlog za isključenje obaveze osiguratelja za isplatu osigurane sume.[45] Međutim, u naprijed navedenoj presudi činjenično stanje je bilo specifično, odnosno osiguratelj je opravdano odbio zahtjev za isplatu osiguranje sume, a što je dokazano u sudskom postupku pokrenutom protiv nasljednika korisnika kredita/osiguranika.

Još jedno zanimljivo tumačenje imamo u posljednjoj presudi Vrhovnog suda FBiH gdje je u postupku po reviziji odbijen tužbeni zahtjev banke protiv nasljednika korisnika kredita.[46] Radilo se o sporu radi naplate ostatka duga po kreditu povodom smrti korisnika kredita, a uz ugovor o kreditu je zaključena polica osiguranja života korisnika kredita vinkulirana u korist banke. Korisnk kredita je preminuo od posljedica *Covid-19*, a u vansudskom postupku osiguratelj je odbio zahtjev pozivajući se na netačnu prijavu značajnih okolnosti od strane korisnika kredita u predugovornoj

se u slučaju smrti korisnika kredita tužitelj naplatio od osiguravajućeg društva, saglasno odredbi člana 897 ZOO. Budući da je nastupio osigurani slučaj, a ugovor o osiguranju nije poništen, to ne postoji odgovornost nasljednika, kako je to pravilno zaključio prvostepeni sud."

[44] Presuda Vrhovnog suda FBiH, broj 65 0 P 572865 Rev od 09.04.2024. godine

[45] Presuda Vrhovnog suda FBiH, broj 58 0 P 232117 24 Rev od 10.12.2024.godine

[46] Presuda Vrhovnog suda FBiH, broj 33 0 P 092753 25 Rev od 01.07.2025. godine

fazi, odnosno da je prešutio da boluje od hipertenzije i dijabetesa tipa 2. Prema obrazloženju suda, s obzirom na ugovorenu vinkulaciju, nasljednici ne bi mogli od osiguratelja tražiti isplatu osigurane svote već to može samo banka. Prema tome, banka ima pravo na prvenstvenu isplatu osigurane svote, a svrha ovog osiguranja je zaštita imovine korisnika kredita i njegovih nasljednika. Stoga bi svako drukčije tumačenje dovelo u pitanje smisao zaključenja ugovora o osiguranju jer tim ugovorom se ne štiti samo banka od rizika neizmirenja obaveze korisnika kredita, već osiguranje ima i ulogu financijskog zaštitnika porodice korisnika.

Iz kratkog prikaza novije sudske prakse vidljivo je da sudovi načelno zauzimaju stav da kod osiguranja korisnika kredita od rizika smrti te vinkuliranja takve police osiguranja u korist banke, po nastupanju osiguranog slučaja-smrti korisnika kredita, nastaje primarna obaveza banke da pravo na naplatu preostalog duga po ugovoru o kreditu ostvaruje od osiguratelja po osnovu ugovora o osiguranja, a supsidijarno, ukoliko u takvom ostvarenju ne uspije i pod uvjetom da je iscrpio primarni zahtjev iz police osiguranja, od nasljednika korisnika kredita.

V Procesni mehanizmi naplate potraživanja banke

S ciljem izbjegavanja štetnih posljedica za banku u vidu nastupanja zastare potraživanja, koja zbog postojanja više pravnih odnosa i to jednog koji predstavlja ugovor o kreditu s korisnikom kredita/osiguranikom i drugi ugovor o osiguranju s osigurateljem i korisnikom kredita/osiguranikom te kada se ima u vidu da trenutkom smrti nasljednici sukladno propisima o nasljeđivanju postaju univerzalni sukcesori, bilo bi svrsishodno da u istom parničnom postupku bude obuhvaćen i osiguratelj i nasljednici umrloga korisnika kredita.

Moguće rješenje je postavljanje zahtjeva u vidu subjektivne alternacije, što podrazumijeva utuženje više tuženih tako da se od Suda traži da alternativno usvoji zahtjev prema jednom od njih. Pravnosnažno odbijanje prethodnog zahtjeva uvjet je da se meritorno odlučuje o sljedećem zahtjevu, a ukoliko bi sud pravnosnažno prihvatio prethodni zahtjev, smatraće se da sljedeći zahtjev nije ni podnesen.[47] Kada je riječ o alternaciji zahtjeva, onda je neizostavna odredba Zakona o parničnom postupku FBiH kojom je propisano da tužitelj može u jednoj tužbi tužiti dva ili više tuženih i tako što će tražiti da tužbeni zahtjev bude usvojen prema slijedećem tuženom u slučaju da bude pravomoćno odbijen prema onome koji je u tužbi naveden prije njega.[48] Tužitelj disponira svojim zahtjevom tako što zahtijeva od suda da o postavljenom zahtjevu odluči prema redoslijedu tuženih koje je on u tužbi utvrdio

[47] Jadranka Stanišić, „Isticanje više tužbenih zahtjeva u jednoj tužbi", *Zbornik radova „Harmonizacija građanskog prava u regionu"*, Istočno Sarajevo, 2013, 502.

[48] Čl. 363. st. 1. Zakona o parničnom postupku FBiH, *Službene novine FBiH,* broj 53/03, 73/05, 19/06 i 98/15

i odredio. Takav poseban oblik suparničarstva u pravnoj teoriji se naziva **eventualno ili supsidijarno suparničarstvo** i predstavlja procesni mehanizam ustanovljen isključivo u interesu tužitelja u pravno složenom sporu kada nije siguran koje je od više lica pasivno legitimirano za postavljeni zahtjev, čime se izbjegava rizik gubitka tekuće i vođenja nove parnice.[49]

Ranija analiza upućuje na zaključak da redoslijed prisilne naplate potraživanja podrazumijeva da banka mora prethodno provesti vansudski postupak naplate od osiguratelja uz poštovanje cjelokupne procedure propisane odgovarajućim uvjetima. U slučaju negativne odluke u drugostupanjskom postupku, gdje je na osnovu ukupnog stanja spisa očigledno da je osiguratelјeva odluka o odbijanju zahtjeva bila neopravdana, potrebno je podnijeti tužbu protiv osiguratelja.

Ukoliko na temelju dokaza iz izvansudskog postupka banka kao tužitelj nije sigurna u ishod eventualnog spora protiv osiguratelja, odgovarajuće procesnopravno rješenje bi bilo podnošenje tužbe s istaknutim tužbenim zahtjevom protiv osiguratelja i zakonskih nasljednika jer isti predstavljaju formalne suparničare u skladu s odredbama čl. 363. st. 1. Zakona o parničnom postupku FBiH. Naime, veže ih ista ili bitno istovrsna činjenična osnova (smrt osiguranika / pravnog prednika) i pravna osnova, odnosno obaveza izmirenja novčane obaveze osiguranika / pravnog prednika, što za osiguratelja znači isplatu osigurane svote po ugovoru o osiguranju, a za zakonske nasljednike odgovornost za dugove pravnog prednika do visine naslijeđenog dijela. S obzirom na redoslijed prvenstvene naplate naveden u ugovoru o kreditu, u ovom slučaju bi osiguratelj trebao biti označen kao prvotuženi.

VI Zaključak

Analiza pravne prirode osiguranja korisnika kredita, važećih domaćih propisa i sudske prakse potvrđuje da je temeljna svrha ugovora o osiguranju zaključenih uz ugovor o kreditu obezbjeđenje naplate potraživanja banke, ali i zaštita imovinskih interesa korisnika kredita i njegovih nasljednika. Kada je zaključenje ugovora o osiguranju uvjet za odobravanje kredita i kada je polica vinkulirana u korist banke, redoslijed naplate potraživanja mora slijediti načelo prvenstvene naplate od osiguratelja, dok je naplata od nasljednika dopuštena tek supsidijarno, nakon iscrpljenja svih pravnih i faktičkih mogućnosti naplate po osnovu osiguranja. Svako drukčije tumačenje dovelo bi u pitanje svrhu osiguranja i narušilo temeljna načela savjesnosti i poštenja, kao i ravnotežu ugovornih strana.

De lege ferenda, nužno je normativno precizirati obavezu banke kao ugovaratelja i zastupnika u osiguranju na jasno, potpuno i dokumentirano informiranje

[49] Senad Mulabdić, „Teorijski i praktični problemi supsidijarnog suparničarstva", *Anali Pravnog fakulteta u Zenici*, god. 5, br. 9 (2012), 317.

korisnika kredita o sadržaju osiguranja, isključenjima iz osiguranja i posljedicama netačne ili nepotpune prijave okolnosti značajnih za ocjenu rizika. Legislativna promjena je dugotrajan proces, te bi bila poželjna zajednička intervencija osiguratelja i banaka u cilju preventivnog djelovanja, odnosno sprječavanja dugotrajnih i skupih sudskih postupaka. To bi se moglo postići propisivanjem u uvjetima osiguranja korisnika kredita obaveze banke kao zastupnika u osiguranju na kvalitetno i transparentno informiranje korisnika kredita / osiguranika o konsekvencama davanja netačnih i nepotpunih informacija o svom zdravstvenom stanju prilikom zaključenja ugovora, te jasnijim normiranjem procedure prihvata u osiguranje. Također, kao temelj dugoročnog poslovnog odnosa zasnovanog na povjerenju, ugovorne strane bi u međusobno trebale detaljno propisati redoslijed i proceduru naplate potraživanja u slučaju smrti korisnika kredita, po kojem bi naplata po osnovu police osiguranja imala primat u odnosu na ostala sredstva obezbjeđenja.

Literatura

- Amici, F., „Credit Protection Insurance: Too Good to Be True? Actual Challenges and Future Applications", *Dialoghi di dirito dell'economia*, 1/2025
- Belanić, L., Ugovor o osiguranju sposobnosti vraćanja kredita prema uslovima osiguranja hrvatskih društava za osiguranje, kritika i prijedlozi reforme u poredbenom pravu, Evropska revija za pravo osiguranja, br. 1/2012
- Belanić, L., Mihelčić, G., „Određena pitanja iz osiguranja izvjesnosti namirenja tražbine kredita", *Zbornik radova s VI. međunarodnog savjetovanja "Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična dostignuća",* Pravni fakultet u Splitu, 2020.
- Đokić, J., „Pravni okvir zaključenja ugovora o osiguranju na daljinu*", Zbornik 31. susreta osiguravača i reosiguravača – SORS,* Sarajevo, 2021
- Đokić, J., „Customers Protection in Insurance Distribution Directive: an Overview on Harmonization of Legislation in Bosnia and Herzegovina", *Balkan Yearbook of European and International Law,* Springer, 2021
- Nenad Grujić, „Pravne dileme u vezi sa načinima zaključenja ugovora o osiguranju na daljinu – putem mobilne aplikacije i internet prezentacije", *Tokovi osiguranja*, br. 1/2024, 105-118
- Mulabdić, S., „Teorijski i praktični problemi supsidijarnog suparničarstva", *Anali Pravnog fakulteta u Zenici*, god. 5, br. 9 (2012),
- Petrović, A., „Novo pravno uređenje financijskih usluga u BiH – koliko su korisnici stvarno zaštićeni?", *Zbornik Pravnog fakulteta u Nišu*, broj 70, god. LIV
- Preložnjak, B., „Pravna priroda ugovora o osiguranju života vezanog uz investicijske fondove", *Zbornik Pravnog fakulteta u Zagrebu*, 61, (3) 967-1010 (2011)

- Stanišić, J.,„Isticanje više tužbenih zahtjeva u jednoj tužbi", *Zbornik radova „Harmonizacija građanskog prava u regionu"*, Istočno Sarajevo, 2013, str. 502.
- Petrović Tomić, N., Ugovor o osiguranju sposobnosti vraćanja kredita, Anali Pravnog fakulteta u Beogradu, god. LXV, br. 2/2017
- Šulejić, P., *Pravo osiguranja*, Dosije, Beograd, 2005.

Sudska praksa:

- Presuda Osnovnog suda u Bečeju, P-135/17 od 23.04.2018.
- Presuda Osnovnog suda u Novom Sadu, P-4659/15
- Presuda Višeg suda u Novom Sadu, Gž-1766/2017
- Presuda Kantonalnog suda u Zenici, 42 0 1 P 019832 23 Gž od 5.9.2023. godine
- Presuda Okružnog suda u Banjoj Luci, 71 0 P 314359 22 Gž od 8.6.2022. godine
- Presuda Vrhovnog suda FBiH, broj 65 0 P 572865 Rev od 09.04.2024. godine
- Presuda Vrhovnog suda FBiH, broj 58 0 P 232117 24 Rev od 10.12.2024. godine
- Presuda Vrhovnog suda FBiH, broj 33 0 P 092753 25 Rev od 01.07.2025. godine

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COLLECTION OF THE BANK'S CLAIM UPON THE OCCURRENCE OF THE INSURED EVENT OF THE BORROWER'S DEATH

REVIEW SCIENTIFIC PAPER

Abstract

This paper examines the issue regarding the collection of bank claims in the event of the borrower's death, where the loan agreement is concluded with an insurance policy covering the risk of death, where it is stipulated that the bank is the insurance beneficiary or the policy is assigned in favor of the bank. If, following the occurrence of the insured event – death, it is determined that the borrower's health, i.e. the insured's, had been previously impaired, insurers may refuse the claim for payment to the insurance beneficiary – the bank, citing standard provisions on exclusions under the insurance contract and terms and conditions.

Through analysis of available sources and case law, this paper explores whether, in the event of the borrower's death, the bank is obliged to exhaust all possibilities for collecting the remaining loan debt from the insurer pursuant to the insurance policy, or whether it has the right to choose the order of collection. Specifically, the study examines whether the bank may demand collection of the debt from the borrower's heirs regardless of the concluded insurance agreement and without prior proof that collection from the insurer was not possible.

Keywords: claim collection, bank, insurance, borrower, death.

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I Introduction

The modern lifestyle and market conditions significantly influence the financial needs of the average consumer, who frequently takes out consumer loans to finance planned or unplanned expenses. However, it often happens that a borrower who has been regularly servicing a loan passes away or becomes credit-impaired due to reasons related either to the borrower personally (such as health issues or death, job loss, etc.) but also for other reasons (e.g. financial crisis, pandemic, etc.).[2] One of the instruments that banks often require alongside a loan agreement to enhance the certainty of claim collection is the conclusion of an insurance contract with an insurance company, where the insured is the borrower, i.e. the debtor under the contractual relationship with the bank. These insurance contracts arose as a result of the practical need for adequate loan collection security and represent one of the mechanisms that guarantee the collection of the bank's claims, while simultaneously providing protection to the borrower against future uncertain events to which they may be exposed during the course of what is typically a long-term contractual relationship with the bank. Equally, the insurance company has a clear interest in these arrangements, as it collects significant funds in insurance premiums and, in return, provides coverage against various risks, primarily death, and occasionally permanent disability or job loss.[3] Although coverage for temporary disability and loss of job is often contracted alongside death risk, due to the scope limitations of this paper, the analysis focuses on insurance protection of the borrower against the risk of death.

1. Types of Insurance Contracts for Borrowers

According to the statutory definition, under a loan agreement, the bank undertakes to make a specified amount of funds available to the borrower for a defined or indefinite period, for a specific purpose or without a specified purpose, while the borrower undertakes to pay the agreed interest and to repay the utilized amount of money at the time and in the manner stipulated in the contract.[4] When contracting insurance to protect consumer loan borrowers, there are two interdependent legal relationships that are mutually dependent: the loan agreement and the insurance contract. The loan agreement is concluded between the bank or another credit institution as the lender and the borrower, who is a natural person, i.e.

[2] Loris Belanić, Gabriela Mihelčić, „Određena pitanja iz osiguranja izvjesnosti namirenja tražbine kredita", *Zbornik radova s VI. međunarodnog savjetovanja "Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična dostignuća"*, 315.

[3] Nataša Petrović Tomić, "Ugovor o osiguranju sposobnosti vraćanja kredita", *Anali Pravnog fakulteta u Beogradu*, year LXV, No. 2/2017, 92.

[4] The Law of Contract and Torts, Art. 1065.

a consumer. The choice of insurance type depends on the credit arrangement. For mortgage loans, it is common to conclude a property insurance contract, where the insured property is real estate (house or apartment) for which the purchase funds are provided through the mortgage loan, so the bank wishes to protect itself from the potential risk of destruction of the property. For purpose-specific loans, such as loans for the purchase of motor vehicles or construction machinery, one of the means of securing claims typically required is a comprehensive (casco) insurance policy, assigned in favor of the bank.

Insurance contracts covering the risk of death of the borrower, which serve as instruments for satisfying the bank's claims, appear in practice in various modalities. The most common are: the loan repayment ability insurance contract, which belongs to non-life insurance (risk type 14.02 – insurance of other types of claims) and the life insurance contract of the borrower (risk type 19.02 – life insurance in case of death).[5]

Within the framework of a thematic survey conducted by the European Insurance and Occupational Pensions Authority (EIOPA), covering 174 insurance companies and 145 banks across Europe over a two-year period (2018–2020),[6] found that the claims ratio for consumer loan borrower insurance amounts to 18%, while for credit card users only 8%. This confirms that credit repayment ability insurance is equally profitable for both banks and insurance companies. In Bosnia and Herzegovina, there is no uniform reporting model by the entity regulatory agencies, making it difficult to determine the exact number of policies and premium amounts for these types of insurance at the national level, as well as theclaims-to-premiums ratio.[7] However, according to publications from the National Bank of Serbia (NBS)[8] and the Croatian Financial Services Supervisory Agency (HANFA),[9] this type of insurance is widespread, particularly in consumer lending, with approximately 100,000 policies contracted annually in these countries.

[5] In the Federation of Bosnia and Herzegovina, the types of risks are defined by the Decision on the Classification of Risk Types by Insurance Groups and Classes, *Official Gazette of the Federation of BiH*, No. 82/17.

[6] EIOPA, Credit Protection Insurance (CPI) Sold Via Banks, study published on 28 September 2022; a thematic review of the study is available at: *https://www.eiopa.europa.eu/publications/thematic-review-credit-protection-insurance-cpi-sold-banks_en, acc,* accessed on 5 January 2026.

[7] The Insurance Supervision Agency of the Federation of Bosnia and Herzegovina does not present data in its reports on the total number of policies and the amount of premiums separately for individual insurance groups (credit insurance, life insurance); instead, the data are provided on an aggregated basis. Consequently, it is not possible to determine the above-mentioned data relating to insurance products that fall under the referenced risk types 14.02 and 19.02. In Republika Srpska, periodic reports include data broken down by risk types within each insurance group. Accordingly, in 2025, premiums collected for term life insurance (risk 19.02) amounted to BAM 13,743,938.00 (approximately EUR 7 million), while claims paid totaled BAM 2,902,162.00 (approximately EUR 1.5 million).

[8] NBS, *https://www.nbs.rs/sr/scripts/showcontent/index.html?id=17992&konverzija=no*, accessed on 25 January 2026.

[9] HANFA, *https://www.hanfa.hr/statistika/drustva-za-osiguranje-i-drustva-za-reosiguranje/,* accessed on 25 January 2026.

1.1. Credit Repayment Ability Insurance Contract

Credit repayment ability insurance contract covers the risk of the borrower's death, as well as the risk of the inability to repay the loan in the event that the borrower loses a job or becomes incapable of working during the term of the loan agreement. If a single contract or policy covers all of these risks, interpretation of the insurance company's terms leads to the conclusion that this is property (non-life) insurance, as its primary function is damage compensation.[10]

Credit repayment ability insurance has its origins in *common law* legal tradition,[11] but over time it has spread as a significant mechanism for protecting borrowers in continental European jurisdictions as well.[12] Although it can be concluded on an individual basis, in practice, credit repayment ability insurance is typically concluded collectively, whereby the contracting party is the bank that concludes insurance policies with the borrowers, provided that they are eligible for insurance within the meaning of the terms, i.e. general rules of the insurance company for the specified type of insurance. The contract with the borrower – the insured – is concluded by signing an accession statement and paying the premium by the insured. This insurance is classified as property insurance because it protects the insured's assets and property interests, namely, it protects them from financial losses to which the insured or their legal heirs may be exposed if one of the insured risks occurs.[13]

The terms and conditions of credit repayment ability insurance predominantly impose certain limitations regarding the insured person, primarily relating to entry age (usually 18 to 65 years) and circumstances related to employment and work status. One of the assumptions frequently included in the terms is that *the insured is in good health and not under medical treatment or supervision*. The terms strictly stipulate that the insurer is not obligated to verify the truthfulness of the information provided in the accession statement (it is presumed that the bank is also not obligated to do so). However, upon the occurrence of an insured event, the insurer may request documentation, including the insured's medical record to verify the truthfulness of health status statements in the accession statement.[14]

[10] N. Petrović Tomić, 94.

[11] Francesco Amici, „Credit Protection Insurance: Too Good to Be True? Actual Challenges and Future Applications", *Dialoghi di dirito dell'economia*, 1/2025, 224.

[12] This type of insurance is referred to in English as *Credit Protection Insurance* (abbreviated: CPI).

[13] N. Petrović Tomić, 95.

[14] See for example: General Terms and Conditions for Group Credit Repayment Ability Insurance for Users of Unsecured Cash Loans, Sava osiguranje d.d., Zagreb, Article 4, available at: *https://www.slatinska-banka.hr/wp-content/uploads/S.O-19.02-2-Grupno-osiguranje-sposobnosti-za-vracanje-kredita-6.9.2022.cdr_.pdf*, accessed on 6 January 2026.

1.2. Life Insurance Contract for the Borrower

Another modality of insurance used as a mechanism to secure loan repayment is a life insurance contract for the borrower, which covers the risk of the borrower's death. In this type of insurance, the survival risk is generally not covered, and no savings component is included. Given that it only covers the risk of death, in insurance terminology it is classified as "term life insurance". Under a life insurance contract, the insurer undertakes to pay the sum insured or annuity to the insured or to a person designated by them in case of death or upon reaching a certain age, while the policyholder undertakes to pay the insurance premium.[15]

A life insurance contract, whether concluded individually or collectively, with a policy assigned in favor of the bank, has the same purpose as credit repayment ability insurance contract, which is to pay the loan borrower's debt to the bank in case of their death. However, in practice, credit repayment ability insurance is much more favorable for the insured, as it also provides coverage in the event of job loss or disability, and unlike life insurance, the procedure for contracting it is maximally simplified, without conducting a medical examination.

The term life insurance provides protection for the borrower against the risk of death with a decreasing sum insured, meaning that the sum insured decreases proportionally with the duration of the credit, i.e. its repayment. Given the classification and the nature of the insurer's obligation, this type of insurance falls under personal insurance, i.e. sum insurance. Unlike credit repayment ability insurance, the terms of term life insurance sometimes contain a very imprecise provision regarding eligibility for concluding a contract, according to which *healthy persons* of entry age from 18 to 75 years who have concluded a loan agreement with the bank can be insured.[16] If a person is not completely healthy, insurance can still be provided under special terms for increased-risk insurance.

II Risk Assessment and Informing the Insured – the Borrower

The disclosure of circumstances relevant to risk assessment is one of the fundamental obligations of the policyholder in all types of insurance contracts. The obligation to disclose circumstances important for risk assessment is of a pre-contractual nature and is based on the principles of good faith (*bona fides*) and conscientiousness and honesty (*Treu und Glauben*).[17] The insurance contract is

[15] Predrag Šulejić, *Pravo osiguranja*, Dosje, Belgrade 2005, 471.

[16] Article 2 of the Terms and Conditions for Life Insurance in the Event of the Borrower's Death with a Decreasing Sum Insured, "Croatia osiguranje" d.d. Mostar (author's archive).

[17] Barbara Preložnjak, „Pravna priroda ugovora o osiguranju života vezanog uz investicijske fondove", *Zbornik Pravnog fakulteta u Zagrebu*, 61, (3) 967-1010 (2011), 975.

often referred to as a contract of utmost good faith (*uberrimae fidei*), which implies maximum transparency between the contracting parties. In insurance contracts, this refers to the policyholder's obligation to provide accurate and truthful information about circumstances material to risk assessment, as well as the insurer's obligation to timely and fairly inform the policyholder about the content of insurance coverage. Thus, in the pre-contractual phase, the policyholder's primary obligation is to disclose to the insurer all circumstances that are material for risk assessment, whether known to them or which could not have remained unknown to them.[18] The insurer, who undertakes an obligation conditional upon unknown circumstances, must rely on the policyholder not to mislead them regarding facts that are decisive for risk assessment.

In credit repayment ability insurance, the pre-contractual duty to disclose circumstances material to risk assessment rests with the borrower – the insured. This is because, despite the undoubted beneficial effect of credit repayment ability insurance, the insurance terms often include numerous exclusions. For example, in the case of death, risks arising from pre-existing health conditions are excluded, while in the case of job loss, the risk is often excluded if it occurs during seasonal or temporary work. However, from the technique of concluding an insurance contract through the so-called bank channel, it is evident that this is a typical accession contract where the insured, by completing the accession statement, provides basic information about their health status, while simultaneously signing authorization for the bank and the insurance company to obtain documentation or information from doctors and health institutions necessary for the insurer to make a decision on acceptance into insurance or on the merit of the claim for payment of the insured sum if an insured event occurs. When contracting insurance, the bank often does not provide sufficient information to the borrower – the insured regarding the content of coverage and conceals circumstances that fall under exclusions.[19]

The terms and conditions of credit repayment ability insurance refer to the provisions of the Law of Contracts and Torts (LoCT) and contain parallel provisions that detail the borrower's obligations regarding disclosure of circumstances material to risk assessment, as well as the consequences of nondisclosure or untruthful disclosure thereof. Nevertheless, analysis of these Terms shows that they **do not contain an obligation for the Bank to inform the insured** about their duties to disclose the mentioned circumstances and the consequences that may arise in the event of an insured occurrence if, in contracting death risk coverage, the borrower fails to disclose or conceals circumstances related to their pre-existing health condition.

[18] The Law of contract and torts, Art. 907.
[19] F. Amici, 231.

1. Avoidance of the Insurance Contract Due to Non-Disclosure of Circumstances Material to Risk Assessment

The terms and conditions of certain insurance companies in BiH prescribe immediate termination, loss of all rights, and automatic nullity of credit repayment ability insurance contracts, granting the insurer the right to claim damages if, after the occurrence of the insured event – death, it is established that some of the information provided when completing the accession statement was inaccurate and incomplete. This provision is problematic for several reasons. Namely, the provisions of the Law of Contracts and Torts (LoCT) regarding the obligation to disclose circumstances material to risk assessment and the consequences of non-disclosure are not of a dispositive nature and therefore cannot be changed by insurance terms, particularly not to the detriment of the insured. On the contrary, these are mandatory norms where, in order to protect the weaker party, preconditions for avoidance and termination of the contract are prescribed if the policyholder has not fulfilled their mentioned pre-contractual obligation. Furthermore, a judicial procedure must be conducted to establish that the contract is void and all consequences that arise therefrom.

In term life insurance, limitations and exclusions from coverage apply only in cases of suicide, intentional homicide, death due to military operations, or the influence of alcohol and narcotic substances. Therefore, in this type of insurance, providing false or incomplete information regarding the insured's health in the application statement does not entail contract nullity. Although not explicitly stated, it can be concluded that the insurer may only establish the inaccuracy and incompleteness of data by reviewing the insured's medical records and other medical documentation, which typically occurs only after the occurrence of an insured event.

The Law of Contracts and Torts (LoCT) distinguishes between intentional and unintentional misrepresentation or concealment of circumstances. In the first case, it gives the insurer the right to request contract avoidance with *ex tunc* effect, whereas in the second case, the insurer may terminate the contract *ex nunc*. Article 908 of the LoCT prescribes the consequences of **intentional** misrepresentation or concealment of circumstances material to risk assessment. If the policyholder intentionally provides false information or intentionally conceals a fact such that the insurer would not have concluded the contract had they known the true state of affairs, the insurer may request contract avoidance. The period for filing an avoidance is three months from the day the insurer becomes aware of the misrepresentation. From the cited statutory provisions, it is evident that the sanction of nullity depends on the insurer's will. If the insurer requests contract avoidance by lawsuit and has compensated the loss to the negligent insured, they may seek return of the executed compensation and retain the collected premium. It is essential that the insured must have had the intention to conceal material facts, and the burden of proof of that

intent rests with the insurer. If the inaccurate disclosure was made **without intent**, the sanction is less severe. According to Article 909 LoCT, if the policyholder has made an inaccurate statement or failed to provide due notification, without intent, the insurer may, at its option, within one month of becoming aware of the inaccuracy or incompleteness, either declare the contract terminated or propose an increase in premium proportionate to the greater risk.

The credit insurance contract cannot be classified as absolutely null and void under Article 103 of the Law of Contracts and Torts, which are contrary to mandatory provisions and public order, and whose nullity can be invoked by any interested person at any time. On the contrary, contract avoidance can be requested by the insurer only in the above-mentioned specifically determined cases and within the prescribed periods. Therefore, such contracts are voidable. Interpretation of Article 908 of the Law of Contracts and Torts leads to the conclusion that this is not a contract without legal effect; rather, the insurer is given the possibility to request avoidance by lawsuit. Thus, the legislator's intention was to treat misrepresentation or concealment of circumstances material to risk assessment as a defect of will, resulting in the voidable nature of the insurance contract. Accordingly, the insurer may file a lawsuit within one year from the day of learning of the reasons for voidability, or within the objective period of three years from contract conclusion (Article 117 LoCT). Here, a statute of limitations problem may arise as a credit insurance contract is typically long-term, and by the time the insurer becomes aware of the misrepresentation, the objective three-year time limit has already expired.

In two cases, the courts of the Republic of Serbia decided on lawsuits for contract avoidance filed by the insurance company against the bank and the heirs of deceased borrowers. In the first case, the insurer filed a lawsuit after reviewing the medical documentation following a compensation claim, before the expiration of the three-month time limit from discovering the concealed circumstances. The court granted the lawsuit under Article 908 and voided the insurance contract, finding that the borrower had concealed a prior diagnosis of malignant disease when entering into the contract.[20] In the second case, the court was guided by general provisions on contract voidability and dismissed the insurer's claim because the subjective period had expired from learning of the reason for voidability had expired, i.e. from the day when the examining doctor's report established that death occurred as a consequence of a disease which the insured had concealed when contracting insurance, and furthermore, the objective three-year time limit from contract conclusion had also passed.[21]

[20] Judgment of the Basic Court in Bečej, Case No. P-135/17, dated 23 April 2018.

[21] Judgment of the Basic Court in Novi Sad, Case No. P-4659/15, affirmed by the Judgment of the Higher Court in Novi Sad, Case No. Gž-1766/2017.

From the above, it can be concluded that provisions in insurance terms stipulating immediate termination, loss of all rights, and automatic nullity of credit repayment ability insurance contract with the insurer's right to compensation, if after the insured's death it is established that some of the data provided when concluding the contract were inaccurate and incomplete, do not produce legal effect automatically as stated therein. Rather, **a court proceeding to avoid the contract must be initiated by the insurer**, with the risk that the claim may be dismissed if the court applies exclusively the general provision on voidable contracts under which the objective three-year time limit from contract conclusion applies.

2. Legislative Basis for the Obligation to Inform the Insured – Credit User

In Bosnia and Herzegovina, the state-level regulation, namely the Law on Consumer Protection in BiH, provides that a bank, as the creditor, is obliged to provide the credit user with a written notice containing information on the costs of insurance concluded in connection with the credit.[22]

The excessive issuance of consumer credits at the beginning of this century was one of the motives for adopting a new entity-level special regulation in the Federation of BiH, namely the **Law on the Protection of Financial Services Users**,[23] which primarily relies on Directive 2008/48/EC on consumer credit agreements.[24] The law proceeds from a restrictive approach in defining the consumer as a natural person and regulates in detail the obligations for pre-contractual and post-contractual information, as well as the right to withdraw.[25] However, the scope of application *ratione materiae* includes banking services, leasing, microcredit, and special financial agreements, but does not cover insurance services.[26]

In terms of informing credit users about the obligation to conclude ancillary service contracts, which particularly include insurance contracts, the aforementioned

[22] Arts. 54 and 55 of the Law on Consumer Protection of Bosnia and Herzegovina, *Official Gazette of BiH*, Nos. 25/2006 and 88/2015.

[23] Law on Protection of Financial Service Users, *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 31/14.

[24] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ 2008, L 133/66. Article 5 of the said Directive provides that, prior to the conclusion of the contract, the consumer must be given clear information, including any obligation to conclude ancillary services, in particular insurance, their cost, and their impact on the total amount of credit.

[25] For a detailed analysis of the Law on the Protection of Users of Financial Services of the Federation of Bosnia and Herzegovina, see: A. Petrović, "Novo pravno uređenje financijskih usluga u BiH – koliko su korisnici stvarno zaštićeni?", *Zbornik Pravnog fakulteta u Nišu*, No. 70, Year LIV, 810.

[26] Jasmina Đokić, „Pravni okvir zaključenja ugovora o osiguranju na daljinu", *Zbornik 31. susreta osiguravača i reosiguravača – SORS,* Sarajevo, 2021, 171; Nenad Grujić, „Pravne dileme u vezi sa načinima zaključenja ugovora o osiguranju na daljinu – putem mobilne aplikacije i internet prezentacije", *Tokovi osiguranja*, br. 1/2024, 105-118 .

Law prescribes the bank's obligation whereby, if concluding an ancillary service contract – particularly an insurance contract, is *mandatory* for concluding a loan agreement, the existence of such obligation must be indicated clearly and prominently, together with the indication of the effective interest rate. Therefore, the cited provisions relate only to transparency in the pricing of insurance services[27] and the duty to inform the credit user about the obligation to conclude ancillary service contracts.[28] Although these services are predominantly sold by the bank as the insurance company's agent, there is no prescribed obligation to inform the user about the very content of those services.

III European Legal Framework on Linking Credit Agreements and Insurance Contracts

Directive (EU) 2016/97 on Insurance Distribution (Insurance Distribution Directive, hereinafter: IDD)[29] establishes a series of substantive and procedural restrictions aimed at preventing unfair practices and strengthening consumer protection.[30] Based on the fundamental obligation of insurance distributors to act fairly, professionally, and in the best interests of the consumer, the IDD allows linking credit and insurance only under the condition that such practice does not disrupt the balance of contractual parties or impose products on the consumer that are unsuitable for their actual needs.

Special rules on so-called *cross-selling* require insurance distributors to inform consumers clearly and understandably of the possibility of concluding an insurance contract independently of the credit agreement.[31] This limits hidden linking and ensures that the consumer's consent to take out insurance along with credit is real and informed, not merely formal.

The IDD also establishes additional standards of conduct and distributor obligations in the pre-contractual phase.[32] From the bank's perspective as a distributor, this primarily means that the bank is obliged, before concluding the contract, to assess the consumer's needs and propose insurance appropriate to the amount, duration, and risks of the specific credit agreement. Insurance with broad exclusions or whose terms significantly limit the possibility of paying the sum insured cannot be

[27] Law on Protection of Financial Service Users of the Federation of Bosnia and Herzegovina, Arts. 11 and 14.
[28] Law on Protection of Financial Service Users of the Federation of Bosnia and Herzegovina, Art. 15.
[29] Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), Text with EEA relevance, *OJ L 26, 2.2.2016*, 19–59.
[30] Jasmina Đokić, „Customers Protection in Insurance Distribution Directive: an Overview on Harmonization of Legislation in Bosnia and Herzegovina", *Balkan Yearbook of European and International Law,* Springer, 2021, 125.
[31] Article 24 of the Insurance Distribution Directive (IDD).
[32] Article 20 of the Insurance Distribution Directive (IDD).

considered a legitimate means of consumer protection, and forcing such insurance along with credit may constitute unfair linking under IDD.

The problem of insured non-information in credit protection insurance was also addressed in the previously mentioned EIOPA study. Based on the analysis of different types of insurance concluded for housing and consumer loans in member states, along with statistics on claims paid by type of contracting (group or individual), the general conclusion is that in group contracts through the bank with premiums paid alongside other credit costs, the percentage of claims paid is significantly lower than in individual contracts. The high number of rejected claims by insurers is due to poor information provided to insureds during the pre-contractual phase.[33] EIOPA recommendations and guidelines concerning *credit protection insurance* indicate the need to reduce information asymmetry, strengthen the quality of advice, and prevent systematic rejection of compensation claims in group insurance.

1. Bank as Representative of the Insurance Company – the Question of the Duty to Inform

In Bosnia and Herzegovina, the entity-level Banking Laws enable banks to engage in insurance representation activities. In the Republic of Srpska, banks are authorized to perform representation, i.e. intermediation services in insurance,[34] while in the Federation of BiH, banks are allowed to provide only insurance intermediation services.[35] However, given the nature and scope of the insurance sales activities performed by banks, these services cannot be considered mere intermediation services but rather exclusively insurance representation; therefore, the aforementioned legislative formulation in the FBiH is completely incorrect.

Theoretically, a credit user in BiH can conclude insurance individually, but in practice, the user is not so free; rather, the bank assumes the role of insurance policyholder. In this case, the bank's role is threefold: besides being the group insurance policyholder for credit users, the bank also appears as the insurance company's representative and performs agency services for an agreed fee (commission), and at the same time is the insured party in the event that the insured risk occurs. Another specificity of this type of contract is that the bank, as the policyholder, is not obligated

[33] EIOPA, Credit Protection Insurance (CPI) Sold Via Banks, study published on 28 September 2022., a thematic review of the study is available at: *https://www.eiopa.europa.eu/publications/thematic-review-credit-protection-insurance-cpi-sold-banks_en*, accessed on 5 January 2026.

[34] Law on Banks of Republika Srpska, *Official Gazette of RS*, Nos. 4/2017, 19/2018 – corrigendum, 54/2019, 65/2024, and 45/2025, provides in Article 3 that banking activities include insurance representation and intermediary services, in accordance with the regulations governing insurance agency and intermediation.

[35] Law on Banks of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of BiH*, Nos. 27/17 and 22/25, stipulate that banking activities include, *inter alia*, insurance intermediation, in accordance with the regulations governing insurance intermediation.

to pay the premium under the general provisions of the Law of Contracts and Torts (LoCT); this obligation rests with the insured, i.e. the credit user.

From the technique of concluding contracts for both types of insurance, it can be concluded that these are adhesion contracts, i.e., accession contracts where, according to currently applicable regulations in Bosnia and Herzegovina, the insured's bargaining power is limited because the contract between the bank and the insurance company disrupts the insured's right to choose whether to conclude an insurance contract at all and with which insurance company they will conclude such a contract. Framework agreements between the bank and the insurer give the bank exclusive right to agency to arrange insurance for an agreed fee.

As the exclusive representative of the insurer, the bank has all the duties prescribed for insurance representatives under the LoCT and the Law on Insurance Intermediation in Private Insurance of the Federation of Bosnia and Herzegovina,[36] i.e. the Law on Insurance Intermediaries, insurance and reinsurance of the Republic of Srpska,[37] which is initiating, preparing, proposing, and performing preparatory work until contract conclusion, or only contract conclusion, on behalf of and for the account of the insurance company.

Since the insurer authorizes the bank to perform all the aforementioned tasks, it implied that the Bank official – in the capacity of insurer's representative, has the duty before concluding the contract to inform the credit user, i.e. future insured, about the content of the insurance coverage, i.e. risks that are covered and those that are excluded, to whom compensation is paid if the risk occurs, etc. Particular attention should be given to explaining the duty to disclose circumstances material for risk assessment. As noted earlier, the disclosure of circumstances material for risk assessment, which are known to the insured or could not reasonably be unknown to them, constitutes the insured's obligation contained in Art. 907 of the LoCT, and also reflects the principle of conscientiousness and honesty in establishing an obligation as a mandatory norm contained in Art. 12 of the LoCT.

However, we shall repeat that the insurance companies' terms do not impose on the Bank the obligation to inform the insured of the duties and consequences of providing false or incomplete information about their health. The burden of guaranteeing the accuracy and completeness of the information lies entirely on the insured. The duty to inform the insured/credit user should consist of familiarizing them with the provisions of the insurance terms.

By giving consent in the accession statement, the insurance policyholder – the bank and the insurer have authorization, but also the duty, to obtain from the

[36] Article 906 of the LoCT and Article 6 of the Law on Insurance Intermediation in Private Insurance of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of BiH*, Nos. 22/2005, 8/2010, and 30/2016.

[37] Article 4 of the Law on Insurance Intermediaries, Insurance and Reinsurance of Republika Srpska, *Official Gazette of RS*, No. 47/17.

insured/credit user, and from all doctors and healthcare institutions that the insured has consulted regarding their physical or mental health, documentation or information necessary for the insurer to make a decision on accepting the insured into insurance. The insurer's decision on the acceptability of the credit user for insurance access or possibly access to insurance under special conditions (abnormal risk) should depend on the information collected. However, in practice, credit user insurance contracts are often concluded "automatically", meaning that a bank official does not apply an individualized approach when concluding an insurance contract. On the contrary, if concluding an insurance contract is stipulated as one of the collaterals securing loan collection, the insurance accession statement is given to the credit user with other documents, which the user signs without paying attention to the content or potential consequences, and thus sometimes unintentionally provides false answers to questions about any previously impaired health status.

Given that, as we have seen, the current European regulation largely permits autonomy in contracting insurance, and thereby limits monopolistic conduct of banks and insurance companies, it is necessary to align domestic entity-level Laws on insurance representation and intermediaries with the IDD in the future in order to regulate in more detail the obligation to act in the best interest of consumers, transparent and comprehensive pre-contractual information of all insurance distributors, including banks acting as insurer's agents. Future regulations should explicitly provide for the bank's obligation to provide the loan beneficiary, in a clear and comprehensible manner, with information about the scope of insurance coverage, insurance exclusions, and the consequences of inaccurate or incomplete disclosure of circumstances material to risk assessment.

2. The Law on the Protection of Financial Services Users in Serbia

In the Republic of Serbia, a new Law on the Protection of Financial Services Users was recently adopted,[38] which significantly improves the protection of credit users when loans are concluded with an insurance contract. In doing so, the law distinguishes between the so-called tying of services and the practice of bundling services, where "tying" means concluding a credit agreement in a package with insurance services or other services as a mandatory condition for concluding the contract (the credit agreement cannot be concluded without these additional services). And "bundling" means that a credit agreement can be concluded without the mentioned collateral, but not necessarily under the same conditions as those with tied services. Article 53 of the cited Law concerns the conclusion of insurance policies and aims to achieve a balance between the interests of banks and insurance companies on

[38] Law on the Protection of Financial Services Users of the Republic of Serbia, *Official Gazette of RS*, No. 17/25.

the one hand and credit users on the other. These provisions are clearly drafted to harmonize with the rules of the IDD. Namely, the Law gives the bank the right to require credit users to conclude a certain type of insurance, but it must consider the proportionality between the loan amount and the required insurance policy. On the other hand, it gives credit users the right to choose: they can conclude an insurance policy individually and with another insurer, and are not limited to joining the group insurance contract with the insurer recommended by the bank. The bank is obliged to accept such a policy. The only limitation prescribed to the credit user's previous health condition is that when issuing an insurance policy linked to a credit agreement, personal data regarding cancer diagnoses may not be used if more than 15 years have passed since the end of treatment. Given that insurance companies' accession statements most often include questions about prior cancer diagnoses, it can be expected that the text of these statements and insurance companies' terms will need to be adjusted to this provision. Only information on cancer diseases that occurred within the last 15 years may be used in the risk assessment of the credit user.

The Law still allows tying of services for a credit agreement if the bank can demonstrate that such tying would result in clear benefits for the credit users, provided that the procedure is approved by the National Bank of Serbia (NBS) through a special process established by the NBS. Thus, the Law limits the discretionary imposition of a specific insurance policy on a credit user by the bank, while such tying may be approved if it is in the credit user's interest, with the bank bearing the burden of proof before the NBS. The Law on Protection of Financial Service Users of Serbia is a more recent regulation, so it will certainly be interesting to see whether such a strict regulation will affect the development of bancassurance.

IV Order of Bank Claims Collection in the Event of the Borrower's Death

To determine the order in which a bank may satisfy its claims in the event of the borrower's death, we first proceed from the type and purpose of the insurance contract. In cases of credit protection insurance and term life insurance for the borrower, when a group insurance contract is concluded, the borrower's position is limited because they are required to enter into an insurance contract in order to have the credit approved.

Here we shall pose the question: what would happen if a borrower of a purpose-specific or mortgage loan refused to conclude an insurance contract? Would their credit application be denied? Since one of the contractual obligations under the credit agreement is the payment of a one-time insurance premium, the conclusion is that the credit would not be approved, because the insurance policy is one of the mandatory collaterals specified in the credit agreement. The agreement

clearly specifies the amount of the borrower's financial obligation for the insurance premium, and the method of fulfilling that obligation is clearly and unambiguously stated (e.g. the premium is paid from the approved loan funds or paid in advance).

By reviewing the Terms of credit repayment ability insurance[39] and the Terms of term life insurance for credit users[40] of several insurance companies in the region, similar rules of procedure in the event of the borrower's death can be established. In essence, it can be concluded that, in order to realize rights from the insurance contract, the obligation to report the insured event lies with any person who can prove an undoubted legal interest.[41] This means that the insured event can be reported by the bank as an insurance beneficiary, but also by the insured's heirs, because they have a justified interest in having the remainder of the loan debt be paid by the insurance company.

Although credit protection insurance in any of its forms represents a significant way of protecting the interests of the borrower, since it protects the borrower's heirs from financial burden in case of the borrower's death, enables the bank to collect the remainder of the debt from the insurer as a solvent debtor, and provides the insurance company with substantial premium income, certain disagreements sometimes arise after the occurrence of the insured event, namely the borrower's death. Specifically, during claim processing, the insurer verifies the accuracy and credibility of the borrower's health status by reviewing medical records and other health documentation. If, in the course of this procedure, the insurer determines that the insured's health had previously been impaired, the insurer may deny the claim, relying on policy exclusions in accordance with the insurance contract and the terms and conditions of insurance that are constituent parts of the contract.

Taking into account the purpose and goal of the borrower's insurance, it can be concluded that when joining group insurance is one of the conditions for entering into the credit agreement, and the risk of the borrower's death materializes, the order of application of compulsory measures for the collection of the bank's claim implies priority collection under the insurance policy, with any remaining amount to be collected through other enforcement measures specified in the credit agreement. Accordingly, the bank is required to exhaust all collection options from the insurance company, and may resort to other enforcement measures only if such collection is not achieved.

[39] See, for example: the Terms and Conditions for Insurance of the Repayment of Unsecured Loans, Croatia osiguranje d.d., Zagreb (author's archive).

[40] See, for example: the General Terms and Conditions for Life Insurance in the Event of the Borrower's Death, Lovćen osiguranje a.d., Podgorica; the General Terms and Conditions for Life Insurance of Housing Consumer Loan Borrowers, Generali osiguranje d.d., Zagreb (author's archive).

[41] Loris Belanić, Ugovor o osiguranju sposobnosti vraćanja kredita prema uslovima osiguranja hrvatskih društava za osiguranje, kritika i prijedlozi reforme u poredbenom pravu, *Evropska revija za pravo osiguranja*, No. 1/2012, 74.

1. Case Law on the Order of Bank Claims Collection

We point out the inconsistency in case law in Bosnia and Herzegovina regarding the order of bank claim collection.

In the first example, the bank, as plaintiff in a dispute against the heirs of the deceased borrower, failed to prove that it had filed a claim against the insurance company before filing the lawsuit against the heirs, even though a group credit repayment insurance policy had been concluded alongside the credit agreement. As a result, in the second-instance proceedings, the lawsuit was dismissed with the explanation that the policy was assigned in favor of the bank, which serves as a means of securing loan repayment, to which the bank, as plaintiff agreed. In this situation, the court held that the bank "*was not entitled to seek compensation from the borrower's heirs, but only from the insurance company, since the insurance was ultimately paid for by the borrower for this specific purpose*".[42]

In the second case, there was also a court dispute between the bank and the heirs because the insurance company, in out-of-court proceedings, rejected the bank's claim invoking insurance terms according to which mentally ill persons cannot be insured, and in the process of processing the compensation claim it was established that the borrower had suffered from psychological disorders. However, the court concluded that the heirs were not obliged to repay the remaining debt because the deceased had taken out the insurance policy as security.[43]

As we can see, in the first case, the bank did not prove that it had approached the insurer for claim collection, while in the second case the bank did not exhaust all possibilities of collection from the insurer.

2. Supreme Court of FBiH – Three Different Interpretations

The Supreme Court of the FBiH interpreted the order of bank claims collection in the event of a borrower's death in three recent judgments issued within a short time interval adopted different stances. In the first case, the Court held that

[42] Judgment of the Cantonal Court in Zenica, Case No. 42 0 1 P 019832 23 Gž, dated 5 September 2023.

[43] Judgment of the District Court in Banja Luka, Case No. 71 0 P 314359 22 Gž, dated 8 June 2022, excerpt from the reasoning: *"From the General Terms and Conditions for Personal Accident Insurance arises the obligation of the insurance company to pay the sum insured, i.e. the amount of the remaining debt under the loan agreement concluded between the plaintiff and the defendants' predecessor. The insurance company with which the plaintiff maintains a business relationship had the opportunity to determine the insured's health status, as clearly and expressly explained by the court of first instance. The insurance company is liable to the plaintiff… because the plaintiff itself required the defendants' predecessor, as a means of securing the claim, to conclude an insurance contract, since in the event of the borrower's death the plaintiff would recover claim from the insurance company, in accordance with Article 897 of the LoCT. Given that the insured event has occurred and the insurance contract has not been avoided, there is no liability on the part of the heirs, as correctly concluded by the court of first instance."*

"*when a credit insurance and assignment of the insurance policy in favor of the loan provider, upon occurrence of the insured event-the borrower's death, a primary obligation arises for the lender to enforce its rights under the assigned insurance policy against the insurer, and subsidiarily, if this claim is unsuccessful, may the bank seek repayment from the borrower's heirs. Accordingly, the subsidiary claim cannot be pursued as long as the primary claim arising from the assigned insurance policy is not exhausted...*"[44]

However, shortly after the cited judgment, the Supreme Court of the FBiH issued a different judgment on the same type of legal matter, holding that it is not necessary for the bank to initiate court proceedings against the insurer before attempting collection from the heirs. In case of a negative outcome of out-of-court proceedings conducted against the insurer, the bank may initiate court proceedings against the heirs, but **the bank is obligated in those proceedings to prove that the insurer justifiably rejected the claim**, i.e. that the insured when concluding the insurance policy did not provide accurate data about their health status, whereby there arises a reason for excluding the insurer's obligation to pay the sum insured.[45] However, in the aforementioned judgment, the factual situation was specific, i.e. the insurer justifiably rejected the claim for payment of the sum insured, which was proven in court proceedings initiated against the heirs of the credit user/insured.

We have one more interesting interpretation in a recent judgment of the Supreme Court of the FBiH, where in revision proceedings the bank's lawsuit against the heirs of the borrower was dismissed.[46] This was a dispute regarding the collection of the remaining debt following the borrower's death, and alongside the loan agreement, a life insurance policy had been concluded for the borrower and assigned in favor of the bank. The borrower died from the consequences of COVID-19, and in out-of-court proceedings the insurer rejected the claim, invoking inaccurate disclosure of material circumstances by the borrower in the pre-contractual phase, namely that he had concealed suffering from hypertension and type 2 diabetes. According to the court's reasoning, given the agreed assignment, the heirs could not seek payment of the sum insured from the insurer; only the bank was entitled to do so. Accordingly, the bank has the right to priority payment of the sum insured, and the purpose of this insurance is to protect the borrower's assets and his heirs. Therefore, any other interpretation would call into question the purpose of concluding the insurance contract, since such a contract does not protect only the bank from the risk of the borrower's non-performance, but also serves as a form of financial protection for the borrower's family.

[44] Judgment of the Supreme Court of the Federation of Bosnia and Herzegovina, Case No. 65 0 P 572865 Rev, dated 9 April 2024.

[45] Judgment of the Supreme Court of the Federation of Bosnia and Herzegovina, Case No. 58 0 P 232117 24 Rev, dated 10 December 2024.

[46] Judgment of the Supreme Court of the Federation of Bosnia and Herzegovina, Case No. 33 0 P 092753 25 Rev, dated 1 July 2025.

From the brief overview of recent case law, it is evident that courts generally take the stance that, in the case of borrower life insurance against the risk of death and assignment of such insurance policy in favor of the bank, upon occurrence of the insured event-the borrower's death occurs, the bank assumes a primary obligation to collect the remaining debt under the loan agreement from the insurer based on the insurance contract. Only subsidiarily, if such recovery proves unsuccessful and provided that the bank has exhausted the primary claim under the insurance policy, may it pursue the borrower's heirs.

V Procedural Mechanisms for Bank Claims Collection

In order to avoid harmful consequences for the bank in the form of the statute of limitations on claims, arising from the existence of multiple legal relationships, namely one based on the loan agreement with the borrower/insured and another based on the insurance contract with the insurer and the borrower/insured, and considering that, upon the death of the borrower, the heirs become universal successors in accordance with inheritance regulations, it would be appropriate for both the insurer and the heirs of the deceased borrower to be included in the same legal proceeding.

A possible solution is to submit the claim in the form of subjective alternation, which implies suing multiple defendants so that the Court is requested to alternatively grant the claim against one of them. A legally binding rejection of the previous claim is a condition for a meritorious decision on the following claim; and if the court were to finally accept the previous claim, it would be considered that the following claim was not even filed.[47] Regarding the alternation of claims, it is essential to consider the provision of the Civil Procedure Act of the FBiH, which stipulates that a plaintiff may, in a single lawsuit, sue two or more defendants and request that the claim be granted against the next defendant if it is finally rejected against the defendant listed before them.[48] The plaintiff retains control over the claim by requesting the court to decide according to the order of defendants established in the complaint. This particular form of adversarial procedure is known in legal theory as **eventual or subsidiary adversariality** and serves as a procedural mechanism established solely in the interest of the plaintiff in complex legal disputes where it is uncertain which of the multiple parties is passively legitimized for the claim. It avoids the risk of losing the pending case and having to initiate new proceedings.[49]

[47] Jadranka Stanišić, „Isticanje više tužbenih zahtjeva u jednoj tužbi", *Zbornik radova „Harmonizacija građanskog prava u regionu"*, East Sarajevo, 2013, 502.

[48] Art. 363 (1) of the Civil Procedure Act of the FBiH, *Official Gazette of the Federation of BiH*, Nos. 53/03, 73/05, 19/06, and 98/15.

[49] Senad Mulabdić, „Teorijski i praktični problemi supsidijarnog suparničarstva", *Anali Pravnog fakulteta u Zenici*, Vol. 5, No. 9 (2012), 317.

Prior analysis leads to the conclusion that the order of enforced claim collection requires that the bank must first conduct out-of-court collection proceedings against the insurer, in compliance with the entire procedure prescribed under the relevant insurance terms and conditions. In the event of a negative decision in second-instance proceedings, where the file demonstrates that the insurer's refusal of the claim was unjustified, it is necessary to file a lawsuit against the insurer.

If, based on evidence from out-of-court proceedings, the bank, as the plaintiff is uncertain about the outcome of a potential dispute against the insurer, an appropriate procedural solution would be to file a lawsuit with a stated lawsuit claim against the insurer and the legal heirs, as they constitute formal adversaries under Article 363(1) of the Civil Procedure Act of FBiH. Namely, they are bound by the same or substantially identical factual basis (the death of the insured / legal predecessor) and legal basis, i.e. the obligation to settle the financial liability of the insured / legal predecessor. For the insurer, this entails payment of the sum insured under the insurance contract, while for the legal heirs, it entails liability for the legal predecessor's debts up to the amount of the inherited share. Considering the order of primary claim collection stipulated in the loan agreement, in this case, the insurer should be designated as the first defendant.

V Conclusion

The analysis of the legal nature of borrower insurance, applicable domestic regulations, and case law confirms that the fundamental purpose of insurance contracts concluded alongside loan agreements is to secure the bank's claim collection, but also to protect the property interests of the borrower and their heirs. When the conclusion of an insurance contract is a condition for credit approval and the policy is assigned in favor of the bank, the order of claim collection must adhere to the principle of primary collection from the insurer, whereas collection from the heirs is permitted only subsidiarily, after exhausting all legal and factual possibilities of collection based on insurance. Any other interpretation would call into question the purpose of insurance and undermine the fundamental principles of good fait and the balance between contractual parties.

De lege ferenda, it is necessary to normatively clarify the obligation of the bank, as the policyholder and insurance intermediary, to provide the borrower with clear, complete, and documented information regarding the content of insurance coverage, exclusions, and the consequences of providing inaccurate or incomplete information material to risk assessment. Legislative change is a lengthy process, therefore, joint intervention by insurers and banks would be desirable with the aim of preventive action, i.e. preventing lengthy and expensive court proceedings. This could be achieved by prescribing, in terms of borrower insurance, the obligation of

the bank as the insurance intermediary to provide quality and transparent information to the borrower/insured regarding the consequences of providing inaccurate or incomplete information about their health status when concluding the contract, and by clearer regulation of the insurance acceptance procedure.

Furthermore, as the foundation of a long-term business relationship based on trust, the contracting parties should mutually define the order and procedure for claim collection in the event of the borrower's death, according to which collection under the insurance policy would have primacy over other security means.

Literature

- Amici, F., „Credit Protection Insurance: Too Good to Be True? Actual Challenges and Future Applications", *Dialoghi di dirito dell'economia*, 1/2025
- Belanić, L., Ugovor o osiguranju sposobnosti vraćanja kredita prema uslovima osiguranja hrvatskih društava za osiguranje, kritika i prijedlozi reforme u poredbenom pravu, Evropska revija za pravo osiguranja, br. 1/2012
- Belanić, L., Mihelčić, G., „Određena pitanja iz osiguranja izvjesnosti namirenja tražbine kredita", *Zbornik radova s VI. međunarodnog savjetovanja "Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična dostignuća",* Pravni fakultet u Splitu, 2020.
- Đokić, J., „Pravni okvir zaključenja ugovora o osiguranju na daljinu*", Zbornik 31. susreta osiguravača i reosiguravača – SORS,* Sarajevo, 2021
- Đokić, J., „Customers Protection in Insurance Distribution Directive: an Overview on Harmonization of Legislation in Bosnia and Herzegovina", *Balkan Yearbook of European and International Law,* Springer, 2021
- Nenad Grujić, „Pravne dileme u vezi sa načinima zaključenja ugovora o osiguranju na daljinu – putem mobilne aplikacije i internet prezentacije", *Tokovi osiguranja*, br. 1/2024, 105-118
- Mulabdić, S., „Teorijski i praktični problemi supsidijarnog suparničarstva", *Anali Pravnog fakulteta u Zenici*, god. 5, br. 9 (2012),
- Petrović, A., „Novo pravno uređenje financijskih usluga u BiH – koliko su korisnici stvarno zaštićeni?", *Zbornik Pravnog fakulteta u Nišu*, broj 70, god. LIV
- Preložnjak, B., „Pravna priroda ugovora o osiguranju života vezanog uz investicijske fondove", *Zbornik Pravnog fakulteta u Zagrebu*, 61, (3) 967-1010 (2011)
- Stanišić, J., „Isticanje više tužbenih zahtjeva u jednoj tužbi", *Zbornik radova „Harmonizacija građanskog prava u regionu"*, Istočno Sarajevo, 2013, str. 502.
- Petrović Tomić, N., Ugovor o osiguranju sposobnosti vraćanja kredita, Anali Pravnog fakulteta u Beogradu, god. LXV, br. 2/2017
- Šulejić, P., *Pravo osiguranja*, Dosije, Beograd, 2005.

Case law:

- Judgment of the Basic Court in Bečej, P-135/17 of 23.04.2018.
- Judgment of the Basic Court in Novi Sad, P-4659/15
- Judgment of the Higher Court in Novi Sad, Gž-1766/2017
- Judgment of the Cantonal Court in Zenica, 42 0 1 P 019832 23 Gž of 5.9.2023.
- Judgment of the District Court in Banja Luka, 71 0 P 314359 22 Gž of 8.6.2022.
- Judgment of the Supreme Court of the FBiH, No. 65 0 P 572865 Rev of 09.04.2024.
- Judgment of the Supreme Court of the FBiH, No. 58 0 P 232117 24 Rev of 10.12.2024.
- Judgment of the Supreme Court of the FBiH, No. 33 0 P 092753 25 Rev of 01.07.2025.

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ORUŽANA DEJSTVA KAO OSIGURANI RIZIK U FIDIC UGOVORIMA – OSVRT NA DEJSTVA PLEMENA HUTI U CRVENOM MORU

PREGLEDNI RAD

Apstrakt

Autori u ovom radu ukazuju na problematičnost pravnog razgraničenja instituta „rizika od neprijateljstava" i „rizika od terorizma", u situacijama kada zbog upotrebe oružane sile dođe do preusmeravanja transporta opreme, u okviru ugovora zasnovanog na FIDIC opštim uslovima (Žuta knjiga, izdanje iz 1999. godine).[2] U tom smislu, ovaj rad analizira pravne implikacije promene rute transporta robe u kontekstu građevinskog projekta koji bi se realizovao u Srbiji, a usled pomorskih napada koje su tokom razdoblja 2023–2025 godine u akvatoriji Crvenog mora sprovodili jemenski Huti, tj. njihovo vojno-političko krilo, pokret Ansar Alah. Uzimajući za faktički okvir scenario u kojem bi transport opreme morao biti preusmeren usled delovanja Ansar Alaha i posledičnog ukidanja „kargo" polise osiguranja, autori ukazuju na potencijalne praktične posledice pravne karakterizacije takvog delovanja. S tim u vezi, ovaj rad će ukazati na međusobnu povezanost ukidanja polisa osiguranja i ugovornih posledica u okviru FIDIC Žute knjige (1999).

Ključne reči: rizik, terorizam, neprijateljstvo, Huti, FIDIC.

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Rad priimljen: 16.1.2026.
Rad prihvaćen: 28.2.2026.
[2] Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Works and for Building and Engineering Works Designed by the Contractor (First Edition 1999).

I Uvod

Promenjena geopolitička situacija na Bliskom istoku i povećani rizici u pomorskom saobraćaju kroz Crveno more, nastali nakon terorističkog napada Islamskog pokreta otpora, tj. Hamasa, na teritoriju Izraela 7. oktobra 2023. godine i potonje eskalacije izraelsko-palestinskog sukoba, izazvali su značajne poremećaje u međunarodnim lancima snabdevanja, koji nisu ostali bez uticaja ni na domaće tržište. Pre svega napadi pokreta Ansar Alah, kao oružane formacije jemenske etničke grupe Huta, na trgovačke brodove i tankere u regionu Crvenog mora i Adenskog zaliva značajno su zakomplikovali realizaciju pomorskog saobraćaja na tom delu rute, dovodeći do značajnih poremećaja na tržištu osiguranja, koji se osećaju i dalje.[3]

Takav razvoj događaja mogao bi imati značajne pravne implikacije na realizaciju infrastrukturnih projekata u Republici Srbiji, naročito u delu koji se odnosi na isporuku investicione opreme kao sastavnog dela brojnih građevinskih poduhvata.

U tom kontekstu, situacije u kojima bi izvođač radova morao preusmeriti isporuku opreme zbog bezbednosnih rizika, uz ukidanje polise osiguranja kojom su osiguravači pokrivali transportne rizike kroz Crveno more, otvorile bi brojna pitanja u vezi sa ugovornom raspodelom rizika između investitora i izvođača. Takve situacije bi rezultirale i pitanjima posledične raspodele troškova koji bi mogli nastati usled preusmeravanja isporuke dužom i skupljom transportnom rutom.

Kada je reč o ugovornom okviru koji uspostavlja FIDIC *Žuta knjiga* (1999) i generalno FIDIC modeli ugovora,[4] odgovori na prethodna pitanja zavise od nekoliko faktora:

1. Kakva je raspodela opisanih rizika između naručioca i izvođača;
2. Da li opisani slučajevi predstavljaju akt više sile;
3. Kakva je uzročno-posledična veza između opisanih događaja i nastalih troškova.

Stoga ovaj rad polazi od teze da dodatni troškovi preusmeravanja transporta opreme, nastali usled ukidanja kargo osiguranja zbog bezbednosnih rizika povezanih s napadima pokreta Ansar Alah, ne predstavljaju trošak koji se po FIDIC *Žutoj knjizi* (1999) može prebaciti na naručioca. Autori argumentuju da se u takvim okolnostima radi o ostvarenju komercijalnog rizika na strani izvođača, a ne o posledici realizacije rizika naručioca u smislu potklauzula 17.3 i 17.4, niti o događaju više sile u smislu potklauzule 19.1.

[3] „Red Sea insurance soars after deadly Houthi ship attacks", https://www.reuters.com/business/autos-transportation/red-sea-insurance-soars-after-deadly-houthi-ship-attacks-2025-07-10/, poslednji put posećeno 24. 10. 2025.

[4] Michael D. Robinson, *A Contractor`s Guide to the FIDIC Conditions of Contract*, Wiley-Blackwell,West Sussex, 2011, 85.

II Ugovorni okvir

FIDIC opšti uslovi zasnivaju raspodelu rizika na ustaljenim i opšteprihvaćenim principima pravičnosti.[5] U skladu s tim principima, određeni rizik treba da snosi ona ugovorna strana koja je u najboljoj poziciji da takav rizik kontroliše, njime efikasno upravlja, razumno predvidi njegove posledice ili se od njega adekvatno osigura. Takav koncept raspodele rizika predstavlja izraz teorijskog pristupa koji je sistematizovan i mimo FIDIC prakse,[6] a koji je potom prihvaćen i normativno inkorporiran u savremene međunarodne standardne ugovorne obrasce.

S tim u vezi, ugovorne odredbe koje uređuju pitanje raspodele rizika između ugovornih strana u kontekstu FIDIC *Žute knjige* (1999), sadržane su u potklauzulama 17.3 i 17.4 i strukturirane su na sledeći način:

> ***17.3 Rizici naručioca***
> *Rizici navedeni u potklauzuli 17.4 u nastavku su:*
> *(a) rat, **neprijateljstva** (bez obzira na to da li je rat zvanično objavljen ili ne), invazija, dela stranih neprijatelja;*
> *(b) pobuna, **terorizam**, revolucija, ustanak, vojna ili uzurpirana vlast, ili građanski rat unutar države;*
> *(c) nemiri, uzbune ili neredi unutar države koje izazivaju lica koja nisu osoblje izvođača niti drugi zaposleni kod izvođača i podizvođača;*
> *(d) ratna municija, eksplozivni materijali, jonizujuće zračenje ili kontaminacija radioaktivnošću unutar države, osim ako se to može pripisati upotrebi takvih sredstava od strane izvođača;*
> *(e) udarni talasi izazvani letelicama ili drugim vazduhoplovnim uređajima koji putuju podzvučnim ili nadzvučnim brzinama;*
> *(f) korišćenje ili zauzeće bilo kog dela stalnih radova od strane naručioca, osim ako je drugačije predviđeno Ugovorom;*
> *(g) projektovanje bilo kog dela radova od strane osoblja naručioca ili drugih za koje naručilac snosi odgovornost, ako ih ima, i*
> *(h) svaka delatnost prirodnih sila koja je nepredvidiva ili protiv koje se od iskusnog izvođača ne bi moglo razumno očekivati da preduzme adekvatne preventivne mere.*
>
> ***17.4 Posledice rizika naručioca***
> *Ukoliko i u meri u kojoj bilo koji od rizika navedenih u potklauzuli 17.3 dovede do gubitka ili oštećenja radova, dobara ili dokumenata izvođača, izvođač će bez odlaganja obavestiti inženjera i sanirati taj gubitak ili oštećenje u meri u kojoj to inženjer zahteva.*

[5] Nael G. Bunni, *Risk and Insurance in Construction* (second edition), Spon Press, London, 2003, 137.
[6] Max Abrahamson, „Risk Management", *International Construction Law Review*, Vol. 1, 1984, 241–264.

Ako izvođač pretrpi kašnjenje i/ili trošak usled sanacije tog gubitka ili oštećenja, dužan je da inženjeru dostavi dodatno obaveštenje i ima pravo, u skladu sa potklauzulom 20.1 [zahtevi izvođača], na:

(a) produženje roka za takvo kašnjenje, ako je završetak radova odložen ili će biti odložen, u skladu sa potklauzulom 8.4 [produženje roka za završetak], i

(b) plaćanje nastalog troška, koji će biti uključen u ugovornu cenu. U slučajevima iz podstavova (f) i (g) potklauzule 17.3 [rizici naručioca], razumna dobit na trošak takođe će biti uključena.

Po prijemu ovog dodatnog obaveštenja, inženjer će postupiti u skladu sa potklauzulom 3.5 [određivanja] radi postizanja saglasnosti ili utvrđivanja tih pitanja.

Shodno prethodnom, citirane ugovorne odredbe akcenat stavljaju na sledeće aspekte:

- Eksplicitno definisanje događaja ili okolnosti koje se smatraju rizicima naručioca;
- Razgraničenje rizika prema kriterijumu teritorijalnosti, pri čemu se određeni rizici (poput terorizma) smatraju rizikom naručioca isključivo ako se ostvare u državi u kojoj se realizuju radovi, dok se drugi rizici (rat, neprijateljstva, akti stranih neprijatelja) tretiraju kao rizik naručioca bez obzira na mesto njihovog ostvarenja;
- Definisanje posledica u slučaju da „rizici investitora" dovedu do „gubitka ili oštećenja" na „radovima, dobrima ili dokumentima" izvođača.

Kao što se vidi, ugovorne odredbe ostaju neme na pitanje kakve su posledice ukoliko dođe do ostvarenja „komercijalnih rizika",[7] kakav je jednostrano otkazivanje polise kargo osiguranja od strane osiguravača, kojom izvođač radova osigurava transport opreme, tj. dobara.

Stoga, u situacijama u kojima bi osiguravači koristili svoje, tržišno vrlo često zastupljeno pravo da otkazuju pokriće za kargo polise osiguranja usled delovanja grupa kao što je pokret Ansar Alah,[8] postavljalo bi se pitanje kakve bi to posledice imalo na ugovornu raspodelu rizika i konsekventnu raspodelu troškova između investitora i izvođača.

III Komercijalni rizik *vs* rizik od gubitka ili oštećenja

Imajući u vidu da kod preusmeravanja transporta robe ne dolazi ni do kakvog oštećenja ili gubitka robe, može se zaključiti da troškovi koji nastaju iz takvih okolnosti predstavljaju posledicu ostvarenja komercijalnog, to jest ekonomskog

[7] Ellis Baker, Ben Mellors, Scott Chalmers, Anthony Lavers, *FIDIC CONTRACTS: Law and Practice*, Routledge, London i Njujork, 2009, 348.

[8] Institutske „War" i „Strike" klauzule sadrže odredbe koje osiguravačima daju opciju da po sopstvenom nahođenju ukinu pokriće, poštujući odgovarajuće preduslove.

rizika. Sledstveno, na taj način ne bi došlo do ispunjenja preduslova za primenu ugovornog mehanizma definisanog u potklauzuli 17.4. FIDIC *Žute knjige* (1999).

S tim u vezi treba uzeti u obzir koji bi to adekvatan uzrok doveo do nastanka dodatnog troška, jer u takvim situacijama uzrok ne bi bio u fizičkom oštećenju ili uništenju robe, već u dužoj ruti putovanja. Drugim rečima, treba razmotriti okolnost da li bi kod preusmeravanja transporta robe došlo do ostvarenja posledica prepoznatih potklauzulom 17.4 FIDIC *Žute knjige*, a naročito u delu koji definiše da izvođač ima pravo na naplatu dodatnog troška usled „gubitka ili oštećenja radova, dobara ili dokumenata", nastalih kao posledica ostvarenja rizika naručioca.

Vodeći se latinskom maksimom *Causa proxima non remota spectatur,*[9] mogli bismo doći do zaključka da bi se neposredna uzročno-posledična veza uspostavila između ukidanja polise, kao neposrednog događaja koji je izvođaču onemogućio realizaciju transporta kroz Crveno more, a ne između delovanja pokreta Ansar Alah (što bi predstavljalo udaljeni uzrok) i nastalih troškova preusmeravanja. Dakle, u toj situaciji troškovi izvođača ne bi nastali kao posledica otklanjanja oštećenja ili gubitka na opremi usled aktivnosti Ansar Alaha (na način kako to predviđa potklauzula 17.4. FIDIC *Žute knjige* (1999), već kao posledica komercijalnog rizika, kakav je odluka osiguravača da ukine pokriće, te na taj način spreči realizaciju transporta kroz region Crvenog mora.

Ovde je važno istaći da rizik od ukidanja polise osiguranja, koji predstavlja dominantan uzrok u nastanku troškova zbog posledične promene rute transporta, FIDIC *Žuta knjiga* (1999) ne prepoznaje kao rizik čije je posledice dužan da preuzme naručilac, niti ih definiše ugovorni okvir koji bi pomogao u opredeljivanju koja ugovorna strana je dužna da takav trošak snosi.

Samim tim, trošak nastao usled preusmeravanja transporta ne potpada pod obim odgovornosti naručioca definisan potklauzulom 17.4 FIDIC *Žute knjige* (1999), budući da ne predstavlja posledicu gubitka ili oštećenja radova, dobara ili dokumentacije izvođača, već rezultat odluke osiguravača da povuče kargo pokriće usled povećanog bezbednosnog rizika.

Takav pristup bi bio u skladu s koncepcijom efikasnog uzroka, razvijenom u pravu *common law* tradicije. Naime, u odluci Doma lordova u predmetu *Leyland Shipping Co v. Norwich Union Fire Insurance Society (1918)*, uvedeno je pravilo da se pod efikasnim uzrokom smatra onaj uzrok koji je najefikasniji, a ne onaj koji je vremenski najbliži posledici.[10] Drugim rečima, *causa proxima* jeste dominantni, efektivni uzrok štete, a ne nužno poslednji po redosledu. Taj pristup postao je standard u savremenom *common law* pravu, uz upotrebu testa tzv. efikasnog uzroka. Time je označen prelaz od formalno-vremenskog kriterijuma ka suštinskom kriterijumu uzročne dominacije.

[9] Wan Izatul Asma Wan Talaat, *Causa Proxima Non Remota Spectatur: The Doctrine of Causation in Marine Insurance*, J. Mar. Law & Commerce 34 : 521 (2003), 495–502.

[10] Leyland Shipping Co v. Norwich Union Fire Insurance Society [1918] AC 350, 369 (HL).

Sudovi više ne posmatraju samo krajnji događaj u lancu već identifikuju uzrok koji je u najvećoj meri doprineo nastanku gubitka, onaj koji je bio odlučujući u pokretanju ostalih uzroka i nastanku štete. Primena testa efikasnog, to jest adekvatnog uzroka u konkretnom slučaju vodi zaključku da je odluka osiguravača o ukidanju kargo pokrića predstavljala pravno relevantan i dominantan uzrok nastanka dodatnih troškova, dok je delovanje pokreta Ansar Alah imalo karakter udaljenog, posrednog uzroka koji sam po sebi nije proizveo gubitak ili oštećenje na robi izvođača.

Pored toga, kontinentalni pravni sistemi, uključujući švajcarski i nemački, primenjuju test „adekvatne uzročnosti", koji ocenjuje da li je uzrok po životnom iskustvu sposoban da proizvede datu štetu. Tako se u tim jurisdikcijama uzročnost određuje na osnovu predvidivosti i tipičnosti uzročne veze, a ne na osnovu formalne blizine događaja šteti. Pravno odlučujući uzrok u tim sistemima jeste onaj koji se, po opštem toku stvari, može smatrati dovoljno značajnim i predvidivim da bi proizveo nastalu štetu. Taj koncept, poznat kao *adäquate Kausalität*, služi kao normativni filter koji isključuje iz odgovornosti one uzroke koji su suviše izuzetni ili nekarakteristični u konkretnom slučaju.[11]

Dakle, moglo bi se reći da je uzročno-posledični odnos između delovanja pokreta Ansar Alah, ukidanja polise osiguranja zbog nebezbednosti plovidbe i posledičnog porasta troškova zbog preusmeravanja transporta takav da ne potpada pod ugovorni okvir definisan potklauzulom 17.4 FIDIC *Žute knjige* (1999) jer ne postoji direktna veza između rizika na strani naručioca i troškova nastalih kao posledica preusmeravanja robe, usled ukidanja polise osiguranja i posledičnog onemogućavanja realizacije transporta planiranom rutom.

IV Terorizam ili neprijateljstva

Kada je reč o ugovornoj kvalifikaciji delovanja Huta, treba imati u vidu da potklauzula 17.3 FIDIC *Žute knjige* (1999) pravi značajnu razliku između situacija koje se tretiraju kao „sukobi" i situacija koje se tretiraju kao „terorizam". Naime, kada je reč o „sukobima", naručilac je taj koji preuzima rizik u slučaju da „sukobi" dovedu do „oštećenja ili gubitka na radovima, dobrima ili dokumentaciji izvođača", bez ikakvog teritorijalnog ograničenja, dok s druge strane, kada se radi o terorizmu, navedena potklauzula definiše da ovaj rizik potpada pod odgovornost naručioca, ali samo u slučaju da se terorizam kao rizik ostvario na teritoriji, tj. državi gde se projekat realizuje.

Kada se taj ugovorni okvir postavi u kontekst faktičke situacije i dešavanja u regionu Crvenog mora i Adenskog zaliva, dobija se kompleksan zadatak koji treba da odgovori da li bi delovanje pokreta Ansar Alah predstavljalo akt „neprijateljstva"

[11] Widmer Pierre, *Causation under Swiss Law." In: Jaap Spier (ed.), Unification of Tort Law: Causation*, Kluwer Law International, The Hague, 2000, 105–122.

ili „terorizma", jer u prvom slučaju teret pada na naručioca gde god da se odvijaju sukobi ili neprijateljstva, dok je u slučaju terorizma, rizik na naručiocu samo onda kada se akti terorizma odvijaju u zemlji gde se projekat realizuje.

Tumačeći etimološko značenje reči „sukob" u njenom izvornom, engleskom obliku *hostility*, i sintagme *act of hostility*, moglo bi se zaključiti da taj termin označava „događaj koji se može smatrati dovoljnim povodom za rat; CASUS BELLI.[12]

Dalje, kada bismo se nadovezali na definiciju termina „ratni čin" (*act of war),* dobija se značenje koje podrazumeva „čin koji se smatra dovoljnim razlogom za neprijateljstva".[13]

Iz tih odrednica, kada se posmatraju zajedno, proizlazi da „neprijateljstva" u pravnom smislu podrazumevaju ponašanje koje predstavlja *casus belli*, tj. povod za rat na način kako rat kategorizuje međunarodno humanitarno pravo.

Vredi napomenuti da član 2. Zajedničkog dela Ženevskih konvencija iz 1949. godine[14] međunarodni oružani sukob definiše kao „sve slučajeve proglašenog rata ili bilo kog drugog oružanog sukoba koji može nastati između dve ili više visokih ugovornih strana, čak i ako jedna od njih ne priznaje stanje rata". Pojašnjenja radi, termin „visoke ugovorne strane" označava isključivo suverene države koje su ratifikovale konvencije, uključujući i Arapsku Republiku Jemen, teritoriju na kojoj operiše Ansar Alah.

Pritom, treba imati u vidu da pokret Ansar Alah, niti Huti kao etnička grupa, ne poseduju status visoke ugovorne strane, niti se prema međunarodnom pravu mogu smatrati legitimnim predstavnikom države Jemena. Međunarodno priznata jemenska vlada, oličena u Predsedničkom savetu (*Presidential Leadership Council – PLC*) sa sedištem u Adenu, predstavlja jedini suvereni entitet ovlašćen da deluje u ime Republike Jemen.

Posledično navedenom, delovanje Ansar Alaha se ne bi moglo okarakterisati kao deo „međunarodnih oružanih sukoba", odnosno kao „neprijateljstva" u kontekstu međunarodnog humanitarnog prava (a samim tim ni u kontekstu FIDIC *Žute knjige* (1999)).

Dodatno, ovde bismo skrenuli pažnju i na kategoriju tzv. „prekogranični nemeđunarodni sukob" – koncepcije koja predstavlja derivat principa „nemeđunarodnih oružanih sukoba". Naime, međunarodno humanitarno pravo prepoznaje mogućnost da u oružanom sukobu učestvuju i nedržavni entiteti, pre svega kada je reč o građanskom ratu, podrazumevajući da „oružani sukob postoji svaki put kada dođe do upotrebe oružane sile između država ili do dugotrajnog oružanog nasilja

[12] *„Act of hostility. (16c) An event that may be considered an adequate cause of war; CASUS BELLI. – Also termed hostile act",* Bryan Garner, Black's Law Dictionary, 12th edition (2012), 43.

[13] *„Act of war. (17c) int'l law. An act considered sufficient cause for hostilities",* Bryan Garner, Black's Law Dictionary, 12th edition (2012), 31.

[14] The Geneva Conventions of August 1949.

između državnih vlasti i organizovanih oružanih grupa, ili između takvih grupa unutar jedne države".[15]

Navedeni princip je proširen kroz institut „prekograničnih nemeđunarodnih sukoba (*Extraterritorial Non-International Armed Conflict*)", koji označavaju „prekogranične unutrašnje oružane sukobe u kojima oružana grupa koja se bori protiv jedne države ima svoje glavno sedište i deluje, u većoj ili manjoj meri, sa teritorije susedne države („države domaćina")".[16]

Dakle, suština tog principa je da dozvoljava mogućnost da se određeno oružano delovanje tretira u okviru međunarodnog humanitarnog prava rezervisanog za unutrašnje sukobe (*non-international armed conflicts*), uprkos činjenici da takvi sukobi imaju „prekogranični karakter".

To bi u konkretnom slučaju značilo da bi se delovanje pokreta Ansar Alah moglo tretirati kao „neprijateljstva" u okviru „prekograničnog nemeđunarodnog sukoba", jer se radi o upotrebi oružane sile od strane „organizovane oružane grupe" i to van granica jedne države, međutim napadi Ansar Alaha na brodove u Crvenom moru nisu predstavljali prelivanje unutrašnjeg sukoba u Jemenu.

Naprotiv, delovanje Ansar Alaha nije bio deo građanskog rata u Jemenu, već je predstavljalo oružane napade usmerene da se utiče na Izrael, da se izraelska vlada prisili da obustavi operacije u Gazi.[17] Samim tim priroda oružanog delovanja Ansar Alaha je takva da se ona ne bi mogla okarakterisati kao „neprijateljstvo" u kontekstu međunarodnog humanitarnog prava, a samim tim ni u kontekstu FIDIC *Žute knjige* (1999).

Dodatno, upravo u političkoj pozadini i motivu delovanja pokreta Ansar Alah leži ključna distinkcija koja bi mogla olakšati opredeljivanje između kvalifikacije njegovog kao „neprijateljstva" ili kao „terorizma". Naime, iako ne postoji univerzalna, obavezujuća definicija terorizma u kontekstu međunarodnog humanitarnog prava, osnovne karakteristike terorizma podrazumevaju da se radi o činovima nasilja ili relevantnim pretnjama nasiljem koji su:

- usmereni protiv civila, civilne infrastrukture koji nisu povezani s bilo kojim oružanim sukobima ili neprijateljstvima;
- izvršene sa posebnom namerom da se zaplaši stanovništvo ili da se vlada ili međunarodna organizacija primoraju da preduzmu ili se uzdrže od preduzimanja određene radnje;
- motivisane političkim, verskim, ideološkim ili sličnim ciljevima.

[15] Anthony Cullen, *The Concept of Non-International Armed Conflict in International Humanitarian Law.* Cambridge: Cambridge University Press, 2010, 117–119, 136–139

[16] Pavle Kilibarda, *Globalization of Non-International Armed Conflicts, in The Grey Zone: Civilian Protection Between Human Rights and the Laws of War (eds. Mark Lattimer & Philippe Sands)*, Bloomsbury Publishing, 2018, 117–155.

[17] Yemen's Houthis 'will not stop' Red Sea attacks until Israel ends Gaza war, https://www.aljazeera.com/news/2023/12/19/yemens-houthis-will-not-stop-red-sea-attacks-until-israel-stops-gaza-war, poslednji put posećeno 26. 10. 2025. godine.

Takva karakterizacija odražena je u konvencijama, poput „Međunarodne konvencije o suzbijanju finansiranja terorizma".[18] Konkretno, član 2 te konvencije propisuje:

1. Bilo koje lice čini krivično delo u smislu ove konvencije ako takvo lice, bilo direktno ili indirektno, nezakonito i namerno, obezbeđuje ili prikuplja sredstva sa namerom da se ona upotrebe, ili sa znanjem da će biti upotrebljena, u celini ili delimično, radi izvršenja:

(a) dela koje predstavlja krivično delo u okviru i kako je definisano jednim od ugovora navedenih u aneksu; ili

(b) bilo kog drugog dela koje ima za cilj da izazove smrt ili tešku telesnu povredu civila ili bilo kog drugog lica koje ne učestvuje aktivno u neprijateljstvima u situaciji oružanog sukoba, kada je svrha takvog dela, po svojoj prirodi ili kontekstu, da zastraši stanovništvo ili da primora vladu ili međunarodnu organizaciju da preduzme ili se uzdrži od preduzimanja određene radnje.

Dodatno, konstitutivni elementi terorizma prepoznati su i u okviru Konvencije o suzbijanju protivpravnih radnji usmerenih protiv bezbednosti pomorske plovidbe, tzv. SUA Konvencija.[19] Ta konvencija usvojena 1988. godine i izmenjena Protokolom iz 2005, predstavlja temeljni međunarodni pravni instrument u borbi protiv terorizma na moru.

U članu 3(1) konvencija definiše sledeća dela kao krivična u kontekstu borbe protiv terorizma:

Svako lice čini krivično delo ako protivpravno i namerno:

(a) zauzme ili preuzme kontrolu nad brodom silom, pretnjom silom ili bilo kojim drugim vidom zastrašivanja;

(b) izvrši nasilni akt nad licem na brodu ako je ta radnja takve prirode da može ugroziti bezbednu plovidbu tog broda;

(c) uništi brod ili prouzrokuje štetu brodu ili njegovom teretu koja može ugroziti bezbednu plovidbu broda;

(d) postavi ili izazove postavljanje na brod, bilo kojim sredstvima, uređaja ili supstance koja može uništiti brod ili prouzrokovati štetu brodu ili njegovom teretu koja ugrožava ili je verovatno da će ugroziti bezbednu plovidbu broda;

(e) uništi ili ozbiljno ošteti pomorska navigaciona postrojenja ili ozbiljno ometa njihov rad, ako je verovatno da će takva radnja ugroziti bezbednu plovidbu broda;

(f) prenese informaciju za koju zna da je lažna, čime ugrožava bezbednu plovidbu broda;

(g) povredi ili ubije bilo koje lice u vezi sa izvršenjem ili pokušajem izvršenja bilo kog od dela navedenih u podtačkama (a) do (f).

[18] International Convention for the Suppression of the Financing of Terrorism (1999).

[19] Convention for the Suppression of Unlawful Acts of Violence Against Safety of Maritime Navigation (1988 and 2005).

Dodatno, član 3(2) predviđa da:

Svako lice takođe čini krivično delo ako:
pokuša da izvrši bilo koje od dela navedenih u stavu 1; ili
podstiče izvršenje bilo kog od dela navedenih u stavu 1 koje izvrši bilo koje lice, ili je na drugi način saučesnik licu koje izvrši takvo delo; ili
uputi pretnju, sa uslovom ili bez njega, kako je predviđeno nacionalnim zakonom, usmerenu ka primoravanju fizičkog ili pravnog lica da preduzme ili se uzdrži od preduzimanja određene radnje, radi izvršenja bilo kog od dela navedenih u stavu 1, podtačke (b), (c) i (e), ako je verovatno da će takva pretnja ugroziti bezbednu plovidbu određenog broda.

U svetlu javnih izjava pokreta predstavnika pokreta Ansar Alah, koji su napade opisali kao napore da se uvede blokada Izraela i njegovih saveznika, navodeći da će operacije trajati sve dok se rat u Gazi ne okonča, jasno je da je pomorska kriza u Crvenom moru prouzrokovana napadima na civilne brodove direktno povezana s političkim zahtevima upućenim državi Izrael. Stoga je očigledno da takvi akti predstavljaju pokušaj prisile da se država Izrael uzdrži od daljih vojnih aktivnosti u Gazi.

Ta povezanost između akta nasilja, njegovog civilnog pomorskog cilja i njegove političke pozadine mogla bi se okarakterisati kao terorizam prema relevantnim međunarodnim konvencijama.

Štaviše, iako ne postoji međunarodno priznata zvanična lista terorističkih grupa, Ujedinjene nacije su prepoznale prirodu delovanja pokreta Ansar Alah kao terorističku aktivnost. U Rezoluciji Saveta bezbednosti UN 2624 (2022),[20] Komitet za sankcije je snažno osudio prekogranične napade koje je izvršila „teroristička grupa Huti", uključujući napade na trgovačke brodove u Crvenom moru pomoću improvizovanih eksplozivnih naprava na vodi i morskih mina, kao i napade na civile i civilnu infrastrukturu u Saudijskoj Arabiji i Ujedinjenim Arapskim Emiratima.

Takve tvrdnje su u potpunosti u skladu s kriterijumima za definisanje terorizma utvrđenim u Rezoluciji Saveta bezbednosti UN 1566 (2004).[21] Naime, pomenuta rezolucija daje široko prihvaćenu radnu definiciju terorizma u okviru međunarodnog humanitarnog prava. Kako je navedeno u tački 3:

Krivična dela, uključujući i ona usmerena protiv civila, izvršena s namerom da se izazove smrt ili teška telesna povreda, ili uzimanje talaca, s ciljem da se izazove stanje terora u široj javnosti, u grupi ljudi ili prema određenim osobama, da se zastraši stanovništvo ili da se vlada ili međunarodna organizacija primoraju da preduzmu ili se uzdrže od preduzimanja određene radnje – a koja predstavljaju krivična dela u okviru i kako su definisana međunarodnim konvencijama i protokolima koji se odnose na terorizam – ni pod kojim okolnostima ne mogu

[20] UNSC Resolution 2624 (2022).
[21] UNSC Resolution 1566 (2004).

biti opravdana političkim, filozofskim, ideološkim, rasnim, etničkim, verskim ili bilo kojim sličnim razlozima.

Dakle, primenom navedenih međunarodnih normativnih okvira, na delovanje pokreta Ansar Alah, moglo bi se zaključiti da delovanje ove grupe u Crvenom moru ispunjavaju konstitutivne elemente terorizma, kao što su:

- namerno i sistematsko napadanje trgovačkih brodova i civilne infrastrukture;
- postajanje namere da se poremeti međunarodna trgovina i pomorska plovidba;
- postojanje namere da se izvrši politička prisila usmerena na uticanje politike suverenih trećih država.

Posledično, delovanje pokreta Ansar Alah u Crvenom moru ne može se kvalifikovati kao „neprijateljstva" u smislu potklauzule 17.3(a) FIDIC *Žute knjige* (1999), već kao akti terorizma koji su se odigrali van teritorije države u kojoj se realizuju radovi, te kao takvi ne aktiviraju ugovorni mehanizam odgovornosti naručioca.

V Viša sila

U međunarodnim komercijalnim ugovorima, koncept više sile (*force majeure*) ima ključnu ulogu u regulisanju posledica nepredviđenih okolnosti koje ugovorna strana nije mogla predvideti, izbeći niti sprečiti. Taj institut postoji kako bi se stranka koja zbog takvog događaja objektivno nije u stanju da ispuni svoje ugovorne obaveze oslobodila odgovornosti, pod strogim uslovima. Po pravilu, viša sila obuhvata prirodne katastrofe, ratna dejstva, postupke organa vlasti i druge poremećaje koji značajno onemogućavaju izvršenje ugovora, ali ne i uobičajene rizike poslovanja kao što su porast troškova, problemi s logistikom ili promena tržišnih uslova.

U tom duhu, FIDIC *Žuta knjiga* (1999) u potklauzuli 19.1 propisuje sledeće:
„Viša sila" je događaj ili okolnost koja:
(a) je van kontrole strane,
(b) koju ta strana nije mogla razumno predvideti pre potpisivanja ugovora,
(c) koja nije mogla biti razumno izbegnuta ili prevaziđena od strane te strane, i
(d) koja nije pretežno uzrokovana drugom stranom.
Viša sila može uključivati, ali nije ograničena na vanredne događaje ili okolnosti navedenog tipa, pod uslovom da su ispunjeni uslovi iz tačaka (a) do (d) iz prethodne definicije:
(i) rat, neprijateljstva (bez obzira na to da li je rat formalno objavljen), invazija, akti stranih neprijatelja,
(ii) pobuna, terorizam, revolucija, ustanak, vojna ili uzurpirana vlast, ili građanski rat,

(iii) nemiri, meteži, neredi, štrajk ili blokada od strane lica koja nisu deo izvođačevog osoblja niti zaposlenih kod izvođača ili podizvođača,
(iv) ratna sredstva, eksplozivne materije, jonizujuće zračenje ili kontaminacija radioaktivnošću, osim kada su ovi posledica delanja izvođača,
(v) prirodne katastrofe poput zemljotresa, uragana, tajfuna ili vulkanske aktivnosti.

U skladu s tim, da bi se pozivanje na višu silu smatralo osnovanim, neophodno je da postoji objektivna nesavladivost okolnosti i da se one kvalifikuju kao eksterni, vanredni i nepredvidivi događaji koji čine ispunjenje ugovorne obaveze nemogućim. Na tom principu počiva i opšta sudska i arbitražna praksa u pogledu tumačenja više sile, kako u domaćem tako i u međunarodnom kontekstu. S tim u vezi od značaja je serija slučajeva koji su tretirali nemogućnost plovidbe kroz Suec tokom 50-ih godina prošlog veka i u kojima je sudska praksa zauzela odgovarajuće stavove.

Naime, zatvaranje Sueckog kanala 1956. godine predstavljalo je odličan test za primenu doktrina više sile i nemogućnosti ispunjenja (*frustration*), te je tako sudska praksa proistekla iz tog događaja nedvosmisleno potvrdila načelo da puko povećanje troškova ili potreba za alternativnim putem izvršenja ne predstavljaju dovoljnu osnovu za oslobođenje od ugovornih obaveza usled više sile ili nemogućnosti ispunjenja.

Tako se u predmetu *Tsakiroglou*[22] sud bavio utvrđivanjem ispunjenosti preduslova za neispunjenje u ugovoru u kojem se prodavac obavezao da isporuči kikiriki iz Sudana u Hamburg preko Sueca. Nakon zatvaranja kanala, prodavac je tvrdio da je ispunjenje ugovora bilo nemoguće. Međutim, sud je utvrdio da je isporuka bila moguća alternativnom rutom oko Rta Dobre Nade, iako skuplja i duža, te da samim tim nije došlo do radikalne promene ugovornih obaveza. Dodatno, sud je utvrdio da je isporučilac bio dužan da snosi troškove preusmeravanja robe.

Slično, u predmetu *Transatlantic Financing*,[23] izvođač je zatražio dodatnu naknadu zbog povećanih troškova uzrokovanih zaobilaskom Afrike. Sud je zaključio da porast troškova od 14% nije dostigao prag komercijalne neizvodljivosti, jer je isporuka bila moguća i izvršena.

Dakle, navedeni slučajevi potvrđuju da otežano izvršenje, bilo kroz duži put, kašnjenje ili povećane troškove, ne ispunjava uslove za primenu više sile. Kako naglašava i profesor Kristof Bruner, okolnosti više sile nema u situacijama kada postoji razuman alternativni način izvršenja, osim ako je izričito dogovorena ekskluzivnost određene metode izvršenja.[24]

[22] *Tsakiroglou & Co Ltd v Noblee Thorl GmbH* [1962] AC 93 (HL).
[23] *Transatlantic Financing Corp. v. United States*, 363 F.2d 312 (D.C. Cir. 1966).
[24] Christoph Brunner, *Force Majeure and Hardship under General Contract Principles*, Kluwer Law International, 2009, 432–435.

Na taj način, moglo bi se zaključiti da doktrina više sile nije primenljiva u situaciji kada je izvođač preusmerio robu i tako izvršio svoju ugovornu obavezu, jer je uspeo da prevaziđe okolnost više sile.

VI Zaključak

Goreopisana hipotetička situacija dokazuje svu kompleksnost kada se ukrste privatno i javno pravo, pogotovo kada je reč o graničnim situacijama i pravnim institutima koje zahtevaju filigransku izverziranost i poznavanje šireg normativnog okvira.

U situaciji kada bi osiguravač izvođača ukinuo polisu osiguranja, usled koje bi izvođač morao da preusmeri transport svoje robe, pitanje ko bi po FIDIC *Žutoj knjizi* (1999) bio dužan da plati troškove takvog preusmeravanja, jeste izuzetno kompleksno i višedimenzionalno. Pre svega, odgovore treba tražiti na polju pravne kategorizacije delovanja pokreta Ansar Alah, te shodno tome razgraničiti da li se radi o aktima „neprijateljstva" ili „terorizma", odnosno da li se radi o događaju više sile i naposletku, utvrditi uzročno-posledičnu korelaciju između aktivnosti Ansar Alaha i nastalih troškova.

S tim u vezi, kada se uzme u razmatranje ugovorni okvir koji definiše FIDIC *Žuta knjiga* (1999), ipak je moguće opredeliti balans preuzetih rizika između ugovornih strana i izvući zaključak u pogledu obaveze snošenja troškova.

Dakle, u konkretnoj situaciji osnovne premise bi podrazumevale sledeće:

- Delovanje pokreta Ansar Alah predstavlja akte terorizma koji su se odigrali van teritorije gde se projekat realizuje;
- Troškovi koji su nastali usled preusmeravanja transporta ne predstavljaju troškove nadoknade gubitaka ili oštećenja na radovima, dobrima ili dokumentima izvođača;
- Nemogućnost plovidbe kroz Crveno more ne predstavlja događaj više sile, jer je izvođač imao na raspolaganju razuman alternativni način izvršenja ugovorne obaveze, što isključuje postojanje objektivne nemogućnosti izvršenja kao ključnog elementa više sile;
- Neposredan uzrok, odnosno adekvatan uzrok nastanka troškova preusmeravanja se nalazi u okolnosti ukidanja polise osiguranja, a ne u delovanju pokreta Ansar Alah.

Shodno prethodnom, moglo bi se rezonovati da bi u konkretnoj situaciji izvođač bio taj koji bi snosio trošak preusmeravanja transporta, a ne naručilac, zato što ugovorni mehanizam FIDIC *Žute knjige* (1999) definiše da izvođač ima pravo na naknadu troškova u situacijama kada:

- trošak nastane kao posledica otklanjanja oštećenja ili gubitka na radovima, dobrima ili dokumentima izvođača;

- se radi o ostvarenju rizika „neprijateljstva" (bez teritorijalnog ograničenja) ili o riziku terorizma (ali pod uslovom da se ovaj rizik ostvario u okviru teritorije gde se projekat realizuje);
- je reč o događaju više sile koji izvođač nije mogao da predvidi, spreči ili izbegne.

U svakom slučaju, hipotetički primer opisan u ovom radu pokazuje na koji način delatnost osiguranja, geopolitičke okolnosti, pomorski transport, industrija građevinarstva i normativni okviri poput FIDIC uslova ugovaranja mogu biti međusobno isprepletani i zavisni jedni od drugih.

Svako drugačije tumačenje dovelo bi do neprihvatljivog proširenja rizika naručioca i do derogacije osnovnog FIDIC principa prema kojem izvođač snosi komercijalne i logističke rizike koji ne proizlaze iz gubitka ili oštećenja radova, dobara ili dokumentacije.

Stoga je neophodno pažljivo secirati svaku kariku u lancu između uzroka i posledice kako bi se utvrdilo koja ugovorna strana snosi koji rizik.

Literatura

- Abrahamson M., Risk Management, International Construction Law Review, Vol. 1, 1984,
- Brunner, C., Force Majeure and Hardship under General Contract Principles, Kluwer Law International, 2009,
- Bunni N., Risk and Insurance in Construction (second edition), Spon Press, London, 2003,
- Baker E., Mellors B., Chalmers S., Lavers A., FIDIC CONTRACTS: Law and Practice, Routledge, London i Njujork, 2009
- Cullen A., The Concept of Non-International Armed Conflict in International Humanitarian Law. Cambridge: Cambridge University Press, 2010.
- FIDIC Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Works and for Building and Engineering Works Designed by the Contractor (First Edition 1999)
- Robinson D., A Contractor`s Guide to the FIDIC Conditions of Contract, Wiley-Blackwell,West Sussex, 2011
- Talaat Izatul W., Causa Proxima Non Remota Spectatur: The Doctrine of Causation in Marine Insurance, J. Mar. Law & Commerce 34:521, 2003,
- Widmer P., Causation under Swiss Law. In: Jaap Spier (ed.), Unification of Tort Law: Causation, Kluwer Law International, The Hague, 2000,
- Kilibarda P., Globalization of Non-International Armed Conflicts, in The Grey Zone: Civilian Protection Between Human Rights and the Laws of War (eds. Mark Lattimer & Philippe Sands), Bloomsbury Publishing, 2018

PROPISI

- International Convention for the Suppression of the Financing of Terrorism (1999)
- Convention for the Suppression of Unlawful Acts of Violence Against Safety of Maritime
- Navigation (1988 and 2005)
- UNSC Resolution 2624 (2022)
- UNSC Resolution 1566 (2004)

SUDSKA PRAKSA

- Leyland Shipping Co v. Norwich Union Fire Insurance Society [1918] AC 350, 369 (HL).
- Tsakiroglou & Co Ltd v Noblee Thorl GmbH [1962] AC 93 (HL).
- Transatlantic Financing Corp. v. United States, 363 F.2d 312 (D.C. Cir. 1966).

INTERNET IZVORI

- "Red Sea insurance soars after deadly Houthi ship attacks", https://www.reuters.com/business/autos-transportation/red-sea-insurance-soars-after-deadly-houthi-ship-attacks-2025-07-10/, poslednji put posećeno 24. 10. 2025
- Yemen's Houthis 'will not stop' Red Sea attacks until Israel ends Gaza war, https://www.aljazeera.com/news/2023/12/19/yemens-houthis-will-not-stop-red-sea-attacks-until-israel-stops-gaza-war, poslednji put posećeno 26. 10. 2025. godine

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ARMED ACTIONS AS AN INSURED RISK UNDER FIDIC CONTRACTS – A REFLECTION ON HOUTHI OPERATIONS IN THE RED SEA

REVIEW SCIENTIFIC PAPER

Abstract

In this paper, the authors highlight the challenges inherent in legally distinguishing between the concepts of "risk of hostilities" and "risk of terrorism" in situations where the use of armed force leads to the rerouting of equipment transportation under a contract based on the FIDIC General Conditions (the "Yellow Book", 1999 edition).[2] In this context, the paper analyzes the legal implications of altering the route of goods transportation within a construction project to be carried out in Serbia, as a consequence of maritime attacks conducted between 2023 and 2025 in the Red Sea area by the Yemeni Houthis, namely their military-political wing, the "*Ansar Allah*" movement. Taking as its factual framework a scenario in which the transport of equipment must be rerouted due to the actions of "Ansar Allah" and the consequent cancellation of a cargo insurance policy, the authors examine the potential practical consequences of the legal characterization of such conduct. In this regard, the paper addresses the interrelationship between the termination of insurance coverage and the contractual consequences arising under the FIDIC Yellow Book (1999).

Keywords: *risk, terrorism, hostilities, Houthis, FIDIC.*

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[2] Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Works and for Building and Engineering Works Designed by the Contractor (First Edition 1999).

I Introduction

The altered geopolitical landscape in the Middle East and the increased risks in maritime traffic through the Red Sea, arising after the terrorist attack carried out by the „Islamic Resistance Movement", i.e. „*Hamas*" the territory of Israel on 7 October 2023 and the subsequent escalation of the Israeli–Palestinian conflict, have caused significant disruptions in international supply chains, the effects of which have also been felt on the domestic market. In particular, attacks by the „Ansar Allah" movement, an armed formation of the Yemeni Houthi ethnic group, against commercial vessels and tankers in the Red Sea and the Gulf of Aden region have considerably complicated maritime navigation along that segment of the route, leading to substantial disturbances in the insurance market, the effects of which continue to be felt.[3]

Such developments could potentially have significant legal implications for the implementation of infrastructure projects in the Republic of Serbia, particularly with respect to the delivery of capital equipment as an integral component of numerous construction undertakings.

In this context, situations in which the contractor would be required to reroute the delivery of equipment due to security risks, coupled with the cancellation of an insurance policy under which insurers had covered transport risks through the Red Sea, would raise a number of issues concerning the contractual allocation of risk between the employer and the contractor. Such situations would also give rise to questions regarding the consequential allocation of additional costs incurred as a result of rerouting the delivery along a longer and more expensive transport route.

With regard to the contractual framework established by the FIDIC "Yellow Book" (1999 edition), and FIDIC standard forms of contract in general,[4] the answers to the foregoing questions depend on several factors:

1. How the described risks are allocated between the employer and the contractor;
2. Whether the described circumstances qualify as force majeure.
3. The existence and scope of the causal link between the described events and the costs incurred.

Accordingly, this paper proceeds from the premise that the additional costs of rerouting equipment transportation, arising from the cancellation of cargo insurance due to security risks associated with attacks by the „Ansar Allah" movement, ne predstavljaju trošak koji se po FIDIC „Žutoj knjizi" (1999) može prebaciti na naručioca.

[3] "Red Sea insurance soars after deadly Houthi ship attacks", https://www.reuters.com/business/autos-transportation/red-sea-insurance-soars-after-deadly-houthi-ship-attacks-2025-07-10/, last visited on 24 October 2025

[4] Michael D. Robinson, *A Contractor`s Guide to the FIDIC Conditions of Contract,* Wiley-Blackwell, West Sussex, 2011, 85.

do not constitute a cost that may, under the FIDIC Yellow Book (1999), be shifted to the employer. The authors argue that, in such circumstances, the situation amounts to the materialization of a commercial risk borne by the contractor, rather than the realization of an Employer's Risk within the meaning of Sub-Clauses 17.3 and 17.4, nor does it constitute a force majeure event within the meaning of Sub-Clause 19.1.

II Contractual framework

The FIDIC General Conditions base the allocation of risk on well-established and widely accepted principles of fairness.[5] In accordance with these principles, a particular risk should be borne by the contracting party that is in the best position to control such risk, manage it efficiently, reasonably foresee its consequences, or adequately insure against it. This concept of risk allocation reflects a theoretical approach that has been systematized beyond FIDIC practice,[6] and subsequently accepted and normatively incorporated into modern international standard forms of contract.

In this regard, the contractual provisions governing the allocation of risk between the parties under the FIDIC "Yellow Book" (1999 edition) are set out in Sub-Clauses 17.3 and 17.4 and are structured as follows:

> ***17.3 Employer's Risks***
> *The risks referred to in Sub-Clause 17.4 below are:*
> *(a) war, **hostilities** (whether war be declared or not), invasion, act of foreign enemies,*
> *(b) rebellion, **terrorism**, revolution, insurrection, military or usurped power, or civil war, within the Country,*
> *(c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Sub-contractors,*
> *(d) munitions of war, explosive materials, ionising radiation or contamination by radioactivity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,*
> *(e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,*
> *(f) use or occupation by the Employer of any part of the Permanent Works, exceptas may be specified in the Contract,*
> *(g) design of any part of the Works by the Employer's Personnel or by others for whom the Employer is responsible, if any, and*

[5] Nael G. Bunni, *Risk and Insurance in Construction* (second edition), Spon Press, London, 2003, 137.
[6] Max Abrahamson, *Risk Management*, International Construction Law Review, Vol. 1, 1984, 241–264.

(h) any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precaution.

17.4 Consequences of Employer's Risks

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

(b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (f) and (g) of Sub-Clause 17.3 [Employer's Risks], reasonable profit on the Cost shall also be included.

After receiving this further notice, the Engineer shall proceed in accordance with SubClause 3.5 [Determinations] to agree or determine these matters.

In light of the foregoing, the cited contractual provisions place emphasis on the following aspects:

- The explicit definition of events or circumstances deemed to constitute Employer's Risks;
- The differentiation of risks based on the criterion of territoriality, whereby certain risks (such as terrorism) are considered Employer's Risks only if they occur in the Country where the Works are executed, while other risks (war, hostilities, acts of foreign enemies) are treated as Employer's Risks irrespective of the place of their occurrence;
- The definition of consequences where "Employer's Risks" result in "loss or damage" to the Contractor's "Works, Goods or Contractor's Documents."

As can be seen, the contractual provisions remain silent as to the consequences arising from the materialization of "commercial risks," such as the unilateral cancellation of a cargo insurance policy by insurers under which the contractor insures the transport of equipment, i.e. Goods.

Accordingly, in situations where insurers exercise their, in practice frequently invoked, right to terminate coverage under cargo insurance policies due to the activities of groups such as „Ansar Allah",[7] the question arises as to what consequences

[7] Institutional "War" and "Strike" clauses contain provisions granting insurers the option, at their discretion and subject to compliance with the relevant preconditions, to withdraw or terminate coverage.

such termination would have on the contractual allocation of risk and the ensuing distribution of costs between the employer and the contractor.

III Commercial risk *vs* risk of loss or damage

Given that the rerouting of goods does not entail any loss of or damage to the goods themselves, it may be concluded that the costs arising from such circumstances represent the materialization of a commercial, i.e. economic, risk. Consequently, the preconditions for the application of the contractual mechanism set out in Sub-Clause 17.4 of the FIDIC "Yellow Book" (1999 edition) would not be satisfied.

In this respect, it is necessary to determine the adequate cause giving rise to the additional costs. In such situations, the cause would not lie in any physical damage to or destruction of the goods, but rather in the extended transport route. In other words, it must be examined whether the rerouting of goods would trigger the consequences contemplated by Sub-Clause 17.4 of the FIDIC Yellow Book, in particular the provision entitling the Contractor to recover additional costs resulting from „loss or damage to the Works, Goods or Contractor's Documents", caused by an Employer's Risk.

Guided by the Latin maxim *„causa proxima non remota spectatur"*[8], one could conclude that the direct causal link would be established between the cancellation of the insurance policy, as the immediate event preventing the contractor from carrying out transportation through the Red Sea, and the additional costs incurred, rather than between the activities of *„Ansar Alah*" (which would constitute a remote cause) and the rerouting costs. Accordingly, in such a scenario, the contractor's costs would not arise from the rectification of loss or damage to the equipment caused by the activities of "*Ansar Alah*" (as stipulated by Sub-Clause 17.4. of the FIDIC „Yellow Book" (1999), but rather from the materialization of a commercial risk, such as the insurer's decision to withdraw coverage and thereby prevent transportation through the Red Sea region.

It is important to emphasize that the risk of cancellation of an insurance policy, which constitutes the dominant cause of the additional costs arising from the consequent change in the transport route, is not recognized under the FIDIC "Yellow Book" (1999) as a risk whose consequences are to be borne by the Employer, nor does it establish a contractual framework that would assist in determining which party should bear such costs.

Accordingly, the costs incurred due to rerouting do not fall within the scope of the Employer's liability as defined in Sub-Clause 17.4 of the FIDIC Yellow Book (1999), since they do not result from loss of or damage to the Works, Goods,

[8] Wan Izatul Asma Wan Talaat, *Causa Proxima Non Remota Spectatur: The Doctrine of Causation in Marine Insurance*, J. Mar. Law & Commerce 34:521 (2003), 495-502.

or Contractor's Documents, but rather from the insurer's decision to withdraw cargo coverage due to heightened security risks.

Such an approach would be consistent with the concept of the efficient proximate cause as developed in the common law tradition. Namely, in the decision of the House of Lords in *Leyland Shipping Co v. Norwich Union Fire Insurance Society (1918)*, the rule was established that the efficient cause is the cause that is most effective, rather than the one that is temporally closest to the consequence.[9] In other words, *causa proxima* refers to the dominant and operative cause of the damage, not necessarily the last event in chronological sequence. This approach has become a standard in contemporary common law jurisprudence through the application of the so-called efficient cause test. It marked a shift from a purely temporal criterion to a substantive criterion of causal dominance. Courts no longer focus solely on the final event in the causal chain, but instead identify the cause that most significantly contributed to the loss, that is, the cause that was decisive in setting the other causes in motion and in producing the damage. Applying the efficient or adequate cause test in the present context leads to the conclusion that the insurer's decision to withdraw cargo coverage constituted the legally relevant and dominant cause of the additional costs incurred, whereas the activities of "*Ansar Alah*" had the character of a remote, indirect cause which, in itself, did not produce any loss of or damage to the contractor's goods.

Moreover, continental legal systems, including Swiss and German law, apply the test of "adequate causation," which assesses whether, according to ordinary experience, a particular cause is capable of producing the damage in question. In these jurisdictions, causation is determined on the basis of the foreseeability and typicality of the causal link, rather than on the formal proximity of an event to the damage. The legally decisive cause is the one which, in the ordinary course of events, may be regarded as sufficiently significant and foreseeable to bring about the loss sustained. This concept, known as „*adäquate Kausalität*", operates as a normative filter excluding from liability those causes that are excessively exceptional or atypical in the circumstances of the case.[10]

Accordingly, it may be argued that the causal chain between the activities of "*Ansar Allah*" ,the cancellation of the insurance policy due to navigational insecurity, and the consequent increase in costs resulting from the rerouting of transport does not fall within the contractual framework defined in Sub-Clause 17.4 of the FIDIC "Yellow Book" (1999) because there is no direct link between an employer's risk and the additional costs incurred due to rerouting, which arose from the withdrawal of insurance coverage and the resulting impossibility of carrying out transportation along the originally planned route.

[9] Leyland Shipping Co v. Norwich Union Fire Insurance Society [1918] AC 350, 369 (HL).

[10] Widmer Pierre, *Causation under Swiss Law." In: Jaap Spier (ed.), Unification of Tort Law: Causation*, Kluwer Law International, The Hague, 2000, 105–122.

IV Terrorism or hostilities

With regard to the contractual qualification of the actions of the Houthis, it should be borne in mind that Sub-Clause 17.3 of the FIDIC "Yellow Book" (1999) draws a significant distinction between situations categorized as "hostilities" and those treated as "terrorism". Specifically, in the case of "hostilities," the Employer bears the risk if such "hostilities" result in "loss of or damage to the Works, Goods or Contractor's Documents," without any territorial limitation. Conversely, in the case of terrorism, the same sub-clause provides that the risk falls upon the Employer only if the act of terrorism occurs within the territory, i.e. the Country, where the project is being executed.

hen this contractual framework is placed in the context of the factual developments in the Red Sea and Gulf of Aden region, a complex interpretative issue arises: whether the actions of "Ansar Allah" would qualify as an "act of hostility" or as "terrorism", because, in the first scenario, the burden would lie with the Employer irrespective of where the hostilities occur, whereas in the case of terrorism, the Employer would bear the risk only if the terrorist acts took place in the Country where the project is carried out.

Interpreting the etymological meaning of the term "hostilities" as well as the shown phrase "act of hostility," one could conclude that it denotes "an event that may be considered a sufficient cause for war; CASUS BELLI.[11]

Furthermore, if one builds upon the definition of the term "act of war", it yields the meaning of "an act regarded as sufficient cause for hostilities."[12]

Taken together, these definitions suggest that "hostilities," in the legal sense, denote conduct amounting to a *casus belli*, i.e. a cause for war in the manner in which war is categorized under international humanitarian law.

It is worth nothing that Common Article 2 of the Geneva Conventions from 1949,[13] defines an international armed conflict as„ all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them For the sake of clarity, the term "High Contracting Parties" refers exclusively to sovereign states that have ratified the Conventions, including the Republic of Yemen, on whose territory "Ansar Allah" operates.

However, it must be borne in mind that "Ansar Allah", nor Houthis as an ethnic group, possess the status of a high contracting party, nor can they be regarded under

[11] *"Act of hostility. (16c) An event that may be considered an adequate cause of war; CASUS BELLI. – Also termed hostile act."*, Bryan Garner, Black's Law Dictionary, 12th edition (2012), 43.

[12] *"Act of war. (17c) int'l law. An act considered sufficient cause for hostilities"*, Bryan Garner, Black's Law Dictionary, 12th edition (2012), 31.

[13] The Geneva Conventions of August 1949.

international law as the legitimate representative of the state of Yemen. The internationally recognized Yemeni government, embodied in the Presidential Leadership Council („*Presidential Leadership Council – PLC*") based in Aden, constitutes the sole sovereign entity authorized to act on behalf of the Republic of Yemen.

Consequently, the actions of "Ansar Allah" could not be characterized as forming part of an "international armed conflict", nor as "hostilities" within the meaning of international humanitarian law (and by that neither in the meaning of the FIDIC „Yellow Book" (1999)).

Additionally, attention should be drawn to the category of so-called "cross-border non-international armed conflict", a concept derived from the broader notion of "non-international armed conflicts "

International humanitarian law recognizes that armed conflicts may involve non-state actors, particularly in the context of civil wars, on the understanding that „an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State ".[14]

This principle has been further developed through the concept of „*Extra-territorial Non-International Armed Conflict*", referring to "cross-border internal armed conflicts in which an armed group fighting a State is primarily (or to a large extent) based and operates from the territory of a neighbouring State (the "host State")".[15]

Thus, the essence of this principle lies in allowing certain armed conduct to be treated within the framework of international humanitarian law applicable to non-international armed conflicts, notwithstanding the fact that such conflicts may have a "cross-border dimension".

In the present context, this could suggest that the actions of "Ansar Allah" might be characterized as "hostilities" within a "cross-border non-international armed conflict", given that they involve the use of armed force by an "organized armed group" operating beyond the borders of a single State. However, the attacks carried out by "Ansar Allah" against vessels in the Red Sea did not constitute a "spillover" of the internal armed conflict in Yemen.

On the contrary, the actions of "*Ansar Alah*" were not part of the Yemeni civil war, but rather consisted of armed attacks aimed at influencing — or compelling — the Government of Israel to cease its operations in Gaza.[16] Accordingly, the nature

[14] Anthony Cullen, *The Concept of Non-International Armed Conflict in International Humanitarian Law.* Cambridge: Cambridge University Press, 2010. str 117–119, 136–139.

[15] Pavle Kilibarda, *Globalization of Non-International Armed Conflicts," in The Grey Zone: Civilian Protection Between Human Rights and the Laws of War (eds. Mark Lattimer & Philippe Sands)*, Bloomsbury Publishing, 2018, 117–155.

[16] Yemen's Houthis 'will not stop' Red Sea attacks until Israel ends Gaza war, https://www.aljazeera.com/news/2023/12/19/yemens-houthis-will-not-stop-red-sea-attacks-until-israel-stops-gaza-war, last time accessed on 26.10.2025.

of such armed conduct does not lend itself to classification as "hostilities" within the meaning of international humanitarian law, and therefore not within the meaning of the FIDIC "Yellow Book" (1999).

Moreover, it is precisely the political background and motive underlying the actions of "Ansar Allah" that provides the key distinction facilitating the determination of whether such conduct should be qualified as "hostilities" or as "terrorism.".

Although there is no universally binding definition of terrorism under international humanitarian law, its core characteristics are generally understood to encompass acts of violence or credible threats of violence which are:

- Directed against civilians or civilian infrastructure and are not connected to any armed conflict or hostilities;
- Committed with the specific intent to intimidate a population or to compel a government or international organization to take, or refrain from taking, a particular action;
- Motivated by political, religious, ideological, or similar objectives.

This characterization is reflected in international conventions such as the "International Convention for the Suppression of the Financing of Terrorism".[17] In particular, Article 2 of that Convention provides:

„Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act…".

Furthermore, the constituent elements of terrorism are also recognized within the framework of the "Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation", i.e. „SUA" Convention.[18] Adopted in 1988 and amended by the 2005 Protocol, this Convention represents a foundational international legal instrument in the fight against maritime terrorism.

Article 3(1) of the Convention defines the following acts as criminal offences in the context of combating terrorism:

[17] International Convention for the Suppression of the Financing of Terrorism (1999).

[18] Convention for the Suppression of Unlawful Acts of Violence Against Safety of Maritime Navigation (1988 and 2005).

„Any person commits an offence if that person unlawfully and intentionally:
(a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
(b) performs an act of violence against a person on board a ship if act is likely to endanger the safe navigation of that ship; or
(c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
(d) places or causes to be placed on a ship, by any means whatsoever, device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
(e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
(f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
(g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f)."

Additionaly, article 3(2) stipulates:

„Any person also commits an offence if that person:
(a) attempts to commit any of the offences set forth in paragraph 1; or
(b) abets the commission of any of the offences set forth in paragraph perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
(c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences setforth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.."

In light of public statements made by representatives of "*Ansar Alah*", who described the attacks as efforts to impose a blockade on Israel and its allies, stating that operations would continue until the war in Gaza ends, it is evident that the maritime crisis in the Red Sea, caused by attacks on civilian vessels, is directly linked to political demands addressed to the State of Israel. It therefore appears clear that such acts constitute an attempt to compel the State of Israel to refrain from further military activities in Gaza.

This nexus between the act of violence, its civilian maritime target, and its political motivation may be characterized as terrorism under the relevant international conventions.

Moreover, although there is no universally binding official list of terrorist organizations at the international level, the United Nations has recognized the nature of the activities of "*Ansar Allah*" as terrorist. In UN Security Council Resolution 2624 (2022),[19] the Sanctions Committee strongly condemned cross-border attacks carried out by the "Houthi terrorist group," including attacks on commercial vessels in the Red Sea using water-borne improvised explosive devices and naval mines, as well as attacks against civilians and civilian infrastructure in Saudi Arabia and the United Arab Emirates.

Such assertions are fully consistent with the criteria for defining terrorism set out in UN Security Council Resolution 1566 (2004).[20] That resolution provides a widely accepted working definition of terrorism within the framework of international law. As stated in paragraph 3:

> *„Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature."*

Therefore, applying these international normative frameworks to the conduct of "Ansar Allah", it may be concluded that the group's actions in the Red Sea satisfy the constituent elements of terrorism, namely:

- the intentional and systematic targeting of commercial vessels and civilian infrastructure,
- the existence of intent to disrupt international trade and maritime navigation,
- the existence of intent to exert political coercion aimed at influencing the policies of sovereign third States.

Accordingly, the actions of Ansar Allah in the Red Sea cannot be qualified as "hostilities" within the meaning of Sub-Clause 17.3(a) of the FIDIC "Yellow Book" (1999), but rather as acts of terrorism occurring outside the territory of the Country in which the Works are executed, and therefore do not trigger the contractual mechanism of employer's liability.

[19] UNSC Resolution 2624 (2022).
[20] UNSC Resolution 1566 (2004).

V Force majeure

In international commercial contracts, the concept of force majeure plays a pivotal role in regulating the consequences of unforeseen circumstances which a contracting party could neither foresee, avoid, nor overcome. This doctrine exists to relieve a party from liability where, due to such an event, it is objectively unable to perform its contractual obligations, subject to strict conditions. As a rule, force majeure encompasses natural disasters, acts of war, governmental actions, and other disruptions that substantially prevent contractual performance, but does not extend to ordinary business risks such as increased costs, logistical difficulties, or changes in market conditions..

In this spirit, Sub-Clause 19.1 of the FIDIC "Yellow Book" (1999 edition) provides as follows:

In this Clause, "Force Majeure" means an exceptional event or circumstance:
(a) which is beyond a Party's control,
(b) which such Party could not reasonably have provided against before entering into the Contract,
(c) which, having arisen, such Party could not reasonably have avoided or overcome, and
(d) which is not substantially attributable to the other Party.
Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:
(i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
(ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
(iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
(iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
(v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

Accordingly, for reliance on force majeure to be considered justified, it is necessary that the circumstances be objectively insurmountable and qualify as external, extraordinary, and unforeseeable events rendering performance of the contractual obligation impossible. This principle underlies both judicial and arbitral practice in the interpretation of force majeure, in domestic as well as international contexts. In this regard, particular significance attaches to a series of cases addressing

the impossibility of navigation through the Suez Canal during the 1950s, in which courts adopted clear and instructive positions.

The closure of the Suez Canal in 1956 provided a significant test for the application of the doctrines of force majeure and frustration, and the case law that emerged from that event unequivocally confirmed the principle that a mere increase in costs or the necessity of an alternative method of performance does not constitute sufficient grounds for release from contractual obligations on the basis of force majeure or frustration.

In *Tsakiroglou* case,[21] the court examined whether the preconditions for frustration were satisfied in a contract under which the seller had undertaken to deliver peanuts from Sudan to Hamburg via the Suez Canal. Following the canal's closure, the seller argued that performance had become impossible. The court, however, held that delivery remained possible via an alternative route around the Cape of Good Hope, albeit longer and more expensive, and that no radical change in the contractual obligation had occurred. It further determined that the seller was required to bear the additional costs of rerouting.

Similarly, in *Transatlantic Financing* case,[22] the contractor sought additional compensation due to increased costs resulting from the detour around Africa. The court concluded that a 14% increase in costs did not reach the threshold of commercial impracticability, as performance remained possible and was in fact completed.

Thus, the above cases confirm that impeded performance, whether in the form of a longer route, delay, or increased costs, does not satisfy the requirements for the application of force majeure. As Professor Christoph Brunner likewise emphasizes, force majeure does not exist where a reasonable alternative mode of performance is available, unless the parties have expressly agreed on the exclusivity of a particular method of performance.[23]

Accordingly, it may be concluded that the doctrine of force majeure would not be applicable in a situation where the contractor reroutes the goods and thereby performs its contractual obligation, as the contractor has, in such circumstances, successfully overcome the alleged force majeure event.

VI Conclusion

The hypothetical scenario described above illustrates the complexity that arises at the intersection of private and public law, particularly in borderline situations involving legal concepts that require a nuanced and sophisticated understanding of the broader normative framework.

[21] *Tsakiroglou & Co Ltd v Noblee Thorl GmbH* [1962] AC 93 (HL).

[22] *Transatlantic Financing Corp. v. United States*, 363 F.2d 312 (D.C. Cir. 1966).

[23] Christoph Brunner, *Force Majeure and Hardship under General Contract Principles*, Kluwer Law International, 2009, 432–435.

In a situation where the contractor's insurer withdraws cargo coverage, thereby compelling the contractor to reroute the transport of goods, the question of who, under the FIDIC "Yellow Book" (1999), is obliged to bear the costs of such rerouting is exceptionally complex and multidimensional.

First and foremost, the answer depends on the proper legal qualification of the actions of "Ansar Allah", namely, whether they constitute acts of "hostilities" or "terrorism," whether they amount to a force majeure event, and, ultimately, whether a legally relevant causal link exists between the activities of "Ansar Allah" and costs incurred..

Within the contractual framework established by the FIDIC "Yellow Book" (1999 edition), however, it remains possible to delineate the balance of risks assumed by the contracting parties and to draw a reasoned conclusion regarding the allocation of the additional costs.

Therefore, in the specific scenario at hand, the fundamental premises would include the following:

- The actions of the "Ansar Allah" movement constitute acts of terrorism that occurred outside the territory where the project is being implemented;
- The costs incurred as a result of rerouting the transport do not constitute costs for remedying loss of or damage to the Works, Contractor's Goods, or Contractor's Documents;
- The inability to navigate through the Red Sea does not amount to a force majeure event, as the Contractor had at its disposal a reasonable alternative means of performing its contractual obligation, thereby excluding the existence of objective impossibility of performance as a key element of force majeure;
- The immediate, i.e., adequate cause of the rerouting costs lies in the termination of the insurance policy, and not in the actions of the "Ansar Allah" movement.

In light of the foregoing, it may be reasoned that, in the given scenario, the Contractor would bear the cost of rerouting the transport, rather than the Employer, since the contractual mechanism under the FIDIC Conditions of Contract for Plant and Design-Build (the "Yellow Book", 1999) provides that the Contractor is entitled to additional payment only in situations where:

- the cost arises as a consequence of remedying loss of or damage to the Works, Contractor's Goods, or Contractor's Documents;
- the relevant risk constitutes "hostilities" (without territorial limitation) or terrorism (provided that such risk materializes within the territory where the project is being carried out);
- the event qualifies as force majeure which the Contractor could not reasonably foresee, prevent, or avoid.

In any event, the hypothetical example described in this paper demonstrates how the insurance industry, geopolitical circumstances, maritime transport, the construction industry, and normative frameworks such as the FIDIC Conditions of Contract may be intricately interconnected and mutually dependent.

Any alternative interpretation would result in an unacceptable extension of the Employer's risk allocation and a derogation from the fundamental FIDIC principle that the Contractor bears commercial and logistical risks which do not stem from loss of or damage to the Works, Goods, or Documents.

Accordingly, it is necessary to carefully "dissect" each link in the chain between cause and effect in order to determine which contractual party ultimately bears the relevant risk.

Literature

- Abrahamson M., Risk Management, International Construction Law Review, Vol. 1, 1984,
- Brunner, C., Force Majeure and Hardship under General Contract Principles, Kluwer Law International, 2009,
- Bunni N., Risk and Insurance in Construction (second edition), Spon Press, London, 2003,
- Baker E., Mellors B., Chalmers S., Lavers A., FIDIC CONTRACTS: Law and Practice, Routledge, London i Njujork, 2009
- Cullen A., The Concept of Non-International Armed Conflict in International Humanitarian Law. Cambridge: Cambridge University Press, 2010.
- FIDIC Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Works and for Building and Engineering Works Designed by the Contractor (First Edition 1999)
- Robinson D., A Contractor`s Guide to the FIDIC Conditions of Contract, Wiley-Blackwell,West Sussex, 2011
- Talaat Izatul W., Causa Proxima Non Remota Spectatur: The Doctrine of Causation in Marine Insurance, J. Mar. Law & Commerce 34:521, 2003,
- Widmer P., Causation under Swiss Law. In: Jaap Spier (ed.), Unification of Tort Law: Causation, Kluwer Law International, The Hague, 2000,
- Kilibarda P., Globalization of Non-International Armed Conflicts, in The Grey Zone: Civilian Protection Between Human Rights and the Laws of War (eds. Mark Lattimer & Philippe Sands), Bloomsbury Publishing, 2018

REGULATIONS

- International Convention for the Suppression of the Financing of Terrorism (1999)
- Convention for the Suppression of Unlawful Acts of Violence Against Safety of Maritime Navigation (1988 and 2005)
- UNSC Resolution 2624 (2022)
- UNSC Resolution 1566 (2004)

CASE LAW

- Leyland Shipping Co v. Norwich Union Fire Insurance Society [1918] AC 350, 369 (HL).
- Tsakiroglou & Co Ltd v Noblee Thorl GmbH [1962] AC 93 (HL).
- Transatlantic Financing Corp. v. United States, 363 F.2d 312 (D.C. Cir. 1966).

INTERNET SOURCES

- "Red Sea insurance soars after deadly Houthi ship attacks", https://www.reuters.com/business/autos-transportation/red-sea-insurance-soars-after-deadly-houthi-ship-attacks-2025-07-10/, last visited on 24.10.2025.
- Yemen's Houthis 'will not stop' Red Sea attacks until Israel ends Gaza war, https://www.aljazeera.com/news/2023/12/19/yemens-houthis-will-not-stop-red-sea-attacks-until-israel-stops-gaza-war, last visited on 26.10.2025.

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Strahinja Sarić[1]

ZAŠTITA POTROŠAČA USLUGA OSIGURANJA U ENGLESKOM PRAVU

PREGLEDNI NAUČNI RAD

Apstrakt

Autor u radu analizira pravnu zaštitu potrošača usluga osiguranja u engleskom pravu, s posebnim osvrtom na prirodu i domet predugovorne dužnosti informisanja. Polazeći od važećeg pravnog okvira koji se u velikoj meri oslanja na regulatorna pravila, ukazuje na određene strukturne nedostatke u pogledu pravne izvesnosti, transparentnosti i efikasnosti u zaštiti potrošača u oblasti osiguranja. Osnovna hipoteza rada je da takvo oslanjanje na podzakonske, pre svega administrativne izvore prava, umesto na sveobuhvatno zakonsko regulisanje dužnosti predugovornog informisanja, dovodi do necelovite i manje predvidive zaštite potrošača. Radi potpunijeg uvida, englesko rešenje upoređeno je sa sistemom nemačkog prava, u kome Zakon o ugovoru o osiguranju nudi koherentan, transparentan i za potrošače pristupačan normativni okvir. Polazeći od prethodno sprovedene analize, u poslednjem delu rada autor predlaže rešenja koja bi omogućila efikasniju i pravno izvesniju zaštitu potrošača usluga osiguranja u engleskom pravu.

Ključne reči: zaštita potrošača usluga osiguranja, predugovorno informisanje, dužnost informisanja, načelo krajnje dobre vere, englesko pravo.

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I Uvod

Zaštita potrošača jedan je od temeljnih postulata savremenog ugovornog prava, pogotovo u oblasti usluga od šireg javnog interesa kao što je osiguranje. Ugovori o osiguranju, zbog svoje specifične strukture, informacione asimetrije i relativno standardizovanog sadržaja, stavljaju osiguranike, kao slabije ugovorne strane, u položaj povećanog rizika u pogledu razumevanja i pravne sigurnosti.[2] Upravo zbog toga, način na koji pravni sistem uređuje dužnost međusobnog informisanja ugovornih strana pre zaključenja ugovora od suštinskog je značaja za obezbeđivanje transparentnosti i efektne zaštite obe ugovorne strane, a naročito potrošača.

Englesko pravo u ovom domenu odstupa od klasičnog modela sveobuhvatne zakonske kodifikacije, karakterističnog za kontinentalne sisteme. Umesto jasno propisanih zakonskih normi o međusobnim dužnostima ugovornih strana kod ugovora o osiguranju, ono se u velikoj meri oslanja na regulatorni okvir koji uspostavlja Telo za finansijski nadzor (engl. *Financial Conduct Authority* – FCA), pre svega pravilima sadržanim u Priručniku za poslovanje u oblasti osiguranja (engl. *Insurance: Conduct of Business Sourcebook – ICOBS*).[3] Takvo rešenje otvara pitanja pravne izvesnosti za potrošače, efikasnosti sredstava putem kojih se utiče na smanjenje informacione asimetrije, kao i doslednosti u primeni i zaštiti prava potrošača.

Polazeći od osnovne hipoteze rada da regulatorni model zasnovan na Priručniku za poslovanje u oblasti osiguranja dovodi do necelovite i manje predvidive zaštite potrošača u sferi osiguranja budući da nije dovoljan da u pravoj meri obezbedi doslednu i sveobuhvatnu zaštitu, autor nastoji da kroz iscrpno ispitivanje postojećeg pozitivnopravnog rešenja, praćeno uporednopravnom analizom, ukaže na prednosti modela celovitog zakonskog uređenja kakav postoji u nemačkom pravu, pre svega posredstvom Zakona o ugovoru o osiguranju.[4] U tom cilju, rad je podeljen u tri celine. U prvom delu biće izložen dug put istorijskog razvoja uređenja ugovornih odnosa kod ugovora o osiguranju, sve do najnovijih izmena koje se dešavaju u poslednjih deceniju i po. U drugom delu rada biće analizirana dužnost informisanja koju međusobno imaju ugovorne strane, s posebnim osvrtom na propise koji je uređuju te pravne posledice njenog nepoštovanja. U trećem delu, na osnovu prethodno sprovedene analize normativne logike i ukazivanja na strukturnu podeljenost između zakonodavne i regulatorne sfere, autor predlaže konkretne pravce reforme i potencijalna rešenja za unapređenje engleskog sistema zaštite potrošača u oblasti osiguranja.

[2] Nataša Petrović Tomić, *Zaštita potrošača usluga osiguranja*, Beograd, 2015, 43.

[3] Financial Conduct Authority, Insurance: Conduct of Business Sourcebook (dalje u fusnotama: ICOBS), dostupno na adresi: *https://www.handbook.fca.org.uk/handbook/ICOBS/1/?view=chapter* posećeno: 15. 7. 2025.

[4] Nemački zakon o ugovoru o osiguranju iz 2008. godine (*Versicherungsvertragsgesetz*).

II Normativna osnova i razvojni put uređenja ugovornih odnosa u osiguranju

Razvoj ugovornog prava osiguranja u engleskom pravu predstavlja primer evolucije jedne grane privatnog prava koja je dugo ostala vezana za trgovačku praksu i sudsku doktrinu, da bi u 20. i 21. veku pretrpela značajne zakonodavne transformacije, pre svega u pogledu zaštite potrošača. Ugovori o osiguranju, naročito pomorskom, nastali su u kontekstu brzog širenja trgovine i rizika vezanih za transport robe morskim putem u 17. i 18. veku. U takvim trgovačkim odnosima dominirala je izrazita informaciona asimetrija gde je osiguranik najčešće raspolagao svim činjenicama značajnim za procenu rizika, dok je osiguravač morao postupati na osnovu ograničenih informacija koje mu osiguranik dostavi, često prećutkujući one od presudnog značaja.[5] Iz te asimetrije proistekla je potreba za uvođenjem načela koje bi štitilo integritet ugovornog odnosa i obezbedilo poverenje u tržište osiguranja.

Tako se postepeno razvilo načelo krajnje dobre vere (engl: *utmost good faith*), pri čemu logičku polaznu osnovu za ustanovljavanje doktrine načela krajnje dobre vere u engleskom ugovornom pravu osiguranja predstavlja mišljenje lorda Mensfilda u predmetu *Carter v. Boehm*. Lord Mensfild je formulisao opšti princip u vezi s prijavljivanjem informacija tokom pregovora o zaključenju ugovora o osiguranju, pri čemu se njegova suština svodi na dužnost osiguranika da pre zaključenja ugovora otkrije osiguravaču sve činjenice koje se mogu smatrati bitnim. Na taj način postavljen je temelj dužnosti potpunog i iskrenog otkrivanja značajnih okolnosti od strane osiguranika. To je značilo da osiguranik mora ne samo da odgovori istinito na postavljena pitanja, već i da spontano obelodani sve okolnosti koje bi mogle uticati na odluku osiguravača o prihvatanju pokrića ili njegovom dodatnom uslovljavanju.[6]

S vremenom, načelo „krajnje dobre vere" uzdignuto je od korisnog pojma koji označava naročito stroge standarde u pregovorima o osiguranju do temeljnog i organizujućeg principa prava osiguranja.[7] Do toga je došlo njegovim kodifikovanjem u Zakonu o pomorskom osiguranju iz 1906. godine, koji propisuje da je ugovor o pomorskom osiguranju „ugovor zasnovan na krajnjoj dobroj veri" i da, ukoliko jedna strana ne ispuni svoju obavezu koja proističe iz njegove sadržine, druga može tražiti raskid ugovora.[8] Iako se zakon odnosi na pomorsko osiguranje, u praksi je primenjivan

[5] John Birds, *Insurance law in the United Kingdom*, sixth edition, Alphen aan den Rijn, 2024, 22; Ben Foat, „Levelling the Playing Field – The Modernisation of Insurance Law in the United Kingdom", *International In-house Counsel Journal*, Vol. 8, No. 31/2015, 2–3.

[6] Howard Bennett, „The Three Ages of Utmost Good Faith", *The World of Maritime and Commercial Law: Essays in Honour of Francis Rose* (eds. Charles Mitchell, Stephen Watterson), London, 2020, 64–68; Jan Woloniecki, „The Duty of Utmost Good Faith in Insurance Law: Where Is It in the 21st Century?", *Defense Counsel Journal*, Vol. 69, No. 1/2002, 63.

[7] H. Bennett, 70.

[8] Engleski zakon o pomorskom osiguranju iz 1906. godine (*Marine Insurance Act 1906*), čl. 17.

kao opšta referenca i u drugim vidovima osiguranja.[9] Na taj način, ugovor o osiguranju postao je tipičan primer „ugovora krajnje dobre vere", u kome važi poseban pravni režim otkrivanja činjenica, pri čemu se njihovo prećutkivanje ili neistinito predstavljanje, čak i nenamerno, smatralo dovoljnim osnovom za raskid ugovora.[10]

Ta strogost je, međutim, s vremenom dovela do kritika, pogotovo u kontekstu masovnih potrošačkih ugovora, gde ugovarači osiguranja često nisu mogli biti svesni svojih obaveza i posledica njihovih propusta. U međuvremenu je došlo i do ozbiljnog razvoja potrošačkog prava kao odgovora na rastuću složenost tržišta i neravnotežu moći između potrošača i poslovnih subjekata. Savremeno tržište osiguranja znatno se promenilo u odnosu na vreme kada je donet zakon iz 1906. godine budući da danas dominiraju sistemi, procedure i složenija analiza podataka, uz sve veći broj osiguranih rizika i potencijalno dostupnih informacija. Zbog toga postojeći pravni okvir nije ispratio te promene i nije odražavao savremene tendencije u razvoju potrošačkog prava. Zakon je favorizovao osiguravače jer je nastao u vreme kada su oni imali slabiju pregovaračku poziciju u odnosu na osiguranike, te im je zato u slučaju povrede ugovornih obaveza od strane osiguranika davana mogućnost da u potpunosti izbegnu ispunjenje ugovora, čak i kada to nije bilo proporcionalno učinjenoj povredi.[11] Otuda je u moderno doba došlo do značajnih zakonodavnih pomaka na tom polju, naročito donošenjem Zakona o potrošačkim osiguranjima i Zakona o osiguranju.[12] Iako zajedno predstavljaju nadgradnju u odnosu na dotada važeća pravila iz Zakona o pomorskom osiguranju, njihova svrha i domen primene se razlikuju. Zakon o potrošačkim osiguranjima se primenjuje isključivo na ugovore između potrošača i osiguravača, dok se Zakon o osiguranju primenjuje na poslovnopravne transakcije odnosno komercijalne ugovore o osiguranju.[13]

[9] Paul Jaffe, „Reform of the Insurance Law of England and Wales-Separate Laws for the Different Needs of Businesses and Consumers", *Tulane Law Review*, Vol. 87, No. 5/2013, 1083–1084.

[10] Teret prepoznavanja i prijavljivanja materijalnih činjenica u smislu svake činjenice koja bi uticala na procenu rizika od strane razumnog osiguravača bio je na ugovaraču osiguranja. To pravilo je važilo čak i ako mu nije postavljeno nijedno pitanje, te je stoga često vodilo do nepravičnih posledica. Suština problema proizlazila je iz okolnosti da prosečan ugovarač osiguranja ne zna šta sve osiguravač smatra relevantnim činjenicama, pri čemu je i pored toga u slučaju propuštanja da otkrije neku bitnu činjenicu osiguravač mogao retroaktivno da raskine ugovor. Nurjannah Chew Li Hua, „The Doctrine of Utmost Good Faith: Back to Common Law to Move Forward?", *Journal of Malaysian and Comparative Law*, Vol. 39, 2012, 10–11; Ozlem Gurses, „What does 'utmost good faith' mean", *Insurance Law Journal*, Vol. 27, 2016, 124–126; B. Foat, 2.

[11] Andre Farrugia, Simon Grima, „A model to determine the need to modernise the regulation of the principle of utmost good faith", *Journal of Financial Regulation and Compliance*, Vol. 29, No. 4/2021, 455; Daniel Vásquez-Vega, „A comparative analysis of utmost good faith in colombian and english insurance law", *EAFIT Journal of International Law*, Vol. 5, No. 02/2014, 86; B. Foat, 3.

[12] Engleski zakon o potrošačkim osiguranjima iz 2012. godine (*Consumer Insurance (Disclosure and Representations) Act;* dalje u fusnotama: CIDRA); Engleski zakon o osiguranju iz 2015. godine (*Insurance Act 2015*).

[13] Takva podela je najvećim delom posledica tranzicije kroz koju je prošlo pravo osiguranja pod uticajem prava Evropske unije i potrošačkog zakonodavstva. Usled nagle ekspanzije standarda zaštite potrošača, sve više na značaju dobija podela osiguranja na potrošačka i komercijalna. Kriterijum razlikovanja jeste

Podela pravila o osiguranju na dva pomenuta propisa ima za cilj da napravi jasnu razliku između dva zasebna režima od kojih svaki odražava specifičnost odnosa između konkretnih ugovornih strana.[14] Na taj način, jasno je istaknuta razlika koja podrazumeva da potrošači moraju uživati viši stepen zaštite kroz blaže dužnosti i jasnije smernice, nasuprot poslovnim odnosima u kojima se očekuje veća informisanost i viši stepen pažnje. Stoga takva podela doprinosi većoj pravnoj sigurnosti i transparentnosti, ali istovremeno zahteva dodatan oprez zbog potrebe usklađenog delovanja tih sektorskih propisa u odnosu na brojna regulatorna pravila u cilju izbegavanja preklapanja i nedoslednosti.

Zakon o potrošačkim osiguranjima određuje svoj domen primene definisanjem potrošačkog ugovora o osiguranju kao ugovora zaključenog između osiguravača i „pojedinca koji ugovor zaključuje isključivo ili pretežno u svrhe koje nisu povezane s njegovom trgovačkom delatnošću, poslovanjem ili profesijom".[15] Osiguranik stoga mora biti potrošač koji je fizičko lice, a glavna svrha zaključenja ugovora mora biti nekomercijalna, tj. nevezana za njegove poslovne aktivnosti.[16]

Pored toga, zakon jasno propisuje šta se očekuje od potrošača i koje su pravne mogućnosti na strani osiguravača u slučaju potrošačeve povrede dužnosti informisanja. U tom smislu, uvedena je posebna dužnost predugovornog informisanja koja se razlikuje od one na nepotrošačkom tržištu, čime se uvažavaju različite potrebe osiguranja fizičkih lica kao potrošača u odnosu na sve druge subjekte. Naspram te redefinisane dužnosti potrošača, da u predugovornoj fazi postupa s dužnom pažnjom kako ne bi dao neistinite izjave osiguravaču, ne stoji korespondentna dužnost osiguravača. Za razliku od pristupa u drugim pravnim sistemima, dužnost predugovornog informisanja od strane osiguravača nije izričito uređena relevantnim zakonskim propisom. Ipak, to ne znači da pomenuta dužnost na strani osiguravača uopšte ne postoji, već jedino to da je ona uređena drugim propisima.

prvenstveno priroda rizika uz pomoćni kriterijum svojstva osiguranika. U tom smislu, ono što jednom osiguranju daje potrošački karakter jeste priroda rizika, pri čemu je bitno da je rizik pokriven osiguranjem privatne a ne poslovne (komercijalne) prirode. Određenje potrošačkog karaktera ugovora na osnovu tako postavljenih kriterijuma ima veliki praktičan značaj, naročito zbog toga što se na taj način izbegavaju problemske situacije koje mogu nastati usled različitog određenja pojma potrošača. Nataša Petrović Tomić, *Pravo osiguranja – sistem*, Knjiga I, Beograd, 2019, 285–286.

[14] P. Jaffe, 1086–1088.

[15] CIDRA, čl. 1. Ova formulacija je slična onoj iz Zakona o pravima potrošača iz 2015. godine (*Consumer Rights Act 2015*), gde se potrošač definiše kao fizičko lice koje deluje u svrhe koje su isključivo ili pretežno van njegove trgovine, poslovanja, zanata ili profesije.

[16] Primećuje se da u skladu sa izloženim shvatanjem pojmom potrošačko osiguranje mogu biti obuhvaćeni i tzv. mešoviti pravni poslovi kada lice pribavlja osiguranje delom za poslovne, a delom za privatne svrhe. Takav ugovor će se smatrati potrošačkim ako je neposlovna svrha u konkretnom slučaju dominantna. Procena se vrši imajući u vidu činjenično stanje svakog pojedinačnog slučaja. U tom smislu, ako je, na primer, u pitanju taksista koji koristi automobil pretežno za prevoz putnika, a povremeno za lične potrebe, smatraće se da nije u pitanju potrošačko osiguranje. N. Petrović Tomić (2015), 114.

Na taj način, suštinski su stvorena dva pravna režima dužnosti informisanja, gde se na svaku od ugovornih strana primenjuje poseban režim.

III Dvostruki pravni režim predugovorne dužnosti informisanja

Dužnost predugovornog informisanja kod ugovora o osiguranju predstavlja ključan mehanizam zaštite kojim se nastoji umanjiti prirodna asimetrija informacija između ugovornih strana – osiguravača kao profesionalca s jedne strane i ugovarača osiguranja, najčešće potrošača, s druge strane. Osiguranje je specifična vrsta pravnog posla čija se svrha i cena temelje na proceni rizika, pri čemu osiguravač zavisi od tačnih i potpunih informacija koje dobije, dok potrošač često ne razume u potpunosti sve elemente usluge koju kupuje. Zato je dužnost međusobnog predugovornog informisanja od presudnog značaja za transparentnost, zaštitu i ravnotežu u ugovornom odnosu. Ona obezbeđuje da potrošač donese informisanu odluku na osnovu svih poznatih okolnosti, dok istovremeno štiti i osiguravača od netačnih prikaza rizika. U tom smislu, ta dužnost nije samo instrument postizanja ravnoteže u ugovornom odnosu, već i osnova za pravno valjan i održiv ugovor o osiguranju. Upravo iz tih razloga, postojanje jasnog, ali i adekvatno uravnoteženog normativnog okvira koji uređuje dužnost informisanja u predugovornoj fazi od suštinske je važnosti za stabilnost ugovornog odnosa u osiguranju.[17]

U tom kontekstu, englesko pravo razvilo je dvostruki pravni režim, poseban za potrošače i poseban za osiguravače, uz nastojanje da se obezbedi što efikasnija zaštita obe strane, ali i da se odgovornost raspodeli u skladu sa stvarnim kapacitetima i očekivanjima svakog od učesnika ugovornog odnosa. Takav pristup, međutim, otvara niz pitanja u pogledu međusobne usklađenosti postojećih režima, njihove praktične primene i stvarne delotvornosti.

1. Dužnost informisanja osiguravača od strane potrošača

Pre donošenja Zakona o potrošačkim osiguranjima načelo krajnje dobre vere bilo je vodeća odrednica prilikom regulisanja dužnosti informisanja. Ugovarač osiguranja bio je dužan da sam iznese sve činjenice koje bi uticale na procenu rizika od strane razumnog osiguravača, pri čemu je ta dužnost postojala nezavisno od okolnosti da li je osiguravač u tom cilju postavio neko konkretno pitanje. Opravdanje

[17] Robert Cooter, Thomas Ulen, *Law and Economics*, 6th edition, Boston, 2016, 41; David Schwartz, „Resolving the Disclosure Puzzle in Insurance Law", *Business Law Review*, Vol. 6/2007, 180; Ana Keglević, „Pre-contractual Information Duty and Unfair Contract Terms – Open questions and dilemmas – ", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013, 81; Ana Keglević, *Građansko-pravni aspekti obveze obavještavanja kod potrošačkog ugovora o osiguranju*, doktorski rad, Pravni fakultet Univerziteta u Zagrebu, Zagreb, 2012, 8–9.

za tako formulisanu dužnost nalaženo je u okolnosti da ugovarač osiguranja zna sve o činjenicama bitnim za procenu rizika, nasuprot osiguravaču koji o njima ne zna ništa. Ipak, s vremenom se postavilo pitanje kako ugovarač osiguranja može da zna koje se sve to činjenice mogu smatrati bitnim za procenu rizika. Prepoznavanje značaja tog problema dovelo je do formiranja izrazito naklonjene prakse prema potrošačima, kao i značajnih zakonodavnih pomaka na tom polju.[18]

Stupanje na snagu Zakona o potrošačkim osiguranjima predstavljalo je prekretnicu u oblasti predugovornog informisanja osiguravača od strane ugovarača osiguranja. Ukinuta je dotadašnja dužnost ugovarača osiguranja da samoinicijativno otkriva sve značajne činjenice koje bi uticale na odluku razumnog osiguravača, i umesto toga propisana nova, ograničena dužnost potrošača „da postupa s dužnom pažnjom kako ne bi izvršio pogrešno predstavljanje okolnosti osiguravaču".[19] To znači da potrošač više nije dužan da samoinicijativno otkriva informacije, već samo da postupajući s dužnom pažnjom tačno i savesno odgovara na pitanja osiguravača.[20] Postupanje s dužnom pažnjom se ceni na osnovu svih relevantnih okolnosti koje zakon navodi *exempli causa*: vrsta potrošačkog osiguranja i ciljno tržište; bilo koji relevantan materijal značajan za pojašnjenje, javno objavljen ili potvrđen od strane osiguravača; koliko su jasna i koliko su konkretna pitanja osiguravača; u slučaju propuštanja da odgovori na pitanja osiguravača u vezi sa obnovom ili izmenom potrošačkog ugovora o osiguranju, koliko jasno je osiguravač saopštio važnost davanja odgovora na ta pitanja; da li je za potrošača radio agent osiguranja? Zahtevani standard pažnje je pažnja razumnog potrošača. Procena da li se u svakom pojedinom slučaju zaista radi o razumnom potrošaču vrši se objektivno, uz izuzetak dve situacije kada je propisano uzimanje u obzir i ličnih (subjektivnih) prilika konkretnog potrošača. Naime, ako je osiguravač bio svestan ili je trebalo da bude svestan da je reč o potrošaču za koga se vezuju određene karakteristike ili okolnosti, one će biti uzete u obzir. Pored toga, namerno pogrešno predstavljanje okolnosti uvek se smatra nedostatkom razumne pažnje. Ti izuzeci omogućavaju da procenom u konkretnom slučaju budu obuhvaćeni i potrošači koji imaju određena posebna znanja i veštine ili koji su postupali nesavesno, dok u slučaju prosečno informisanog potrošača ostavljaju mesta za razumnu grešku pri donošenju odluke.[21]

[18] Ana Keglević Steffek, „Trust and Transparency in Insurance Contract Law: European Regulation and Comparison of Laws", *Cambridge Yearbook of European Legal Studies*, Vol. 24, 2022, 331–332; John Lowry, „Whither the Duty of Good Faith in UK Insurance Contracts", *Connecticut Insurance Law Journal*, Vol. 16, No. 1/2009, 99. Može se reći da je s vremenom došlo do toga da tradicionalna dužnost osiguranika da obavesti osiguravača o riziku polako biva zamenjena, ili barem dopunjena, dužnošću odnosno potrebom osiguravača da sam pribavi bitne informacije, tj. da se sam angažuje u cilju informisanja o potrebama konkretnog klijenta. Herman Cousy, „The Principles of European Insurance Contract Law: the Duty of Disclosure and the Aggravation of Risk", *ERA Forum 9 (Suppl 1)*, 2008, 123.

[19] CIDRA, Section 2.

[20] N. Petrović Tomić, 254.

[21] CIDRA, Section 3; Engleski Predlog zakona o potrošačkim osiguranjima iz 2011. godine (*Consumer Insurance (Disclosure and Representations) Bill [HL]*; dalje u fusnotama: CIDRA Bill), tač. 30, dostupno na adresi: *https://publications.parliament.uk/pa/bills/lbill/2010-2012/0068/en/2012068en.htm*, posećeno: 27. 7. 2025.

Napuštanje ranijeg rešenja koje je podrazumevalo dobrovoljno i samoinicijativno informisanje osiguravača o činjenicama značajnim za procenu rizika predstavlja značajno olakšanje za potrošača. Njegova dužnost se suštinski sada sastoji u tome da s razumnom pažnjom pročita pitanja koja mu je postavio osiguravač i da na njih odgovori tačno i što potpunije. Više ne mora brinuti da li će neku od bitnih činjenica propustiti jer je osiguravač taj koji postavlja pitanja za koja se pretpostavlja da su značajna za procenu.[22] Tako se prevazilaze brojne prepreke na tržištu osiguranja poput informacione asimetrije, uz istovremeno omogućavanje da se kroz ovakav mehanizam različite usluge osiguranja prilagode svakom pojedinačnom potrošaču.[23]

Ako potrošač prekrši dužnost informisanja osiguravača, radiće se o pogrešnom predstavljanju okolnosti značajnih za ocenu rizika (engl. *misrepresentation*). Odgovor na pitanje da li je u konkretnom slučaju reč o pogrešnom predstavljanju okolnosti daje *common law*, pri čemu o tome postoji značajna sudska praksa. Često se ističe da se čak i izjava koja je sama po sebi tačna može smatrati pogrešnim predstavljanjem ako je nepotpuna.[24] U praksi se to pitanje može javiti kao naročito značajno prilikom obnove ugovora, kada se od potrošača zahteva da potvrdi ili izmeni prethodno dostavljene informacije. Zakon u ovom slučaju izričito propisuje da se takvo propuštanje može smatrati pogrešnim predstavljanjem.[25]

Prosto neizvršenje dužnosti informisanja u vidu pogrešnog predstavljanja okolnosti značajnih za ocenu rizika ipak neće biti samo po sebi dovoljno da osiguravaču dâ pravo na određeno pravno sredstvo kojim bi zaštitio svoje interese. Pored povrede dužnosti informisanja, potrebno je da bude ispunjen i jedan dodatni uslov. On podrazumeva postojanje pretpostavljenog uticaja pogrešnog predstavljanja okolnosti na odluku osiguravača o prihvatanju rizika, odnosno uslovima prihvatanja.[26] To znači da osiguravač mora dokazati da ne bi zaključio ugovor ili bi to učinio pod bitno drugačijim uslovima da nije bilo pogrešnog predstavljanja, pri čemu je potrebno subjektivno dokazivanje stvarne zavisnosti odluke osiguravača od izjave potrošača, a ne samo hipotetička relevantnost izjave za razumnog osiguravača.[27]

[22] N. Petrović Tomić (2015), 254; Slično rešenje postoji i u nemačkom pravu. Prema čl. 19 st. 1 nemačkog zakona o ugovoru o osiguranju, ugovarač osiguranja dužan je da pre zaključenja ugovora o osiguranju saopšti osiguravaču sve okolnosti koje su bitne za odluku osiguravača da li će zaključiti ugovor pod predviđenim uslovima. On to čini odgovarajući na pitanja koja je osiguravač izričito postavio u pisanoj formi, najčešće putem upitnika koji su posebno prilagođeni ovoj svrsi. Manfred Wandt, Kevin Bork, „Disclosure duties in German insurance contract law", *Zeitschrift für die gesamte Versicherungswissenschaft*, Vol. 109/2020, 82–83.

[23] A. Keglević Steffek, 337.

[24] CIDRA Bill, tač. 23.

[25] CIDRA, Section 2.

[26] CIDRA, Section 4.

[27] Zakon ovde suštinski kodifikuje pravno shvatanje iz slučaja *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd [1995] AC 501*. Ono odražava stav da za uspešnu odbranu osiguravača od pogrešnog predstavljanja informacija nije dovoljno samo da je pogrešno predstavljena činjenica koja se smatra

Kada je reč o pravnim posledicama pogrešnog predstavljanja okolnosti značajnih za cenu rizika, vidljiv je jasan prelazak sa sistema „sve ili ništa" na „sistem srazmernosti". Naime, pravilo sve ili ništa počiva na shvatanju da povreda dužnosti informisanja prouzrokuje nedostatke u volji ugovornih strana, zbog kojih posledica takvog postupanja ne može biti ništa drugo sem raskid ugovora. S druge strane, zbog stava da pomenuto pravilo nepravedno stavlja ugovarača osiguranja u mnogo lošiju poziciju, princip srazmernosti napušta prethodno shvatanje i zamenjuje ga ekonomičnijim modelom koji se zasniva na ravnoteži između stvarnog rizika i visine premije. Uz određene izuzetke i u zavisnosti od prirode povrede dužnosti, princip srazmernosti podrazumeva da se ugovor izmeni odnosno prilagodi situaciji srazmerno stepenu povrede. Zaključujemo da je namera zakonodavca očigledno bila da se na taj način podstakne međusobno poverenje i nastavak ugovornog odnosa, čak i pod izmenjenim uslovima visine premije ili drugih ugovornih elemenata.[28]

Da bi primena principa srazmernosti na konkretni ugovorni odnos bila moguća, nakon utvrđivanja povrede dužnosti informisanja, potrebno je utvrditi potrošačev subjektivni odnos prema istinitosti predstavljene informacije. U tom smislu, ukoliko potrošač učini pogrešno predstavljanje činjenica prilikom davanja odgovora na postavljeno pitanje, pravna sredstva koja osiguravaču stoje na raspolaganju zavise od subjektivnog odnosa potrošača prema iznetim činjenicama. Ako se pogrešno predstavljanje koje je učinjeno smatra poštenim i razumnim (engl. *reasonable misrepresentation*), osiguravač nakon nastupanja osiguranog slučaja nema pravo da odbije isplatu, već je dužan da plati potraživanu naknadu iz osiguranja. U tom slučaju smatra se da je potrošač postupao s pažnjom razumnog potrošača, uzimajući u obzir različite objektivne okolnosti, pri čemu se subjektivne okolnosti potrošača ne uzimaju se u obzir, osim ako su bile poznate ili su morale biti poznate osiguravaču. Ako je ipak pogrešno predstavljanje bilo posledica potrošačeve nepažnje (engl. *careless misrepresentation*), osiguravač ima pravo na srazmerno pravno sredstvo koje zavisi od toga kako bi postupio da je potrošač dao tačan i potpun odgovor. U slučaju da tada ne bi ni zaključio ugovor, može da ga raskine uz obavezu vraćanja uplaćenih iznosa premije. S druge strane, ako bi ugovor ipak zaključio, ali pod drugačijim uslovima, smatraće se da je zaključen upravo pod takvim uslovima.

bitnom, već osiguravač mora i da dokaže da je na osnovu te informacije bio zaista i subjektivno naveden da zaključi ugovor pod tim uslovima. Drugim rečima, nije dovoljno da neki hipotetički razuman osiguravač bude pod uticajem netačno predstavljenih informacija već mora postojati i odlučujući uticaj na volju tog razumnog osiguravača da bi se konkretno pogrešno predstavljanje smatralo bitnim. Takođe se ističe da bi priznavanje osnova za odgovornost zbog netačnog predstavljanja čak i kada volja konkretnog osiguravača nije bila pogođena takvom okolnošću bilo suprotno zdravom razumu i pravičnosti. Paul Walker, „Non-disclosure: Some comparisons", *Victoria University of Wellington law review*, Vol. 26/1996, 832; Laura Reeves, „The Duty of Pre-Contractual Disclosure in English Insurance Law: Past and Future – Does the Law Need to be Changed?", *Southampton Student Law Review*, Vol. 5/2015, 3.

[28] A. Keglević Steffek, 341.

Konačno, ako je pogrešno predstavljanje učinjeno s namerom ili krajnjom nepažnjom (engl. *deliberate or reckless misrepresentation*), osiguravač ima pravo da poništi ugovor i odbije odštetni zahtev. U tom slučaju, osiguravač može da zadrži uplaćene iznose premije, osim ako bi to bilo nepravično prema potrošaču. Da bi se pogrešno predstavljanje okolnosti smatralo namernim ili učinjenim iz krajnje nepažnje, potrebno je dokazati da je, na osnovu svih poznatih okolnosti, potrošač: 1) znao da je izjava netačna ili obmanjujuća, ili da mu je bilo svejedno da li je tačna ili ne; 2) znao da je predmetna činjenica relevantna za osiguravača, ili da mu je bilo svejedno da li je relevantna ili ne. Teret dokazivanja da je došlo do pogrešnog predstavljanja na taj način leži na osiguravaču. Međutim, zakon predviđa oborive pretpostavke: 1) da je potrošač imao znanje koje bi imao razuman potrošač; 2) da je potrošač znao da je činjenica o kojoj je osiguravač postavio jasno i precizno pitanje bitna za donošenje odluke o zaključenju ugovora.[29]

Na taj način uspostavljen je jasan sistem koji pravne posledice temelji na stepenu krivice osiguranika, štiteći pri tome kroz princip srazmernosti pravičnost i interese obe ugovorne strane. Pošto mogu da prilagode ugovor nakon saznanja za „nove" rizike, bilo smanjenjem iznosa naknade, bilo povećanjem premije, osiguravači nemaju potrebu da ulažu vreme i novac u iscrpne predugovorne provere s ciljem da izbegnu raskid ili poništenje ugovora. Upravo zato, princip proporcionalnosti predstavlja dobitnu kombinaciju za obe ugovorne strane.[30]

2. Dužnost informisanja potrošača od strane osiguravača

Predugovorne dužnosti osiguravača prvenstveno su usmerene na zaštitu svih potencijalnih ugovarača osiguranja, a naročito potrošača. Ugovarač osiguranja predstavlja slabiju stranu u ugovornom odnosu i kao takav zaslužuje posebnu zaštitu, jer je, po pravilu, ekonomski slabiji i poseduje manje znanja o uslugama osiguranja od

[29] CIDRA, Section 5, Schedule 1; CIDRA Bill, tač. 36–40. Andrew Hutchinson, Helena Stoop, „Misrepresentation in Consumer Insurance: The United Kingdom Legislature Opts for a Reasonable Consumer Standard", *South African Law Journal*, Vol. 130, No. 4/2013, 710–712.

[30] A. Keglević Steffek, 346. Princip srazmernosti prihvata i nemačko pravo uz određene specifičnosti. Ako je do pogrešnog predstavljanja došlo iz obične nepažnje, osiguravač ima pravo da odustane od ugovora u skladu sa opštim pravilima građanskog prava o raskidu ugovora. S druge strane, ako je u pitanju namera ili gruba nepažnja, osiguravač može da raskine ugovor uz jednomesečni otkazni rok. Ipak, pravo na raskid se može ostvariti samo ako ugovor ne može biti prilagođen okolnostima koje nisu bile otkrivene, jer princip srazmernosti ima prvenstvo u primeni u nemačkom pravu. Ukoliko bi osiguravač u trenutku zaključenja ugovora, da je znao za relevantne činjenice, pristao na ugovor pod drugačijim uslovima, tada je dužan da izvrši prilagođavanje ugovora, čime te činjenice postaju sastavni deo ugovora. Da bi došlo do primene principa srazmernosti, moraju dodatno biti ispunjena dva uslova: 1) da postoji uzročno-posledična veza između neotkrivene okolnosti i procene rizika, i 2) da bi osiguravač, iako pod izmenjenim uslovima, ipak zaključio ugovor. Robert Koch, „German Reform of Insurance Contract Law", *European Journal of Commercial Contract Law*, Vol. 2, No. 3/2010, 169–170.

osiguravača. Osnovni vid zaštite ogleda se u pružanju svih potrebnih informacija koje potencijalnom ugovaraču omogućavaju donošenje informisane odluke. Osiguravač u tom smislu ima dužnost da pruži te informacije ne samo pre zaključenja ugovora već i tokom njegovog trajanja. Ta dužnost proizlazi kako iz posebnih zakonskih propisa u oblasti osiguranja tako i u slučaju njihove odsutnosti iz opštih pravnih načela, poput savesnosti i poštenja ili odgovornosti za štetu nastalu u fazi pregovora. Ipak, zbog složenosti i značaja te materije, opšta pravna načela nisu dovoljna te se javlja potreba za preciznim normiranjem putem posebnih pravila.[31]

Većina pravnih sistema odlučila se za jasno zakonsko uređenje te dužnosti. Tako je, na primer, u nemačkom zakonu o ugovoru o osiguranju predugovorno savetovanje i informisanje ugovarača osiguranja postavljeno kao centralni segment njegove zaštite. Dužnost informisanja važi za sve ugovore o osiguranju, bez obzira na konkretnu vrstu pokrića, pri čemu za potrebe primene normi zaštitnog karaktera zakonodavac ne pravi razliku između fizičkih i pravnih lica. Ona je jedino umanjena kada je reč o osiguranju od velikih rizika. O značaju koji se predugovornom informisanju pridaje u nemačkoj dodatno govori i činjenica da je nakon donošenja zakona posebno doneta i Uredba o dužnosti informisanja koja dalje razrađuje zakonsku obavezu detaljno objašnjavajući u čemu se ona tačno sastoji.[32]

Za razliku od jasnog i preciznog rešenja nemačkog prava, englesko pravo ima drugačiji pristup u regulisanju predugovorne dužnosti osiguravača. Naime, glavna specifičnost engleskog rešenja jeste to da Zakon o potrošačkim osiguranjima uopšte ne uređuje osiguravačevu dužnost predugovornog informisanja, usredsređujući se isključivo na olakšavanje potrošačevog položaja kroz redefinisanje njegove dužnosti u vezi s predstavljanjem okolnosti značajnih za ocenu rizika. Zato se načelo krajnje dobre vere iz Zakona o pomorskom osiguranju iz 1906. godine i dalje primenjuje na dužnosti osiguravača u predugovornoj fazi, kao i na odnos ugovornih strana nakon zaključenja ugovora. Potencijalni razlog za takvo opredeljenje zakonodavca treba tražiti u poslovnoj praksi u kojoj je široko rasprostranjeno mišljenje da je mnogo efikasnije oblikovati postupanje osiguravača prema standardima transparentnosti i pravičnosti sadržanim u samoregulatornim aktima i pravilima osiguravajuće delatnosti, a ne nužno prema strogim zakonskim pravilima.[33]

[31] N. Petrović Tomić (2015), 127; Samim Ünan, „Insurer's Pre-contractual Duties to Inform and Warn/Advise", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013, 9–10; A. Keglević (2012), 8.

[32] Nemačka uredba o dužnosti informisanja iz 2008. godine (*Verordnung über Informationspfl ichten bei Versicherungsverträgen*). Nataša Petrović Tomić, „Informisanje korisnika usluga osiguranja u nemačkom pravu", *Tokovi osiguranja,* časopis za teoriju i praksu osiguranja, br. 4/2015, 5–18; M. Wandt, K. Bork, 88–92; R. Koch, 166–168. Sličnu logiku prate i Principi evropskog ugovornog prava osiguranja (*The Principles of European Insurance Contract Law*) koji u čl. 1:101 propisuju da se primenjuju kada „se ugovorne strane, bez obzira na ograničenja u izboru merodavnog prava po pravilima međunarodnog privatnog prava, saglase da se oni primenjuju na njihov ugovor".

[33] A. Keglević Steffek, 324–325.

U skladu s načelom krajnje dobre vere, osiguravač mora postupati tako da potrošaču ne prećuti nijednu informaciju koja se smatra značajnom za zaključenje ugovora. Stoga je on pre zaključenja ugovora dužan da obavesti saugovornika o svim okolnostima značajnim za zaključenje ugovora a da mu saugovarač o njima i ne postavi neko pitanje, pri čemu je inače dužan da se uzdrži od svakog pogrešnog predstavljanja okolnosti.[34]

S obzirom na to da ispunjenje osiguravačeve obaveze u skladu s načelom krajnje dobre vere ne rešava u potpunosti problem informacione asimetrije na potrošačevoj strani, javila se potreba za preduzimanjem daljih koraka. Zarad potrošačeve što potpunije zaštite, najpre je poslovna praksa, a kasnije i regulatori na tržištu osiguranja, nastojala da pronađe rešenje u jasnijim i strožim regulatornim aktima i pravilima osiguravajuće delatnosti. Kao posledica tog nastojanja, čak deceniju pre donošenja Zakona o potrošačkim osiguranjima, formirano je Telo za finansijske usluge (engl. *Financial Services Authority – FSA*) kao jedinstveni zakonski regulator finansijskih usluga. Ono je objavilo priručnik koji je sadržao posebna pravila za potrošačka osiguranja pod nazivom Pravila poslovanja u osiguranju – pravila o neotkrivanju i pogrešnom predstavljanju okolnosti (engl. *Insurance Conduct of Business Sourcebook – Rules on Non-disclosure and Misrepresentation (FSA Handbook – ICOBS Rules)*),[35] koja su, između ostalog, propisivala i dužnost osiguravača da postavlja jasna pitanja u vezi sa svim okolnostima bitnim za ugovaranje osiguranja. Nakon što je Telo za finansijske usluge ukinuto 2013. godine, Telu za finansijski nadzor (engl. *Financial Conduct Authority – FCA*) je pripao deo njegovih nadležnosti, te ono danas nadzire pružanje finansijskih usluga i postupanje finansijskih institucija u Velikoj Britaniji, s ciljem zaštite potrošača i očuvanja integriteta tržišta. Donet je i novi akt pod nazivom Priručnik za poslovanje u oblasti osiguranja kao sastavni deo posebnog priručnika Tela za finansijski nadzor donetog na osnovu Zakona o finansijskim uslugama.[36]

Priručnik za poslovanje u oblasti osiguranja sadrži detaljna pravila kojima se uređuje ponašanje osiguravača u odnosima s potrošačima na tržištu osiguranja u Ujedinjenom Kraljevstvu. U tom smislu, osiguravači su dužni da postupaju pošteno i u skladu s najboljim interesima svojih klijenata u svakoj fazi ugovornog odnosa, od početka pregovora, preko zaključenja ugovora, pa sve do eventualne realizacije osiguranog rizika.[37] Pored toga, sve informacije koje se pružaju potrošaču, uključujući

[34] H. Bennett, 70–74.

[35] Financial Services Authority, Insurance Conduct of Business Sourcebook – Rules on Non-disclosure and Misrepresentation (FSA Handbook – ICOBS Rules), dostupno na adresi: *https://www.handbook.fca.org.uk/handbook/ICOB/2/?date=2005-01-14&view=chapter&timeline=True*, posećeno: 6. 8. 2025.

[36] Zakon o finansijskim uslugama iz 2021. godine (*Financial Services Act 2021*). A. Keglević Steffek, 326; Andrew Schmulow, Baladev Dayaram, Sian Mullen, „Consumer Protection in Insurance Contracts: The Need for a 'Treating Customers Fairly' Regime", *The International Review of Financial Consumers*, Vol. 8, No. 1/2023, 60–62.

[37] ICOBS, čl. 2.5.1R.

reklame i prodajne izjave, moraju biti jasne, sažete i ne smeju dovesti potrošača u zabludu.[38] Pre zaključenja ugovora, osiguravač mora potrošaču da predoči sve potrebne informacije o usluzi, uključujući: osnovne karakteristike same usluge; obim pokrića i isključenja; trajanje ugovora; visinu premije i uslove plaćanja.[39] Propisana je i dužnost dostavljanja standardizovanog dokumenta koji sadrži sažete i lako razumljive informacije o usluzi, a koji omogućava potrošačima da lakše uporede različite usluge i donesu informisanu odluku.[40] Takođe, potrošaču se mora omogućiti jednostavno i pravovremeno ostvarivanje prava iz ugovora, uključujući pravo na raskid ugovora u određenom roku, kao i jasne informacije o postupku po prigovoru.[41] Konačno, propisani su i posebni standardi ponašanja u pogledu upravljanja uslugama, koji uključuju dužnost osiguravača da razvijaju i vrše distribuciju usluga koje odgovaraju potrebama ciljnog tržišta, čime se potrošači dodatno štite od usluga koje nisu primerene njihovim interesima i potrebama.[42]

Pored priručnika, značajno mesto u sistemu zaštite potrošača usluga osiguranja zauzima i Služba finansijskog ombudsmana (engl. *Financial Ombudsman Service – FOS*) kao nezavisno i nepristrasno telo čija je glavna dužnost rešavanje po pritužbama potrošača usmerenih ka pružaocima finansijskih usluga, uključujući i osiguravače. U tom cilju on redovno tumači pravila i standarde ponašanja, uključujući pravila iz Priručnika za poslovanje u oblasti osiguranja, u svetlu pravičnosti i najboljeg interesa potrošača. Na taj način on doprinosi razvoju prakse zaštite potrošača, jer njegovi stavovi i načini rešavanja sporova često utiču na ponašanje osiguravača i tumačenje pravila od strane zakonodavca i regulatora tržišta. Upravo zato, mnogi stavovi koje je on zauzeo u praksi kasnije su znatno uticali na oblikovanje Zakona o potrošačkim osiguranjima. Služba finansijskog ombudsmana je, dakle, ključni mehanizam alternativnog rešavanja sporova u sektoru osiguranja, koji omogućava brzo, efikasno i lako dostupno rešavanje sporova, bez potrebe za pokretanjem sudskog postupka. Njegova uloga stoga nije samo zaštitna, već i preventivna, ali i korektivna, u odnosu na ponašanje osiguravača.[43]

[38] ICOBS, čl. 2.2.2R
[39] ICOBS, čl. 6.1.5R
[40] ICOBS, čl. 6, aneks 3.
[41] ICOBS, čl. 7.1.1R i 7.2.1R.
[42] ICOBS, čl. 4.2A.6R i 4.2A.13R.
[43] Ugochi Amajuoyi, Andrea Fejős, „Mind the Consumer Protection Gap: the UK Financial Ombudsman Service, Fairness and Reasonableness, and the Law", *Protecting Financial Consumers in Europe Comparative Perspectives and Policy Choices* (eds. Piotr Tereszkiewicz, Mariusz Golecki), Brill Nijhoff, Leiden/Boston, 2023, 259–264; Mary Donnelly, „The Financial Services Ombudsman: Asking the Existential Question", *Dublin University Law Journal*, Vol. 35/2012, 231–234; B. Foat, 5–6.

IV Efikasnost strukturne podeljenosti i regulatorna (ne)usklađenost zaštite

Sagledavanjem svega na šta je prethodno ukazano, zaključujemo da se zaštita potrošača usluga osiguranja u engleskom pravu osiguranja karakteriše izrazitom strukturnom podeljenošću između zakonodavne i regulatorne sfere. S jedne strane, Zakon o potrošačkim osiguranjima kao sektorski propis uređuje pitanja koja se odnose na dužnost potrošača u vezi s davanjem tačnih i potpunih informacija pre zaključenja ugovora, dok, s druge strane, regulatorni okvir koji uređuje ponašanje osiguravača suštinski proizlazi iz pravila sadržanih u Priručniku za poslovanje u oblasti osiguranja. Takvo stanje dovodi do dvostruke normativne logike, jedne koja je usmerena na dužnosti potrošača, te druge usmerene na dužnosti osiguravača, pri čemu one nisu nužno sistemski usklađene, niti su načelno strukturirane u okviru jedinstvenog sektorskog zakonskog teksta, kao što je to često slučaj u kontinentalnim pravnim sistemima.

Nemačko pravo, kao klasični predstavnik kontinentalne pravne tradicije, nudi koherentniji model zasnovan na integraciji svih ključnih pravila zaštite potrošača u zakonski okvir, pre svega kroz Zakon o ugovoru o osiguranju. Taj zakon direktno i transparentno propisuje obaveze osiguravača da pruže sve značajne informacije pre zaključenja ugovora, uključujući tzv. listu sa informacijama o usluzi osiguranja, a sve u skladu s pravilima harmonizovanim na nivou Evropske unije. Time se obezbeđuje veća pravna sigurnost i transparentnost, kako za potrošače tako i za osiguravače kao pružaoce usluga.[44]

Nasuprot tome, engleski sistem postavlja regulatorna pravila izvan samog Zakona o potrošačkim osiguranjima, što može dovesti do pravne fragmentacije i nedovoljne predvidivosti za njegove krajnje korisnike. Iako pravila iz Priručnika za poslovanje u oblasti osiguranja imaju obavezujući karakter, njihov status je formalno podzakonski, što može otvoriti dodatna pitanja u pogledu hijerarhije pravnih izvora i zaštite prava potrošača u slučaju spora.

Međutim, može se tvrditi da ta podela ima i određene prednosti u pogledu fleksibilnosti i prilagodljivosti tržišnim promenama, jer Telo za finansijski nadzor kao regulator može brže intervenisati i menjati pravila ponašanja u praksi nego što bi to bilo moguće kroz klasični zakonodavni proces. U tom smislu, efikasnost strukturne podeljenosti zavisi od stabilnosti regulatornog režima, ali i od sposobnosti prosečnog potrošača da razume razliku između zakonske i regulatorne zaštite. Samim tim, iako je zaštita potrošača u engleskom pravu osiguranja suštinski snažna, strukturna podeljenost i regulatorna razuđenost mogu otežati njeno ispoljavanje u praksi, naročito u poređenju s modelima u kojima je normativna osnova jedinstvena i sistematizovana.

[44] M. Wandt, K. Bork, 88–92; R. Koch, 166–168.

Ta složenost zaštitnog okvira naročito dolazi do izražaja kroz regulatorne intervencije poput one koju je sprovelo Telo za finansijski nadzor u periodu 2017–2018. godine, poznate kao Transparentnost pri obnavljanju polise osiguranja (engl. *Renewal Transparency*). Ta intervencija, sprovedena izmenama Priručnika za poslovanje u oblasti osiguranja, imala je za cilj da unapredi transparentnost ponuda za obnovu polisa osiguranja i time zaštiti potrošače od štetnih posledica koje trpe time što ostaju kod istog osiguravača bez aktivnog poređenja ponuda. Naime, utvrđeno je da mnogi osiguravači nisu na jasan način prikazivali cenu iz prethodnog perioda, niti su potrošače obaveštavali o mogućnosti da obnove polisu pod povoljnijim uslovima kod drugih osiguravača. Stoga je uvedena dužnost osiguravača da jasno prikaže iznos premije iz prethodne godine u novoj ponudi, kao i da istakne poruku kojom podstiče potrošača da preispita sopstvene potrebe i razmotri druge opcije na tržištu.[45]

Pomenuta praksa ukazuje na mogućnosti koje regulatorna fleksibilnost pruža u pogledu prilagođavanja zaštite realnim problemima u tržišnom ponašanju, ali istovremeno i to da bi bez regulatorne fleksibilnosti Tela za finansijski nadzor zaštita potrošača ostala nepotpuna. Stoga bi se moglo zaključiti da takav model pre svega suštinski zavisi od regulatorne inicijative, a ne od stabilnog zakonskog okvira, što znači da potrošač često može ostati nedovoljno zaštićen ako Telo za finansijski nadzor ne reaguje pravovremeno.

U svetlu navedenih izazova, moguće je razmotriti niz institucionalnih i normativnih rešenja u cilju unapređenja zaštite potrošača. Kao prvo, integracija osnovnih sektorskih pravila, poput standarda sadržanih u Priručniku za poslovanje u oblasti osiguranja, u jedinstveni zakonodavni akt, kao npr. kroz izmenu Zakona o potrošačkim osiguranjima, mogla bi doprineti većoj pravnoj sigurnosti i jasnoći primenljivih pravila. Nadalje, iako se trenutno očekuje da osiguravači saopštavaju informacije u skladu s načelom „jasno, pošteno i neobmanjujuće",[46] uvođenje izričite zakonske dužnosti pružanja ključnih informacija pre zaključenja ugovora, po ugledu na nemačku listu sa informacijama o usluzi osiguranja, doprinelo bi delotvornijem smanjenju informacione asimetrije. Ta potreba za zakonskim učvršćivanjem informacione dužnosti osiguravača naročito dobija na značaju u svetlu činjenice da se regulativa engleskog prava osiguranja tradicionalno oslanjala na materijalno odnosno sadržinsko uređenje u smislu fokusiranja pravila na sadržaj ugovora i ponašanje aktera, a ne na transparentnost kao osnovni instrument zaštite potrošača. Ta istorijska tendencija, proistekla iz ranog razvoja osiguranja kao posebne, stručne delatnosti, dovela je do dugotrajnog zanemarivanja uloge informisanog pristanka potrošača i pasivne uloge nadzornih tela prema dinamici tržišnih odnosa. Tek u novijim

[45] Financial Conduct Authority, Evaluation Paper 19/1: An evaluation of our general insurance renewal transparency intervention, 1–5, dostupno na adresi: *https://www.fca.org.uk/publication/corporate/ep19-1.pdf*, posećeno: 31. 7. 2025.

[46] ICOBS, čl. 2.2.2R.

reformama, uključujući aktivnosti Tela za finansijski nadzor, započet je zaokret ka modelu koji vrednuje jasnoću i dostupnost informacija kao preduslov pravičnosti ugovornih odnosa.[47] Pored toga, unapređenje institucionalne odgovornosti kroz uvođenje zakonske obaveze Tela za finansijski nadzor da redovno izveštava o sistemskim rizicima i potencijalno štetnim praksama u sektoru osiguranja omogućilo bi proaktivnu, a ne reaktivnu zaštitu potrošača. Ti izveštaji bi služili da se njima identifikuju prakse koje mogu dovesti do povreda prava potrošača i pre nego što se one pojave kroz konkretne pritužbe pred ombudsmanom ili postupke pored sudom. Na kraju, razmatranje osnivanja koordinacionog tela koje bi pratilo usklađenost zakonodavnog i regulatornog okvira, naročito u kontekstu digitalizacije, primene veštačke inteligencije i novih usluga tržišta osiguranja, predstavlja važan korak ka celovitijem i koherentnijem sistemu zaštite.[48]

Iako bi predložene reforme zahtevale sistemsku intervenciju i visok stepen koordinacije između zakonodavnih i regulatornih tela, one bi ujedno predstavljale mogućnost da se strukturna podeljenost engleskog sistema transformiše iz faktora kompleksnosti u siguran izvor fleksibilnosti i prilagodljivosti. Time bi se potrošačka zaštita u oblasti osiguranja učinila ne samo normativno dostupnijom već i funkcionalno delotvornijom.

Zaključujemo da efikasnost strukturne podeljenosti u engleskom pravu osiguranja zavisi pre svega od kvaliteta regulatorne usklađenosti i jasnoće međusobnog odnosa između zakonskih i podzakonskih izvora prava. Dok regulatorna razuđenost može omogućiti brze reakcije na promene tržišta i inovacije u sektoru osiguranja, ona istovremeno nosi rizik od nejasnoća, preklapanja i otežanog pristupa pravima za potrošače kao krajnje korisnike usluga osiguranja. Stoga, bez obzira na to što engleski sistem pruža visoke standarde zaštite u suštinskom smislu, njegova stvarna efikasnost zavisi od usklađenosti i dostupnosti tih standarda u praksi, a time i od postojanja institucionalne volje da se regulatorna struktura zakonski uobliči, harmonizuje i učini transparentnijom za potrošače.

V Zaključak

Razvoj engleskog ugovornog prava osiguranja u poslednjim decenijama svedoči o postepenom, ali odlučnom napuštanju tradicionalnog pristupa zasnovanog na oštrom formalizmu i snažnom oslanjanju na načelo krajnje dobre vere,

[47] Daniel Schwarcz, „Transparently Opaque: Understanding the Lack of Transparency in Insurance Consumer Protection", *UCLA Law Review*, Vol. 61/2014, 456.

[48] Zofia Bednarz, Kayleen Manwaring, „Keeping the (Good) Faith: Implications of Emerging Technologies for Consumer Insurance Contracts", *Sydney Law Review*, Vol. 43, No. 4/2021, 486–487; Paul Klumpes, „Coordination of cybersecurity risk management in the U.K. insurance sector", *The Geneva Papers on Risk and Insurance – Issues and Practice*, Vol. 48/2023, 336–339.

u korist modernijeg i uravnoteženijeg režima zaštite ugovornih strana, a prvenstveno potrošača. Usvajanje Zakona o potrošačkim osiguranjima ali i Zakona o osiguranju predstavlja ključnu tačku u tom pravcu, ne samo kao izraz zakonodavne svesti o potrebi unapređenja zaštite na tržištu, već i kao rezultat šire transformacije razumevanja pravičnosti i razumnosti u ugovornim odnosima.

Kroz detaljno promatranje dužnosti obe ugovorne strane kod ugovora o osiguranju, dužnosti potrošača da pruži tačne i potpune informacije, kao i dužnosti osiguravača da transparentno informiše i ne dovede potrošača u zabludu, ukazano je na težnju zakonodavca da se postigne ravnoteža u podeli rizika i odgovornosti. Upravo ta ravnoteža predstavlja osnovu za poverenje u osiguranje kao specifičnu vrstu usluge čija je ciljna funkcija pružanje zaštite, ali i postavlja granice u kojima pravna pravila treba da štite slabiju stranu, bez narušavanja tržišne dinamike i efikasnosti.

Analiza regulatornog okvira zaštite dalje pokazuje da i pored visokog stepena zaštite koju engleski sistem osiguranja pruža, njegova strukturna podeljenost i složena regulatorna razuđenost mogu predstavljati prepreke za efektivno ostvarivanje prava potrošača. Neusklađenost termina, fragmentacija izvora i odsustvo institucionalne koordinacije zahtevaju sistemske korekcije, koje bi mogle doprineti boljoj dostupnosti pravne zaštite, većoj predvidljivosti i jačanju poverenja u regulatorni okvir. U tom smislu, engleski model može poslužiti i kao primer mogućnosti, ali i izazova u izgradnji modernog sistema prava osiguranja, u kojem pravna sigurnost, zaštita potrošača i fleksibilnost tržišta nisu suprotstavljene vrednosti, već međusobno zavisni elementi jednog održivog i savremenog pravnog okvira.

Literatura

- Amajuoyi U., Fejős A., „Mind the Consumer Protection Gap: the UK Financial Ombudsman Service, Fairness and Reasonableness, and the Law", *Protecting Financial Consumers in Europe Comparative Perspectives and Policy Choices (eds. Piotr Tereszkiewicz, Mariusz Golecki)*, Brill Nijhoff, Leiden/Boston, 2023.
- Bednarz Z., Manwaring K., „Keeping the (Good) Faith: Implications of Emerging Technologies for Consumer Insurance Contracts", *Sydney Law Review*, Vol. 43, No. 4/2021.
- Bennett H., „The Three Ages of Utmost Good Faith", *The World of Maritime and Commercial Law: Essays in Honour of Francis Rose* (eds. Charles Mitchell, Stephen Watterson), London, 2020.
- Birds J., *Insurance law in the United Kingdom*, sixth edition, Alphen aan den Rijn, 2024.
- Chew Li Hua N., „The Doctrine of Utmost Good Faith: Back to Common Law to Move Forward?", *Journal of Malaysian and Comparative Law*, Vol. 39/2012.
- Cooter R., Ulen T., *Law and Economics*, 6th edition, Boston, 2016.

- Cousy H., „The Principles of European Insurance Contract Law: the Duty of Disclosure and the Aggravation of Risk", *ERA Forum 9 (Suppl 1)*, 2008.
- Donnelly M., „The Financial Services Ombudsman: Asking the Existential Question", *Dublin University Law Journal*, Vol. 35/2012.
- Farrugia A., Grima S., „A model to determine the need to modernise the regulation of the principle of utmost good faith", *Journal of Financial Regulation and Compliance*, Vol. 29, No. 4/2021.
- Foat B., „Levelling the Playing Field – The Modernisation of Insurance Law in the United Kingdom", *International In-house Counsel Journal*, Vol. 8, No. 31/2015.
- Gurses O., „What does 'utmost good faith' mean", *Insurance Law Journal*, Vol. 27, 2016.
- Hutchinson A., Stoop H., „Misrepresentation in Consumer Insurance: The United Kingdom Legislature Opts for a Reasonable Consumer Standard", *South African Law Journal*, Vol. 130, No. 4/2013.
- Jaffe P., „Reform of the Insurance Law of England and Wales-Separate Laws for the Different Needs of Businesses and Consumers", *Tulane Law Review*, Vol. 87, No. 5/2013.
- Keglević A., „Pre-contractual Information Duty and Unfair Contract Terms – Open questions and dilemmas – ", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013.
- Keglević A., *Građanskopravni aspekti obveze obavještavanja kod potrošačkog ugovora o osiguranju*, doktorski rad, Pravni fakultet Univerziteta u Zagrebu, Zagreb, 2012.
- Keglević Steffek A., „Trust and Transparency in Insurance Contract Law: European Regulation and Comparison of Laws", *Cambridge Yearbook of European Legal Studies*, Vol. 24/2022.
- Klumpes P., „Coordination of cybersecurity risk management in the U.K. insurance sector", *The Geneva Papers on Risk and Insurance – Issues and Practice*, Vol. 48/2023.
- Koch R., „German Reform of Insurance Contract Law", *European Journal of Commercial Contract Law*, Vol. 2, No. 3/2010.
- Lowry J., „Whither the Duty of Good Faith in UK Insurance Contracts", *Connecticut Insurance Law Journal*, Vol. 16, No. 1/2009.
- Petrović Tomić N., „Informisanje korisnika usluga osiguranja u nemačkom pravu", *Tokovi osiguranja, Časopis za teoriju i praksu osiguranja*, br. 4/2015.
- Petrović Tomić N., *Pravo osiguranja – sistem*, Knjiga I, Beograd, 2019.
- Petrović Tomić N., *Zaštita potrošača usluga osiguranja,* Beograd, 2015.
- Reeves L., „The Duty of Pre-Contractual Disclosure in English Insurance Law: Past and Future – Does the Law Need to be Changed?", *Southampton Student Law Review*, Vol. 5/2015.

- Schmulow A., Dayaram B., Mullen S., „Consumer Protection in Insurance Contracts: The Need for a 'Treating Customers Fairly' Regime", The International Review of Financial Consumers, Vol. 8, No. 1/2023.
- Schwarcz D., „Transparently Opaque: Understanding the Lack of T ently Opaque: Understanding the Lack of Transparency in ency in Insurance Consumer Protection", *UCLA Law Review*, Vol. 61/2014.
- Schwartz D., „Resolving the Disclosure Puzzle in Insurance Law", *Business Law Review*, Vol. 6/ 2007.
- Ünan S., „Insurer's Pre-contractual Duties to Inform and Warn/Advise", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013.
- Vásquez-Vega D., „A comparative analysis of utmost good faith in colombian and english insurance law", *EAFIT Journal of International Law*, Vol. 5, No. 02/2014.
- Walker P., „Non-disclosure: Some comparisons", *Victoria University of Wellington law review*, Vol. 26/1996.
- Wandt M., Bork K., „Disclosure duties in German insurance contract law", *Zeitschrift für die gesamte Versicherungswissenschaft*, Vol. 109/2020.
- Woloniecki J., „The Duty of Utmost Good Faith in Insurance Law: Where Is It in the 21st Century?", *Defense Counsel Journal*, Vol. 69, No. 1/2002.

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Strahinja Sarić[1]

CONSUMER PROTECTION OF INSURANCE SERVICES IN ENGLISH LAW

REVIEW SCIENTIFIC PAPER

Abstract

In this paper, the author analyses the legal protection of consumers of insurance services under English law, with particular reference to the nature and scope of the pre-contractual duty of disclosure and provision of information. Proceeding from the current legal framework, which largely relies on regulatory rules, the author identifies certain structural shortcomings in legal certainty, transparency, and the effectiveness of consumer protection in the field of insurance. The central hypothesis of the paper is that such reliance on subordinate legislation, primarily administrative sources of law, rather than on comprehensive statutory regulation of the pre-contractual duty to inform, results in fragmented and less predictable consumer protection. For the purpose of obtaining a more complete perspective, the English approach is compared with the German legal system, in which the Insurance Contract Act provides a coherent, transparent, and consumer-accessible normative framework.

On the basis of the foregoing analysis, the final part of the paper proposes solutions that would enable more effective and legally certain protection of consumers of insurance services under English law.

Keywords: consumer protection in insurance services, pre-contractual disclosure, duty to inform, principle of utmost good faith (*bona fides*), English law.

I Introduction

Consumer protection is one of the fundamental postulates of modern contract law, particularly in the field of services of broader public interest, such as

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the insurance industry. Insurance contracts, owing to their specific structure, informational asymmetry, and relatively standardised content, place policyholders, as the weaker contractual parties, in a position of increased risk regarding comprehension and legal certainty.[2] Precisely for this reason, the manner in which a legal system regulates the mutual pre-contractual duty of disclosure and provision of information between contracting parties is of essential importance for ensuring transparency and effective protection of both parties, and consumers in particular.

In this domain, English law departs from the standard model of comprehensive statutory codification characteristic of continental legal systems. Rather than relying on clearly prescribed statutory provisions governing the respective duties of contracting parties in insurance contracts, it largely depends on a regulatory framework established by the *Financial Conduct Authority* (FCA), primarily through the rules contained in the *Insurance: Conduct of Business Sourcebook* (ICOBS).[3] Such a solution raises questions concerning legal certainty for consumers, the effectiveness of mechanisms to reduce informational asymmetry, and consistency in the application and protection of consumer rights.

Proceeding from the principal hypothesis that a regulatory model grounded in the ICOBS results in fragmented and less predictable consumer protection within the sphere of insurance, to the extent that it is insufficient to ensure consistent and comprehensive protection, the author tends, through a thorough examination of the existing positive legal framework accompanied by a comparative legal analysis, to highlight the advantages of a model based on comprehensive statutory regulation, such as that found in German law, primarily through the German Insurance Contract Act.[4] For that purpose, the paper is divided into three parts. The first part outlines the lengthy historical development of the regulation of contractual relations in insurance contracts, culminating in the most recent amendments introduced over the past decade and a half. The second part analyzes the duty of disclosure and provision of information owed mutually by the contracting parties, with particular reference to the rules governing this duty and the legal consequences of its breach. In the third part, drawing on the previous analysis of the normative logic and the identified structural division between the legislative and regulatory spheres, the author proposes specific reform directions and potential solutions for improving the English system of consumer protection in the field of insurance.

[2] Nataša Petrović Tomić, *Zaštita potrošača usluga osiguranja*, Beograd, 2015, 43.

[3] Financial Conduct Authority, *Insurance: Conduct of Business Sourcebook* (hereinafter in footnotes: ICOBS), available at: *https://www.handbook.fca.org.uk/handbook/ICOBS/1/?view=chapter*, accessed on 15 July 2025.

[4] German Insurance Contract Act of 2008 (*Versicherungsvertragsgesetz*)

II Normative Basis and the Developmental of the Regulation of Contractual Relations in Insurance

The development of insurance contract law in English law represents an example of the evolution of a branch of private law that long remained closely tied to commercial practice and judicial doctrine, before undergoing significant legislative transformations in the twentieth and twenty-first centuries, particularly with regard to consumer protection. Insurance contracts, especially marine insurance, emerged within the context of the rapid expansion of trade and the risks associated with the maritime transport of goods throughout the seventeenth and eighteenth centuries. Within such commercial relationships, pronounced informational asymmetry prevailed, whereby the insured typically possessed all facts material to the assessment of risk, while the insurer was required to act on the basis of limited information provided by the insured, who often failed to disclose facts of decisive importance.[5] From this asymmetry arose the need to introduce a principle that would safeguard the integrity of the contractual relationship and ensure confidence in the insurance market.

Thus, the principle of *utmost good faith* gradually developed, the logical foundation for the establishment of this doctrine in English insurance contract law being found in the opinion of Lord Mansfield in *Carter v. Boehm*. Lord Mansfield articulated a general principle concerning the disclosure of information during negotiations for the conclusion of an insurance contract, the essence of which lies in the duty of the insured to disclose to the insurer, prior to the conclusion of the contract, all facts that may be regarded as material. In this manner, the foundation was laid for the duty of full and frank disclosure of material circumstances by the insured. This meant that the insured was required not only to answer truthfully the questions asked, but also voluntarily to disclose all circumstances that might influence the insurer's decision whether to accept the risk or to impose additional conditions on coverage.[6]

Over time, the principle of *utmost good faith* was elevated from a useful concept denoting particularly stringent standards in insurance negotiations to a foundational and organising principle of insurance law.[7] This occurred through its codification in the Marine Insurance Act 1906, which prescribes that a contract of

[5] John Birds, *Insurance law in the United Kingdom*, sixth edition, Alphen aan den Rijn, 2024, 22; Ben Foat, „Levelling the Playing Field – The Modernisation of Insurance Law in the United Kingdom", *International In-house Counsel Journal*, Vol. 8, No. 31/2015, 2–3.

[6] Howard Bennett, „The Three Ages of Utmost Good Faith", *The World of Maritime and Commercial Law: Essays in Honour of Francis Rose* (eds. Charles Mitchell, Stephen Watterson), London, 2020, 64–68; Jan Woloniecki, „The Duty of Utmost Good Faith in Insurance Law: Where Is It in the 21st Century?", *Defense Counsel Journal*, Vol. 69, No. 1/2002, 63.

[7] H. Bennett, 70.

marine insurance is "a contract based upon the utmost good faith" and that, if either party fails to observe the duty arising therefrom, the other party may rescind the contract.[8] Although the act pertains to marine insurance, in practice it has been applied as a general point of reference for other forms of insurance as well.[9] Thus, the insurance contract became a typical example of a contract of *utmost good faith*, subject to a special legal regime governing the disclosure of facts, whereby their non-disclosure or misrepresentation, even if unintentional, entitled the insurer to rescind the contract.[10]

However, such strictness gradually attracted criticism, particularly in the context of mass consumer contracts, where proposers were often unaware of the extent of their obligations and the consequences of their omissions. Concurrently, consumer law underwent substantial development as a response to the growing complexity of markets and the imbalance of power between consumers and commercial entities. The modern insurance market has changed considerably since the enactment of the 1906 Act, with contemporary practice characterised by sophisticated systems, procedures, and more complex data analysis, alongside an expanding range of insured risks and potentially available information. As a result, the existing legal framework failed to keep pace with these developments and did not reflect contemporary trends in consumer law. The act favoured insurers because it originated at a time when they occupied a weaker bargaining position in relation to insureds; accordingly, in cases of breach by the insured, insurers were given the opportunity to avoid the contract in its entirety, even where such a response was disproportionate to the breach.[11] For these reasons, the modern era has witnessed significant legislative progress in this field, particularly through the enactment of the Consumer Insurance Act and the Insurance Act.[12] Although these acts collectively

[8] Marine Insurance Act 1906, Art. 17.

[9] Paul Jaffe, „Reform of the Insurance Law of England and Wales-Separate Laws for the Different Needs of Businesses and Consumers", *Tulane Law Review*, Vol. 87, No. 5/2013, 1083–1084.

[10] The burden of identifying and disclosing material facts, namely, any fact that would influence the judgment of a prudent insurer in assessing the risk, rested upon the proposer. This rule applied even where no questions had been asked and therefore frequently led to unfair consequences. The essence of the problem lay in the circumstance that the average proposer was unaware of which facts the insurer considered relevant; nevertheless, a failure to disclose a material fact enabled the insurer to rescind the contract retroactively. Nurjannah Chew Li Hua, "The Doctrine of Utmost Good Faith: Back to Common Law to Move Forward?," *Journal of Malaysian and Comparative Law*, Vol. 39, 2012, 10–11; Ozlem Gurses, "What Does 'Utmost Good Faith' Mean?," *Insurance Law Journal*, Vol. 27, 2016, 124–126; B. Foat, 2.

[11] Andre Farrugia, Simon Grima, „A model to determine the need to modernise the regulation of the principle of utmost good faith", *Journal of Financial Regulation and Compliance*, Vol. 29, No. 4/2021, 455; Daniel Vásquez-Vega, „A comparative analysis of utmost good faith in Colombian and English insurance law", *EAFIT Journal of International Law*, Vol. 5, No. 02/2014, 86; B. Foat, 3.

[12] The Consumer Insurance (Disclosure and Representations) Act 2012 (hereinafter: CIDRA) and the Insurance Act 2015.

represent an upgrade to the previously applicable rules of the Marine Insurance Act, their purpose and scope of application differ. CIDRA applies exclusively to contracts concluded between consumers and insurers, whereas the Insurance Act governs business transactions, that is, commercial insurance contracts.[13]

The division of insurance rules between these two acts is intended to make a clear distinction between two separate regimes, each reflecting the specific nature of the relationship between the contracting parties.[14] In this manner, a clear distinction is made, underscoring the premise that consumers must benefit from a higher level of protection through less onerous duties and clearer guidance, as opposed to commercial relationships in which a greater degree of knowledge and diligence is expected. Such differentiation contributes to enhanced legal certainty and transparency, while simultaneously requiring additional caution to ensure the coordinated operation of these sector-specific statutes in relation to numerous regulatory rules, thereby avoiding overlap and inconsistency.

CIDRA defines its scope of application by characterising a consumer insurance contract as one concluded between an insurer and "an individual who enters into the contract wholly or mainly for purposes unrelated to the individual's trade, business, or profession".[15] Accordingly, the insured must be a consumer who is a natural person, and the principal purpose of concluding the contract must be non-commercial, i.e. unrelated to the individual's business activities.[16]

Moreover, the statute clearly prescribes what is expected of consumers and the legal remedies available to insurers in the event of a consumer's breach of the duty to inform. In this respect, a specific pre-contractual duty is introduced that

[13] This division is largely the result of the transition undergone by insurance law under the influence of European Union law and consumer legislation. With the rapid expansion of consumer protection standards, the distinction between consumer and commercial insurance has gained increasing importance. The criterion of differentiation is mainly the nature of the risk, supplemented by the status of the insured. Accordingly, what confers a consumer character upon insurance is the private rather than commercial nature of the covered risk. Determining the consumer character of a contract on the basis of these criteria has significant practical implications, particularly because it avoids problematic situations that may arise from differing definitions of the concept of consumer. Nataša Petrović Tomić, *Pravo osiguranja – sistem*, Knjiga I, Belgrade, 2019, 285–286.

[14] P. Jaffe, 1086–1088.

[15] CIDRA, Art. 1. This formulation closely resembles that contained in the *Consumer Rights Act 2015*, where a consumer is defined as a natural person acting for purposes wholly or mainly outside that person's trade, business, craft, or profession.

[16] It should be noted that, in accordance with this understanding, the concept of consumer insurance may encompass so-called mixed-purpose transactions, where a person obtains insurance partly for business and partly for private purposes. Such a contract will be regarded as consumer insurance if the non-business purpose predominates in the particular case. The assessment is conducted in light of the factual circumstances of each individual case. Thus, for example, where a taxi driver uses a vehicle predominantly for transporting passengers and only occasionally for personal needs, the insurance will not be considered consumer insurance. N. Petrović Tomić (2015), 114.

differs from the duty applicable in the non-consumer market, thereby recognising the distinct insurance needs of natural persons acting as consumers in comparison with other entities. Opposite this redefined duty of the consumer, to exercise reasonable care during the pre-contractual stage so as not to make misrepresentations to the insurer, there is no corresponding statutory duty imposed upon insurers. Unlike the approach adopted in other legal systems, the insurer's pre-contractual duty to provide information is not expressly regulated by the relevant statute. Nevertheless, this does not mean that such a duty is entirely absent on the part of the insurer; rather, it is governed by other regulatory instruments. In this manner, two distinct legal regimes governing duties of disclosure have been established, with a separate regime applicable to each contracting party.

III Dual Legal Regime Governing the Pre-contractual Duty of Disclosure

The pre-contractual duty of disclosure in insurance contracts constitutes a key protective mechanism aimed at reducing the inherent informational asymmetry between the contracting parties – the insurer, as a professional, on the one hand, and the proposer, most often a consumer, on the other. Insurance is a specific type of legal transaction whose purpose and price are grounded in risk assessment, whereby the insurer depends on accurate and complete information, while the consumer frequently does not fully understand all elements of the service being purchased. Accordingly, the parties' respective pre-contractual duties of disclosure are of decisive importance for transparency, protection, and balance within the contractual relationship. They ensure that the consumer makes an informed decision on the basis of all known circumstances, while simultaneously protecting the insurer from inaccurate presentations of risk. In this sense, the duty is not merely an instrument for achieving balance in the contractual relationship but also a foundation for a legally valid and sustainable insurance contract. For these reasons, the existence of a clear yet appropriately balanced normative framework governing pre-contractual disclosure is essential to the stability of the insurance relationship.[17]

Within this context, English law has developed a dual legal regime, one applicable to consumers and another to insurers, with the aim of ensuring effective protection for both parties, while allocating responsibility in accordance with the

[17] Robert Cooter, Thomas Ulen, *Law and Economics*, 6th edition, Boston, 2016, 41; David Schwartz, „Resolving the Disclosure Puzzle in Insurance Law", *Business Law Review*, Vol. 6/2007, 180; Ana Keglević, „Pre-contractual Information Duty and Unfair Contract Terms – Open questions and dilemmas – "*Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013, 81; Ana Keglević, *Građansko-pravni aspekti obveze obavještavanja kod potrošačkog ugovora o osiguranju*, doktorski rad, Pravni fakultet Univerziteta u Zagrebu, Zagreb, 2012, 8–9.

actual capacities and reasonable expectations of each participant in the contractual relationship. Such an approach, however, raises a number of issues concerning the coherence of the existing regimes, their practical application, and their overall effectiveness.

1. The Consumer's Duty to Disclose Information to the Insurer

Prior to the enactment of the Consumer Insurance, the principle of utmost good faith served as the guiding standard in regulating the duty of disclosure. The policyholder was required to disclose all facts that might influence a prudent insurer's assessment of the risk, and this duty existed regardless of whether the insurer had made any specific questions for that purpose. The justification for such a broadly formulated duty lay in the assumption that the policyholder had full knowledge of the facts material to the risk assessment, in contrast to the insurer, who was presumed to know none. Over time, however, the question arose as to how a policyholder could reasonably be expected to identify which facts were material to risk assessment. Recognition of this problem led to the development of a strongly consumer-oriented practice, as well as significant legislative advances in this area.[18]

The entry into force of CIDRA marked a turning point in the pre-contractual disclosure obligations owed to insurers by proposers. The previous duty requiring policyholders voluntarily to disclose all material facts impacting the decision of a prudent insurer was abolished and replaced with a new, more limited obligation requiring consumers "to take reasonable care not to make a misrepresentation to the insurer".[19] This means that consumers are no longer obliged to voluntarily disclose information, instead, they must take reasonable care to provide accurate and complete answers to the insurer's questions.[20] Whether reasonable care has been exercised is assessed in light of all relevant circumstances, several of which are identified *exempli causa* in the statute: the type of consumer insurance and its target market; any relevant explanatory material produced, published, or endorsed by the insurer; the clarity and specificity of the insurer's questions; in cases relating to renewal or variation of a consumer insurance contract, the extent to which the

[18] Ana Keglević Steffek, „Trust and Transparency in Insurance Contract Law: European Regulation and Comparison of Laws", *Cambridge Yearbook of European Legal Studies*, Vol. 24, 2022, 331–332; John Lowry, „Whither the Duty of Good Faith in UK Insurance Contracts", *Connecticut Insurance Law Journal*, Vol. 16, No. 1/2009, 99. It may be observed that the traditional duty of the insured to inform the insurer of the risk has gradually been replaced, or at least supplemented, by the insurer's duty to obtain material information independently, that is, to take an active role in identifying the needs of the particular client. Herman Cousy, „The Principles of European Insurance Contract Law: the Duty of Disclosure and the Aggravation of Risk", *ERA Forum 9 (Suppl 1)*, 2008, 123.

[19] CIDRA, Section 2.

[20] N. Petrović Tomić, 254.

insurer clearly communicated the importance of responding to such questions; and whether an insurance agent acted on behalf of the consumer. The applicable standard is that of the reasonable consumer. The assessment of whether a consumer meets this standard is primarily objective, subject to two exceptions requiring consideration of the consumer's personal (subjective) characteristics. First, where the insurer knew or ought reasonably to have known that the consumer had particular traits or was subject to specific circumstances, those factors must be taken into account. Second, a deliberate misrepresentation is invariably regarded as a failure to exercise reasonable care. These exceptions ensure that the assessment captures consumers with specialised knowledge or skills, as well as those acting in bad faith, while still allowing room for reasonable error on the part of the average consumer when making a decision.[21]

The shift away from the earlier model, under which policyholders were expected to volunteer facts material to risk assessment, represents a significant easing of the consumer's burden. The consumer's duty now essentially consists in reading the insurer's questions with reasonable care and answering them accurately and as fully as possible. The consumer no longer needs to be concerned about omitting a material fact, since it is the insurer who asks questions presumed to be material to the assessment of risk.[22] In this way, numerous obstacles in the insurance market, most notably informational asymmetry are mitigated, while simultaneously enabling insurance services to be tailored to the needs of individual consumers through such a mechanism.[23]

If a consumer breaches the duty of disclosure, the result is a misrepresentation of circumstances material to the assessment of risk. The determination of whether a misrepresentation has occurred is governed by common law and supported by substantial case law. It is frequently emphasised that even a statement that is literally true may constitute a misrepresentation if it is incomplete.[24] In practice, this issue is particularly significant at the stage of contract renewal, when the consumer is required to confirm or amend previously provided information. In this case, the statute expressly provides that a failure to do so may constitute a misrepresentation.[25]

[21] CIDRA, Section 3; *Consumer Insurance (Disclosure and Representations) Bill [HL];* (hereinafter: CIDRA Bill), para. 30, available at: *https://publications.parliament.uk/pa/bills/lbill/2010-2012/0068/en/2012068en.htm*, accessed: 27 July 2025.

[22] N. Petrović Tomić (2015), 254; A similar solution exists in German law. Under Art. 19(1) of the Versicherungsvertragsgesetz, the policyholder must disclose all circumstances material to the insurer's decision whether to enter into the contract on the agreed terms. This obligation is fulfilled by responding to questions expressly posed by the insurer in written form, most commonly through questionnaires specifically designed for that purpose. Manfred Wandt, Kevin Bork, "Disclosure Duties in German Insurance Contract Law", *Zeitschrift für die gesamte Versicherungswissenschaft*, Vol. 109/2020, 82–83.

[23] A. Keglević Steffek, 337.

[24] CIDRA Bill, para. 23.

[25] CIDRA, Section 2.

However, the breach of the duty of disclosure in the form of a misrepresentation of circumstances material to the assessment of risk will not, in itself, be sufficient to entitle the insurer to a remedy for the protection of its interests. In addition to the breach, a further requirement must be satisfied, namely, the misrepresentation must be presumed to have influenced the insurer's decision whether to accept the risk and on what terms.[26] The insurer must demonstrate that it would not have entered into the contract, or would have done so only on materially different terms, had the misrepresentation not occurred. This entails proof of the insurer's actual reliance on the consumer's statement, rather than simply establishing the hypothetical relevance of the statement to a prudent insurer.[27]

With respect to the legal consequences of misrepresentation of circumstances material to the assessment of risk, a clear shift is noticeable from the traditional "all-or-nothing" approach to a "proportionality-based system". The all-or-nothing rule rests on the view that a breach of the duty of disclosure renders the parties' consent defective, with the consequence that avoidance of the contract is the only available remedy. On the other hand, the principle of proportionality rejects this rigid approach in favour of a more economically rational model based on balancing the actual risk against the level of the premium. Subject to certain exceptions and depending on the nature of the breach, the principle of proportionality requires that the contract be amended or adjusted in proportion to the degree of fault. It can be concluded that the legislature's evident intention was to promote mutual trust and the continuation of the contractual relationship, even under modified terms relating to the premium or other contractual elements.[28]

For the principle of proportionality to apply, it is necessary, once a breach of the duty of disclosure has been established, to determine the consumer's subjective attitude toward the accuracy of the given information. The remedies available to the insurer depend accordingly on the consumer's state of mind. Where the misrepresentation is honest and reasonable (*reasonable misrepresentation*), the insurer may not refuse payment after the insured event has occurred and must satisfy the

[26] CIDRA, Section 4.

[27] The statute effectively codifies the legal position articulated in *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd [1995] AC 501*. It reflects the view that, for an insurer successfully to rely on misrepresentation, it is not sufficient that the misrepresented fact be material; the insurer must also demonstrate that the statement induced it to enter into the contract on those terms. In other words, it is insufficient that a hypothetical prudent insurer might have been influenced by the inaccurate information, there must be a decisive effect on the actual insurer's decision for the misrepresentation to be regarded as material. It is further emphasised that recognising liability for misrepresentation where the will of the particular insurer was unaffected would be contrary to common sense and fairness. Paul Walker, "Non-disclosure: Some Comparisons", *Victoria University of Wellington Law Review*, Vol. 26/1996, 832; Laura Reeves, "The Duty of Pre-Contractual Disclosure in English Insurance Law: Past and Future – Does the Law Need to be Changed?", *Southampton Student Law Review*, Vol. 5/2015, 3.

[28] A. Keglević Steffek, 341.

claim. In such cases, the consumer is deemed to have acted with the reasonable care expected of a reasonable consumer, taking into account relevant objective circumstances; subjective characteristics are considered only if known, or ought reasonably to have been known, to the insurer. Where the misrepresentation results from the consumer's careless misrepresentation, the insurer is entitled to a proportionate remedy determined by how it would have acted had accurate information been provided. If the insurer hadn't entered into the contract, it may rescind the contract and return the premiums paid. Conversely, if it had been contracted on different terms, the policy is treated as having been concluded on those terms. Finally, where the misrepresentation is deliberate or reckless, the insurer may rescind the contract and reject the claim, retaining the premiums unless doing so would be unfair to the consumer. To establish that a misrepresentation was deliberate or reckless, it must be proven, on the basis of all relevant circumstances, that the consumer 1) either knew the statement was untrue or misleading, or was indifferent as to whether it was true; and 2) knew the fact in question was relevant to the insurer, or was indifferent as to its relevance. The burden of proving such misrepresentation rests with the insurer. However, the statute provides for rebuttable presumptions: 1) that the consumer possessed the knowledge reasonably expected of a reasonable consumer; and 2) that the consumer knew that a fact forming the subject of a clear and specific question was material to the insurer's decision whether to conclude the contract.[29]

In this manner, a clear framework has been established in which legal consequences are determined by the degree of the insured's fault, while the principle of proportionality safeguards fairness and the interests of both contracting parties. Because insurers are able to adjust the contract upon becoming aware of previously undisclosed risks, either by reducing the indemnity or increasing the premium, they are less compelled to invest time and resources in exhaustive pre-contractual investigations aimed at avoiding avoidance or rescission. For this reason, the principle of proportionality represents a mutually beneficial solution for both parties.[30]

[29] CIDRA, Section 5, Schedule 1; CIDRA Bill, paras. 36–40. Andrew Hutchinson, Helena Stoop, „Misrepresentation in Consumer Insurance: The United Kingdom Legislature Opts for a Reasonable Consumer Standard", *South African Law Journal*, Vol. 130, No. 4/2013, 710–712.

[30] A. Keglević Steffek, 346. German law likewise embraces the principle of proportionality, subject to certain specific features. Where a misrepresentation results from ordinary negligence, the insurer is entitled to withdraw from the contract in accordance with the general rules of civil law governing termination. Conversely, where the misrepresentation is intentional or the result of gross negligence, the insurer may terminate the contract subject to one month's notice. However, the right to terminate may be exercised only where the contract cannot be adjusted to reflect the undisclosed circumstances, as the principle of proportionality takes precedence under German law. If, at the time of conclusion, the insurer would have agreed to the contract on different terms had it been aware of the relevant facts, it is obliged to adjust the contract accordingly, thereby incorporating those facts into the contractual framework. For the principle of proportionality to apply, two additional conditions must be satisfied: 1) a causal link must exist between the undisclosed circumstance and the assessment of risk; and 2) the insurer must have been willing to

2. The Insurer's Duty to Inform the Consumer

The insurer's pre-contractual duties are primarily directed toward protecting all prospective policyholders, and consumers in particular. The policyholder represents the weaker party in the contractual relationship and, as such, warrants special protection, being typically in a weaker economic position and having less knowledge of insurance services than the insurer. The primary form of protection lies in the provision of all necessary information enabling the prospective policyholder to make an informed decision. In this regard, the insurer is under a duty to provide such information not only prior to the conclusion of the contract but also throughout its duration. This duty arises both from specific statutory provisions governing insurance and, in their absence, from general legal principles such as good faith and liability for damage incurred during the negotiation phase. Nevertheless, given the complexity and significance of this subject matter, general principles alone are insufficient, thereby precise regulation through specific rules is needed.[31]

Most legal systems have opted for a clear statutory regulation of this duty. For example, under the German Insurance Contract Act, pre-contractual advice and disclosure are positioned as a central component of policyholder protection. The duty to inform applies to all insurance contracts regardless of the specific type of cover, and for the purposes of protective provisions the legislature makes no difference between natural and legal persons. The duty is limited to cases involving large risks. The importance attributed to pre-contractual disclosure in German law is further evidenced by the adoption of the Regulation on Information Duties, which elaborates the statutory obligation by specifying its precise scope and content.[32]

In contrast to the clear and detailed solution adopted in German law, English law follows a different approach to regulating the insurer's pre-contractual duty. Namely, the Consumer Insurance (Disclosure and Representations) Act does not regulate the insurer's pre-contractual duty of disclosure at all, focusing instead exclusively on alleviating the consumer's position by redefining the consumer's duty in relation to the presentation of circumstances material to the assessment of risk. Consequently, the principle of utmost good faith originating in the Marine Insurance Act 1906

conclude the contract, albeit on modified terms. Robert Koch, "German Reform of Insurance Contract Law", *European Journal of Commercial Contract Law*, Vol. 2, No. 3/2010, 169–170.

[31] N. Petrović Tomić (2015), 127; Samim Ünan, "Insurer's Pre-contractual Duties to Inform and Warn/Advise", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013, 9–10; A. Keglević (2012), 8.

[32] *Verordnung über Informationspflichten bei Versicherungsverträgen* (2008); Nataša Petrović Tomić, „Informisanje korisnika usluga osiguranja u nemačkom pravu", *Tokovi osiguranja*, No. 4/2015, 5–18; M. Wandt, K. Bork, 88–92; R. Koch, 166–168. A similar logic is reflected in *the Principles of European Insurance Contract Law*, which provides in Article 1:101 that they apply where "the contracting parties, notwithstanding any restrictions on the choice of applicable law under private international law, agree that these Principles shall govern their contract".

continues to apply to the insurer's duties in the pre-contractual phase, as well as to the relationship between the contracting parties following the conclusion of the contract. A possible explanation for this legislative choice lies in business practice, where it is widely considered more effective to shape insurers' conduct in accordance with standards of transparency and fairness embedded in self-regulatory instruments and rules governing insurance activities, rather than through rigid statutory provisions.[33]

In accordance with the principle of utmost good faith, the insurer must act so as not to withhold from the consumer any information considered material to the conclusion of the contract. Therefore, even in the absence of a specific inquiry from the counterparty, the insurer is obliged, prior to contract formation, to disclose all circumstances material to the contract and to refrain from any misrepresentation.[34]

Since compliance with the insurer's obligation under the principle of utmost good faith does not entirely resolve the problem of informational asymmetry on the consumer's side, further measures proved necessary. In order to ensure the fullest possible consumer protection, business practice, and subsequently insurance market regulators, sought solutions in clearer and more stringent regulatory instruments and rules governing insurance activities. As a result, nearly a decade prior to the enactment of the Consumer Insurance (Disclosure and Representations) Act, the *Financial Services Authority* (FSA) was established as the single statutory regulator of financial services. It issued a handbook containing specific rules for consumer insurance, entitled the *Insurance Conduct of Business Sourcebook – Rules on Non-disclosure and Misrepresentation (FSA Handbook – ICOBS Rules)*,[35] which, *inter alia*, required insurers to make clear questions concerning all circumstances material to the formation of the insurance contract. Following the abolition of the Financial Services Authority in 2013, part of its mandate was transferred to the *Financial Conduct Authority (FCA)*, which now supervises the provision of financial services and the conduct of financial institutions in the United Kingdom with the aim of protecting consumers and safeguarding market integrity. A revised Insurance Conduct of Business Sourcebook was subsequently adopted as part of the FCA Handbook, issued pursuant to the Financial Services Act.[36]

The Insurance Conduct of Business Sourcebook contains detailed rules governing insurers' conduct in their dealings with consumers on the United Kingdom insurance market. Insurers are required to act honestly, fairly, and professionally in accordance

[33] A. Keglević Steffek, 324–325.

[34] H. Bennett, 70–74.

[35] Financial Services Authority, Insurance Conduct of Business Sourcebook – Rules on Non-disclosure and Misrepresentation (FSA Handbook – ICOBS Rules), available at: *https://www.handbook.fca.org.uk/handbook/ICOB/2/?date=2005-01-14&view=chapter&timeline=True,* accessed on 6 August 2025.

[36] *Financial Services Act 2021*. A. Keglević Steffek, 326; Andrew Schmulow, Baladev Dayaram, Sian Mullen, "Consumer Protection in Insurance Contracts: The Need for a 'Treating Customers Fairly' Regime", *The International Review of Financial Consumers*, Vol. 8, No. 1/2023, 60–62.

with their customers' best interests at every stage of the contractual relationship, from the initiation of negotiations through contract formation to the potential occurrence of the insured event.[37] Moreover, all information provided to consumers, including advertising and promotional statements, must be clear, fair, and not misleading.[38] Prior to the conclusion of the contract, the insurer must present the consumer with all necessary information regarding the service, including: the main characteristics of the services; the scope of cover and exclusions; the duration of the contract; the premium, and the terms of payment.[39] Insurers are also required to supply a standardised document containing concise and easily comprehensible information about the service, thereby enabling consumers to compare different products more readily and to make an informed decision.[40] Additionally, a consumer must further be afforded a simple and timely means of exercising its contractual rights, including the right to cancel the contract within a specified period, as well as clear information concerning complaint procedures.[41] Finally, specific conduct standards relating to product governance are prescribed, including the duty of insurers to develop and distribute products aligned with the needs of the target market, thereby providing additional protection against products that are unsuitable for consumers' interests and requirements.[42]

In addition to the Handbook, an important role within the system of consumer protection in insurance services is played by the *Financial Ombudsman Service (FOS)*, an independent and impartial body whose principal function is to resolve complaints brought by consumers against financial service providers, including insurers. In fulfilling this role, it regularly interprets rules and standards of conduct, including those contained in the Insurance Conduct of Business Sourcebook, in light of fairness and the consumer's best interests. In this way, it contributes to the development of consumer-protection practice, as its stances and dispute-resolution approaches frequently affect insurers' behaviour as well as the interpretation of rules by legislators and market regulators. Thus, many positions first adopted in its practice have subsequently considerable impacted the shaping of the Consumer Insurance (Disclosure and Representations) Act. The Financial Ombudsman Service thus constitutes a key alternative dispute resolution mechanism within the insurance sector, enabling disputes to be resolved swiftly, efficiently, and accessibly without recourse to judicial proceedings. Therefore, its role is not merely protective, but also preventive and corrective win relation to insurers' behaviour.[43]

[37] ICOBS, Art. 2.5.1R.
[38] ICOBS, Art. 2.2.2R.
[39] ICOBS, Art. 6.1.5R.
[40] ICOBS, Art. 6, annex 3.
[41] ICOBS, Arts. 7.1.1R and 7.2.1R.
[42] ICOBS, Arts. 4.2A.6R and 4.2A.13R.
[43] Ugochi Amajuoyi, Andrea Fejős, "Mind the Consumer Protection Gap: the UK Financial Ombudsman Service, Fairness and Reasonableness, and the Law", *Protecting Financial Consumers in Europe Comparative*

IV Effectiveness of Structural Division and Regulatory (In)Coherence in Consumer Protection

In light of the foregoing analysis, consumer protection in English insurance law is characterised by a pronounced structural division between the legislative and regulatory spheres. On the one hand, the Consumer Insurance (Disclosure and Representations) Act, as a sector-specific statute, governs matters relating to the consumer's duty to provide accurate and complete information prior to the conclusion of the contract. On the other hand, the regulatory framework governing insurers' behaviour stems primarily from the rules contained in the Insurance Conduct of Business Sourcebook (ICOBS). Such an arrangement results in a dual normative framework - one directed at consumer duties and the other at insurers' obligations. These frameworks are not necessarily systemically aligned, nor are they, as is often the case in continental legal systems, structured within a single sector-specific legislative instrument, as is often the case in continental legal systems.

German law, as a standard representative of the continental legal tradition, offers a more coherent model based on the integration of the principal consumer-protection rules within a statutory framework, most notably through the German Insurance Contract Act. The Act directly and transparently prescribes insurers' obligations to provide all material information prior to contract formation, including the insurance product information document, in accordance with rules harmonised at the EU level. This approach enhances legal certainty and transparency for both consumers and insurers as service providers.[44]

By contrast, the English system sets regulatory rules outside the Consumer Insurance (Disclosure and Representations) Act, which may give rise to legal fragmentation and reduced predictability for end users. Although the rules contained in the Insurance Conduct of Business Sourcebook are binding, their formal status remains subordinate legislation, which may raise additional questions regarding the hierarchy of legal sources and the protection of consumer rights in the event of a dispute.

Nevertheless, this division may also offer certain advantages in terms of flexibility and responsiveness to market developments, as the Financial Conduct Authority (FCA), acting as regulator, is able to intervene and amend rules of conduct more rapidly than would be possible through the ordinary legislative process. In this respect, the effectiveness of structural division depends both on the stability of the regulatory regime and on the average consumer's ability to understand the distinction between statutory and regulatory protection. Accordingly, although

Perspectives and Policy Choices (eds. Piotr Tereszkiewicz, Mariusz Golecki), Brill Nijhoff, 2023, 259–264; Mary Donnelly, "The Financial Services Ombudsman: Asking the Existential Question", *Dublin University Law Journal*, Vol. 35/2012, 231–234; B. Foat, 5–6.

[44] M. Wandt, K. Bork, 88–92; R. Koch, 166–168.

consumer protection in English insurance law is substantively robust, structural division and regulatory dispersion may undermine its practical operation, particularly when compared with models founded upon a unified and systematised normative basis.

The complexity of this protective framework is especially evident in regulatory interventions such as the FCA's 2017–2018 initiative known as *Renewal Transparency*. Implemented through amendments to the Insurance Conduct of Business Sourcebook, the intervention aimed to enhance the transparency of renewal offers and thereby protect consumers from the harmful effects of remaining with the same insurer without actively comparing alternative offers. It was found that many insurers failed to present the previous year's premium clearly, nor did they inform consumers of the possibility of renewing their policies on more favourable terms with other insurers. Consequently, insurers were required to prominently display the amount of the prior year's premium in the renewal offers and to include a message encouraging consumers to reassess their needs and consider alternative market options.[45]

This practice demonstrates the capacity of regulatory flexibility to adapt consumer protection to real market problems, while simultaneously illustrating that, without such flexibility on the part of the Financial Conduct Authority, consumer protection would remain incomplete. Therefore, it may be concluded that this model depends primarily on regulatory initiative rather than on a stable statutory framework, meaning that consumers may often remain insufficiently protected where the regulator fails to act in a timely manner.

In light of these challenges, a number of institutional and normative solutions may be considered with a view to enhancing consumer protection. First, the integration of core sectoral rules, such as the standards contained in the Insurance Conduct of Business Sourcebook, into a single legislative act, for example through amendments to the Consumer Insurance (Disclosure and Representations) Act, could contribute to greater legal certainty and clarity. Furthermore, although insurers are currently expected to communicate information in accordance with the principle that it be "clear, fair and not misleading",[46] the introduction of an explicit statutory duty to provide key information prior to contract formation, modeled on the German insurance product information sheet, would further reduce informational asymmetry. The need to reinforce the insurer's duty of disclosure becomes particularly evident in light of the fact that English insurance regulation has traditionally relied on substantive regulation, focusing rules on contractual content and the conduct of market actors, rather than on transparency as a primary instrument of consumer protection. This historical tendency, stemming from the early development of insurance

[45] Financial Conduct Authority, Evaluation Paper 19/1: An evaluation of our general insurance renewal transparency intervention, 1–5, available at: *https://www.fca.org.uk/publication/corporate/ep19-1.pdf,* accessed: 31 July 2025.

[46] ICOBS, Art. 2.2.2R.

as a specialised professional activity, contributed to the prolonged neglect of informed consumer consent and to the relatively passive role of supervisory bodies in relation to evolving market dynamics. Only in more recent reforms, including initiatives undertaken by the Financial Conduct Authority, has a shift begun toward a model that values clarity and accessibility of information as prerequisites for fairness in contractual relations.[47] Moreover, strengthening institutional accountability by introducing a statutory obligation for the Financial Conduct Authority to report regularly on systemic risks and potentially harmful practices within the insurance sector would facilitate proactive, rather than reactive consumer protection. Such reports would assist in identifying practices likely to result in consumer harm even before they materialise through complaints submitted to the ombudsman or through judicial proceedings. Finally, consideration should be given to establishing a coordinating body tasked with monitoring the alignment of legislative and regulatory frameworks, particularly in the context of digitalisation, the deployment of artificial intelligence, and emerging insurance services, as an important step toward a more comprehensive and coherent system of protection.[48]

Although the proposed reforms would require systemic intervention and a high degree of coordination between legislative and regulatory bodies, they would also present an opportunity to transform the structural division of the English system from a source of complexity into a reliable source of flexibility and adaptability. Consumer protection in the field of insurance would become not only normatively more accessible but also functionally more effective.

Therefore, it may be concluded that the effectiveness of structural division in English insurance law depends primarily on the quality of regulatory coherence and the clarity of the relationship between statutory and subordinate sources of law. While regulatory pluralism may enable rapid responses to market developments and innovation within the insurance sector, it simultaneously carries the risk of ambiguity, overlap, and impeded access to rights for consumers as the end users of insurance services. Although the English system provides materially high standards of protection, its practical effectiveness depends on the coherence and accessibility of those standards, and thus on the willingness of institutions to formally structure, harmonise, and make the regulatory framework more transparent for consumers.

[47] Daniel Schwarcz, "Transparently Opaque: Understanding the Lack of Transparency in Insurance Consumer Protection", *UCLA Law Review*, Vol. 61/2014, 456.

[48] Zofia Bednarz, Kayleen Manwaring, "Keeping the (Good) Faith: Implications of Emerging Technologies for Consumer Insurance Contracts", *Sydney Law Review*, Vol. 43, No. 4/2021, 486–487; Paul Klumpes, "Coordination of cybersecurity risk management in the U.K. insurance sector", *The Geneva Papers on Risk and Insurance – Issues and Practice*, Vol. 48/2023, 336–339.

V Conclusion

The development of English insurance contract law in recent decades reflects a gradual yet decisive departure from the traditional approach characterised by strict formalism and a strong reliance on the principle of utmost good faith, in favour of a more modern and balanced regime for the protection of contracting parties, and consumers in particular. The adoption of the Consumer Insurance (Disclosure and Representations) Act, as well as the Insurance Act, represents a pivotal step in this direction, not only as an expression of legislative awareness of the need to enhance protection within the insurance market, but also as part of a broader transformation in the understanding of fairness and reasonableness in contractual relations.

A detailed examination of the duties of both contracting parties to an insurance contract, namely, the consumer's duty to provide accurate and complete information and the insurer's duty to communicate transparently and refrain from misleading the consumer, reveals the legislature's intention to achieve a balanced allocation of risk and responsibility. This balance constitutes the foundation of trust in insurance as a distinctive service whose primary function is the protection, while simultaneously defining the boundaries within which legal rules must safeguard the weaker party without undermining market dynamics and efficiency.

The analysis of the regulatory framework further demonstrates that, notwithstanding the high level of protection provided by the English insurance system, its structural division and regulatory complexity may impede the effective exercise of consumer rights. Terminological inconsistencies, fragmentation of legal sources, and the absence of institutional coordination call for systemic adjustments that could enhance the accessibility of legal protection, improve predictability, and strengthen confidence in the regulatory framework. In this respect, the English model may serve both as an illustration of the opportunities and as a reminder of the challenges inherent in constructing a modern system of insurance law, one in which legal certainty, consumer protection, and market flexibility are not competing values, but interdependent elements of a sustainable and contemporary legal framework.

Literature

- Amajuoyi U., Fejős A., „Mind the Consumer Protection Gap: the UK Financial Ombudsman Service, Fairness and Reasonableness, and the Law", *Protecting Financial Consumers in Europe Comparative Perspectives and Policy Choices (eds. Piotr Tereszkiewicz, Mariusz Golecki)*, Brill Nijhoff, Leiden/Boston, 2023.
- Bednarz Z., Manwaring K., „Keeping the (Good) Faith: Implications of Emerging Technologies for Consumer Insurance Contracts", *Sydney Law Review*, Vol. 43, No. 4/2021.

- Bennett H., „The Three Ages of Utmost Good Faith", *The World of Maritime and Commercial Law: Essays in Honour of Francis Rose* (eds. Charles Mitchell, Stephen Watterson), London, 2020.
- Birds J., *Insurance law in the United Kingdom*, sixth edition, Alphen aan den Rijn, 2024.
- Chew Li Hua N., „The Doctrine of Utmost Good Faith: Back to Common Law to Move Forward?", *Journal of Malaysian and Comparative Law*, Vol. 39/2012.
- Cooter R., Ulen T., *Law and Economics*, 6th edition, Boston, 2016.
- Cousy H., „The Principles of European Insurance Contract Law: the Duty of Disclosure and the Aggravation of Risk", *ERA Forum 9 (Suppl 1)*, 2008.
- Donnelly M., „The Financial Services Ombudsman: Asking the Existential Question", *Dublin University Law Journal*, Vol. 35/2012.
- Farrugia A., Grima S., „A model to determine the need to modernise the regulation of the principle of utmost good faith", *Journal of Financial Regulation and Compliance*, Vol. 29, No. 4/2021.
- Foat B., „Levelling the Playing Field – The Modernisation of Insurance Law in the United Kingdom", *International In-house Counsel Journal*, Vol. 8, No. 31/2015.
- Gurses O., „What does 'utmost good faith' mean", *Insurance Law Journal*, Vol. 27, 2016.
- Hutchinson A., Stoop H., „Misrepresentation in Consumer Insurance: The United Kingdom Legislature Opts for a Reasonable Consumer Standard", *South African Law Journal*, Vol. 130, No. 4/2013.
- Jaffe P., „Reform of the Insurance Law of England and Wales-Separate Laws for the Different Needs of Businesses and Consumers", *Tulane Law Review*, Vol. 87, No. 5/2013.
- Keglević A., „Pre-contractual Information Duty and Unfair Contract Terms – Open questions and dilemmas", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013.
- Keglević A., *Građanskopravni aspekti obveze obavještavanja kod potrošačkog ugovora o osiguranju*, doctoral thesis, Faculty of Law, University of Zagreb, 2012.
- Keglević Steffek A., „Trust and Transparency in Insurance Contract Law: European Regulation and Comparison of Laws", *Cambridge Yearbook of European Legal Studies*, Vol. 24/2022.
- Klumpes P., „Coordination of cybersecurity risk management in the U.K. insurance sector", *The Geneva Papers on Risk and Insurance – Issues and Practice*, Vol. 48/2023.
- Koch R., „German Reform of Insurance Contract Law", *European Journal of Commercial Contract Law*, Vol. 2, No. 3/2010.

- Lowry J., „Whither the Duty of Good Faith in UK Insurance Contracts", *Connecticut Insurance Law Journal*, Vol. 16, No. 1/2009.
- Petrović Tomić N., „Informisanje korisnika usluga osiguranja u nemačkom pravu", *Tokovi osiguranja, Časopis za teoriju i praksu osiguranja*, No. 4/2015.
- Petrović Tomić N., *Pravo osiguranja – sistem*, Knjiga I, Belgrade, 2019.
- Petrović Tomić N., *Zaštita potrošača usluga osiguranja,* Belgrade, 2015.
- Reeves L., „The Duty of Pre-Contractual Disclosure in English Insurance Law: Past and Future – Does the Law Need to be Changed?", *Southampton Student Law Review*, Vol. 5/2015.
- Schmulow A., Dayaram B., Mullen S., „Consumer Protection in Insurance Contracts: The Need for a 'Treating Customers Fairly' Regime", The International Review of Financial Consumers, Vol. 8, No. 1/2023.
- Schwarcz D., „Transparently Opaque: Understanding the Lack of T ently Opaque: Understanding the Lack of Transparency in ency in Insurance Consumer Protection", *UCLA Law Review*, Vol. 61/2014.
- Schwartz D., „Resolving the Disclosure Puzzle in Insurance Law", *Business Law Review*, Vol. 6/ 2007.
- Ünan S., „Insurer's Pre-contractual Duties to Inform and Warn/Advise", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013.
- Vásquez-Vega D., „A comparative analysis of utmost good faith in Colombian and English insurance law", *EAFIT Journal of International Law*, Vol. 5, No. 02/2014.
- Walker P., „Non-disclosure: Some comparisons", *Victoria University of Wellington law review*, Vol. 26/1996.
- Wandt M., Bork K., „Disclosure duties in German insurance contract law", *Zeitschrift für die gesamte Versicherungswissenschaft*, Vol. 109/2020.
- Woloniecki J., „The Duty of Utmost Good Faith in Insurance Law: Where Is It in the 21st Century?", *Defense Counsel Journal*, Vol. 69, No. 1/2002.

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Fidelis Oditah (editor), *The Future for the Global Securities Market*, Oxford, 1996, 74.

Jürgen Basedow *et al*., (Hrsg.), *Anleger- und objektgerechte Beratung, Private Krankenversicherung, Ein Ombudsmann für Versicherungen,* Band 11, Nomos, Baden-Baden, 1999, 55.

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Submitted papers must meet the scientific paper standards in terms of scope and scientific apparatus. **The standard length of the paper** is one author's sheet (16 typed pages), with a maximum of 1.5 author's sheets (24 typed pages).

Articles should be written in **Times New Roman, 12 pt font, with 1.5 line spacing**. The article in Serbian should be written in Latin script, except for foreign words and words in Latin, which should be written in Latin script and italicized.

The article must begin with the title, the full name and surname (of all) authors, the full (official) name and address (including the country) of the institution where the author is employed. The note at the bottom of the first page should include the email addresses (of all) authors, as well as their ORCID numbers.

Sources (references) should be listed in footnotes, in 10 pt font. A period should follow the end of each footnote.

The article must contain an abstract with the basic goals of the research, methods, results, and conclusions. The abstract should be no more than 150 words.

After the abstract, the article must list key words that best describe the content of the paper for indexing and search purposes. The number of keywords should not exceed 5.

The article must contain a list of references (bibliography), **which includes only bibliographic sources** (articles, monographs, etc.) and is given in a separate section after the text. References should be listed consistently, in alphabetical order by the author's surname, as they appear in the original.

The article must also include an abstract and key words in English. The abstract and key words should be provided at the end of the article, after the References section.

The title of the article should be centered and written in uppercase letters. Headings within the article must follow this format:

First-level heading – centered; numbering: Roman numerals (e.g., I, II, III, etc.); first letter capitalized, the rest lowercase.

Second-level heading – centered; numbering: Arabic numbers with a period (e.g., 1., 2., 3., etc.); first letter capitalized, the rest lowercase.

Third-level heading – centered; italicized; numbering: lowercase letter with a closed parenthesis (e.g., a), b), v), etc.); first letter capitalized, the rest lowercase.

Fourth-level heading – centered; numbering: Arabic number with a closed parenthesis (e.g., 1), 2), 3), etc.); first letter capitalized, the rest lowercase.

Example:
I Concept
Definition
a) *Definition in Comparative Law*
) French Legislation

REFERENCE STYLE

1. BOOKS

a) Books should be cited as follows: author's first name, author's last name, title of the work in italics, edition number if applicable, place of publication, year of publication, page number.

Example: Susan Hodges, *Cases and Materials on Marine Insurance Law*, Cavendish Publishing Limited, London, 2002, 74.

b) When citing a text from multiple pages that are specifically determined, separate the page numbers with a dash, followed by a period. If more than one page is cited from a text, but they are not specifically stated, after the number which notes the first page "etc." is added with a period at the end.

Example: Susan Hodges, *Cases and Materials on Marine Insurance Law*, Cavendish Publishing Limited, London, 2002, 74–80.

Example: Philip Wood, Principles of international insolvency, Sweet &Maxwell, London 2007, 111 etc.

c) When citing a book by multiple authors (up to three), their names are separated by commas.

Example: Katherine B. Posner, Tim Marland, Philip Chrystal, *Margo on Aviation Insurance*, Fourth edition, London, 2014, 429.

d) If citing a book with more than three authors, only the first author's name and surname are given, followed by the abbreviation *et al.* in italics.

Example: Hugh Beale *et al.*, *Contract Law*, 2nd edn. Bloomsbury Publishing, London, 2010, 54.

e) A book edited by someone is cited by adding the designation "editor" or the abbreviation "ed." in parentheses after their name.

Example: Fidelis Oditah (editor), *The Future for the Global Securities Market*, Oxford, 1996, 74. Jürgen Basedow *et al.,* (Hrsg.), *Anleger- und objektgerechte Beratung, Private Krankenversicherung, Ein Ombudsmann für Versicherungen*, Band 11, Nomos, Baden-Baden, 1999, 55.

f) When citing a single book by a specific author, in repeated citations, use the first initial of the first name with a period and the last name, followed by the page number.

Example: S. Hodges, 231.

g) When citing multiple books by the same author, in repeated citations, use the first initial of the first name with a period and the last name, followed by the year of publication in parentheses, and the page number.

Example: M. Vasiljević (2012), 107.

h) If the same page of the same source was cited in the previous footnote, the abbreviation for *Ibidem* should be used, in italics, followed by a period (without quoting the name of the author). (without repeating the author's last name and first name).

Example: *Ibidem*.

If the same source (but not the same page) was cited in the previous footnote, the abbreviation for Ibidem should be used, in italics, followed by the page number and a period.

Example: *Ibid.*, 23.

2. ARTICLES

a) Articles should be cited as follows:

Author's name, author's last name, title of the article in roman with quotation marks, name of the journal in italics, volume and year of publication, page number

(same rule as in the book citation). If the name of a journal is longer than usual, an abbreviation should be offered in brackets when it is first mentioned and used later on.

Example: Ebers Martin, "Information and Advising Requirements in the Financial Services Sector: Principles and Peculiarities in EC Law", *Electronic Journal of Comparative Law* 2/2004, vol. 8, 238.

b) When citing an article by multiple authors, their names and surnames should be separated by commas.

Example: Nataša Petrović Tomić, Miloš Radovanović, "Poravnanje o naknadi štete iz sredstava Garantnog fonda", *Harmonius, Journal of Legal and Social Studies in South East Europe*, 2017, 175.

If citing an article by more than three authors, only the first author's name and surname are to be cited, followed by the abbreviation *et al.* in italics.

Example: Farines Elise *et al*., "The Pre-contractual and Contractual Information in Life Insurance Policy", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul 2013, 123.

c) A paper or article published in a proceedings or book edited by another person is cited as follows:

Author's first name, author's last name, opening quotation marks, title of the article, closing quotation marks, title of the proceedings or book in italics, in parentheses the designation "editor" or "ed.", and the name and surname of the editor, edition number if applicable, place of publication, year of publication, page number.

Example: Helmut Heiss, "The Common Frame of Reference (CFR) of European Insurance Contract Law", *Common Frame of Reference and Existing EC Contract Law* (ed. Reiner Schulze), Sellier European Law Publishers, GmbH, Munich, 2008, 13.

d) When citing an article by a specific author, in repeated citations, use the first initial of the first name with a period and the last name, followed by the page number.

Example: N. Petrović Tomić, 164.

e) When citing multiple articles by the same author, in repeated citations, use the first initial of the first name with a period and the last name, followed by the year of publication in parentheses, and finally the page number.

Example: N. Petrović Tomić (2014), 122.

f) If the same author has multiple works cited in the same year, add the Latin letters a, b, c, d, etc., after the year of publication, according to the order in which the works are cited, followed by the page number.

Example: I. Jankovec (1995a), 16.

3. STATUTES AND OTHER REGULATIONS

a) Regulations should be cited as follows:

Full name of the regulation, the official gazette in which the regulation was published in italics, the gazette number and year of publication.

Example: Act XXVIII of 2017 on Private International Law of Hungary, *Magyar Közlöny*, 2017-04-11, vol. 54.

b) In case of repeated citations, an acronym should be provided on the first mention of a given statute or other regulation.

Example: Companies Act – CA, *Official Gazette of the Republic of Serbia*, No. 6/2011, 99/2011, 83/2014, 5/2015, 44/2018, 95/2018, 91/2019 and 109/2021.

c) Article, paragraph, and point of the regulation are designated with the abbreviations art. and par..

Example: Art. 8, par. 25.

d) When citing a regulation repeatedly, its full name or the abbreviation introduced in the first citation should be given, along with the abbreviations art. or par. and the provision number.

Example: CA, art. 58.

e) Regulations in foreign languages should be cited as follows:

Full name of the regulation translated into English, year of publication or adoption, opening parenthesis, full name of the regulation in the original language in italics, any abbreviation under which the regulation will continue to appear, closing parenthesis, abbreviation art. or par. and provision number.

Example: German Commercial Code of 1897 (*Handelsgesetzbuch*), par. 29.

4. ONLINE SOURCES

a) Online sources should be cited as follows:

author's first name and surname, or the name of the organization that prepared the text, title of the text, possible place and year of publication, the website address in italics, the date of access, and the page number.

Example: Elisabeth Pollman, "The Making and Meaning of ESG", Law Working Paper 659/2022, available at: http://ssrn.com/abstract_id=4219857, accessed June 16, 2023, 5.

b) When citing an online source repeatedly, use the first initial of the author's first name with a period and the surname, or the name of the organization that prepared the text, the title of the text, and the page number.

Example: Elisabeth Pollman, The Making and Meaning of ESG, 5.

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