UDK: 368(497.11)(094)
DOI: 10.5937/TokOsig2402265S

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ZNAČAJ OSIGURANJA I PERSPEKTIVE RAZVOJA U SRBIJI

PREGLEDNI RAD

Apstrakt

Osiguranje je delatnost koja u Srbiji baštini tradiciju još od Dušanovog zakonika. Autorka nastoji da ustanovi razvojni put koji je osiguranje prešlo od prvih zajednica rizika do osiguravajućih kuća, kao institucionalnih investitora koji u savremenoj ekonomiji imaju značajnu ulogu. Posebnu pažnju posvećuje prelasku na tržišni mehanizam i tranziciji koja je značila etabliranje osiguravajućeg sektora kao visoko regulisanog i iznad svega profitabilnog. U radu se ne izostavlja uloga Udruženja osiguravača Srbije, kao krovne organizacije koja je značajno doprinela promociji i zaštiti interesa delatnosti osiguranja. U zaključku se iznose predlozi kako bi tržište pro futuro trebalo da se razvija, s naglaskom na tome da je osiguranje rastuća delatnost koja čini važan deo održivog razvoja.

Ključne reči: *osiguranje, Zakon o osiguranju, tržište, profitabilnost, zaštita korisnika osiguranja, transformacija kapitala.*

I. Razvoj osiguranja u Srbiji do usvajanja Zakona o osiguranju iz 2004. godine

1. Razvojni put osiguranja do Drugog svetskog rata: od igre na sreću do postepenog regulisanja

Za razliku od modernog doba, za koje se vezuje razvoj osiguranja kao delatnosti koja pruža zaštitu od rizika i koje karakteriše regulisanost na svim nivoima, pre

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Rad primljen: 10. 4. 2024.
Rad prihvaćen: 17. 5. 2024.

kraja XVIII odnosno početka XIX veka ne možemo govoriti o osiguranju u pravom smislu reči, niti o osiguravajućim društvima. Moderno osiguranje koje se zasniva na naučnoj osnovi i do detalja je zakonom regulisano, te koje vode licencirana i kvalifikovana lica, pripada drugoj polovini XIX veka.[2] Da bi se došlo do tog oblika organizovanja, osiguranje je prešlo određeni razvojni put o kome ćemo govoriti u ovom radu. Usredsredićemo se samo na istoriju društava za osiguranje na našim prostorima, podrazumevajući pod time ne nužno teritoriju Srbije, već i teritorije koje su, na bilo koji način, bile povezane sa Srbijom. Dve zakonitosti koje smo uočili tokom proučavanja razvoja sektora osiguranja, a pogotovo društava za osiguranje, tiču se istorijskih okolnosti i društveno-političkog konteksta.

Osiguranje kao delatnost koja počiva na zajednici rizika beleži početke razvoja u Srbiji još u srednjem veku. Naime, prve naznake onoga što ćemo kasnije nazvati obaveznim osiguranjem nalazimo u Dušanovom zakoniku iz 1349. godine. Iako Zakonik doslovno ne pominje reč osiguranje, njime je ustanovljena kolektivna odgovornost za naknadu štete, odnosno prelaz od plemenskih i seoskih zajednica rizika ka prvim zajednicama rizika. Međutim, osiguranje, kao ni većina privrednih delatnosti, nije moglo da se razvija u pravom smislu sve do kraja XIX veka.[3]

Jedan od prvih zakona od značaja za delatnost osiguranja u Srbiji bio je Srpski građanski zakonik, čije je donošenje 1829. godine inicirao knez Miloš Obrenović. Zakonik je donet tek 15 godina kasnije, tačnije 1844. godine za vreme vladavine kneza Aleksandra Karađorđevića, i napisan je po uzoru na Austrijski građanski zakonik iz 1811. godine. Srpski građanski zakonik pominje osiguranje u dva člana (čl. 798 i 799). Ono što ih čini vrednim pomena jeste njihov značaj za institut osiguranja i u savremenim uslovima. Naime, *Srpski građanski zakonik reguliše princip uticaja krivice*

[2] Detaljnije o istoriji osiguranja: Z. Petrović, V. Čolović, D. Knežević, *Istorija osiguranja u Srbiji, Crnoj Gori i Jugoslaviji do 1941. godine*, Beograd, 2013.

[3] „Ideja osiguranja – koja se razvila još u starom veku – jeste da se stvaranjem zajednice rizika, koju čine sva lica ugrožena istom opasnošću, omogući raspodela rizika između svih članova. Zajednica rizika, dakle, počiva na ideji *uzajamnosti i solidarnosti.* Ali istinski život zajednice rizika i nastanak osiguranja vezuju se za pojavu računa verovatnoće i zakona velikih brojeva. *Zakon velikih brojeva* zasniva se na utvrđivanju određenih pravilnosti u nastupanju određenih događaja. To je moguće na osnovu statističkih podataka o velikom broju slučajeva. Ključno je da se mogu utvrditi pravilnosti u ponavljanju. Što je broj posmatranih slučajeva veći, pravilnost u nastupanju jednog događaja je veća, a odstupanja manja. Ako se neki događaj posmatra pojedinačno, on je slučaj; čim se posmatra veliki broj slučajeva, dolazi se do određenih pravilnosti tj. zakonitosti (zakonitost se ispoljava u masi slučajeva!). Praksa je pokazala da se osiguravači mogu više osloniti na primenu zakona velikih brojeva ako je broj posmatranih slučajeva veći. Dakle, primenom zakona velikih brojeva utvrđuje se prosečna vrednost posmatrane veličine. Osiguravačima je, zahvaljujući primeni zakona velikih brojeva, postalo mnogo jednostavnije vođenje biznisa osiguranja. *Verovatnoća* nastupanja određenog događaja označava se kao odnos između broja povoljnih izgleda i broja ukupnih izgleda koji postoje u pogledu njegovog ostvarivanja. Primenom računa verovatnoće određuje se stepen verovatnoće nastupanja određene opasnosti, odnosno osiguranog rizika. Uz zakon velikih brojeva, račun verovatnoće je naučna osnova tehničke organizacije osiguranja. Za što veću verodostojnost rezultata primene računa verovatnoće potrebno je da portfelj osiguranja bude što veći." V.: N. Petrović Tomić, *Pravo osiguranja, Sistem, Knjiga prva*, Službeni glasnik, Beograd, 2019, str. 74-75.

osiguranika na prouzrokovanu štetu, što je jedno od osnovnih načela prava osiguranja.[4] S obzirom na njegovu ulogu u moralizaciji osiguranja i njegovom širem društvenom prihvatanju, Srpski građanski zakonik je nezaobilazni izvor u istoriji osiguranja. Drugim članom uređuju se posledice osiguranja već nastalog rizika, što je takođe jedno od najbitnijih pravila osiguranja.

Gotovo pola veka kasnije, 1892. godine, donet je Zakon o osiguravajućim društvima, koji je regulisao isključivo rad stranih osiguravajućih društava, kojih je jedino i bilo na našim prostorima,[5] da bi kasnije, 1898. godine, bio donet Zakon o akcionarskim društvima, koji je regulisao poslovanje domaćih osiguravajućih društava.[6]

U to vreme, u srpskom jeziku nije postojala reč za osiguranje, pa se koristio posrbljen italijanski izraz ASIKURACIJA, dok su se agenti osiguravajućih društava zvali ASIKURANTI.

Prvo osiguranje u Beogradu zaključio je 1839. godine izvesni Lazar Zuban, sudija Apelacionog suda. Zabeleženo je da je posle svega nekoliko dana njegova kuća izgorela u požaru i da je od osiguravajućeg društva „Assicurazioni Generali" naplatio odštetu u iznosu od 175 talira.[7]

Prvo domaće osiguravajuće društvo „Beogradska zadruga" osnovano je 1897. godine, a njen prvi predsednik bio je Đorđe Vajfert. Zanimljivo je da je već u prvoj godini rada ta zadruga ostvarila zapažene rezultate i sklopila 482 životna osiguranja i 858 osiguranja od požara. Država je podržala taj projekat i prvoj domaćoj osiguravajućoj kući poverila osiguranje svih državnih objekata na 20 godina. To je bio prvi korak u emancipaciji zemlje kada je reč o osiguranju.

Čedomilj Mijatović, ministar finansija Kraljevine Srbije, u svom radu „Mišljenja o osiguranju" napisao je nešto što se čini izuzetno važnim i danas:[8]

„Ja bih želeo da dođe, a nadam se da će doći jedno sretno doba u XX veku, kada će svaki Srbin mladoženja svojoj nevesti na dan venčanja pokloniti dokumenat koji joj osigurava parče hleba u slučaju smrti njegove, kada će svaki otac na dan kad mu se dete rodi osigurati ovome da kad postane punoletan, primi bar toliki kapital, da alate za rad nabavi, kao i devojčici miraz, da će svaki neženjenik smatrati za milu i neodoljivu dužnost da osigura da se na dan njegove smrti opštini njegovoj položi bar 1.000

[4] P. Šulejić, *Pravo osiguranja, Peto izmenjeno i dopunjeno izdanje*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2005, str. 34.

[5] To je verovatno jedan od razloga što je postojao veliki uticaj iz inostranstva na osiguranje, a naročito na reosiguranje. Tako i V. Čolović, *Osiguravajuća društva, Zakonodavstvo Srbije, pravo EU, uporedno pravo,* Institut za uporedno pravo, Beograd, 2010, str. 30.

[6] Osiguravači su u početku u osiguranju videli izvor dobiti i nisu mnogo vodili računa o obavljanju delatnosti osiguranja u interesu osiguranika. Na ruku im je išlo to što nije postojala regulativa koja bi se odnosila na društva za osiguranje. To je dovelo do velikog broja stečajeva i likvidacija.

[7] V. Čolović, *Osiguravajuća društva, Zakonodavstvo Srbije, pravo EU, uporedno pravo*, Institut za uporedno pravo, Beograd, 2010, str. 29.

[8] Dostupno na: https://zivotnoosiguranje.co.rs/misljenja-o-osiguranju-19-vek-srbija/
Posećeno: 1. 4. 2024.

dinara na dobrotvorne ciljeve, doba, kad nijedne kuće neće biti koja nije osigurana za slučaj požara, nijedne njive, nijednog vinograda, nijednog voćnjaka koji nije osiguran za slučaj štete od elementarne nepogode, i kad će ne samo svaki činovnik nego i svaki seljak i svaki zanatlija moći da svojoj ženi i deci osigura penziju, i naposletku kad će svaki radnik na slučaj starosti ili privremene nemoći osigurati sebi izdržavanje, ne kao poklon ili milostinju od opštine ili države, nego kao plod svojih napora i svoga poštenog ugovora s jednom domaćom ustanovom za osiguranje."

Polako prolazi i treća decenija XXI veka, a mi i dalje čekamo da dođe to srećno doba.

Za vreme balkanskih ratova, osiguravajuća društva proširila su svoju praksu na tzv. ratni rizik, na osnovu specijalne premije. Dan nakon početka Prvog svetskog rata, donet je zakon kojim je propisano da premija za ratne rizike ne mora da se plati unapred. Društva su obavezana da za sve osiguranike preuzmu ratni rizik, a svaki osiguranik koji je želeo da mu osiguranje ostane u važnosti, morao je unapred, u roku od 15 dana od stupanja na snagu zakona dati izjavu o tome uz obećanje da će premiju naknadno platiti. Ratnu premiju bi tako platili osiguranici koji prežive rat, čime bi pomogli osiguravajućem društvu da isplati osigurane sume porodicama onih koju su u ratu nastradali. Nakon mnogo posleratnih sporova, država je donela Uredbu kojom je obavezala društva da isplate osigurane sume i onima koji nisu dali izjavu i taj presedan je skupo koštao osiguravajuća društva.

Uoči Drugog svetskog rata, u Jugoslaviji je bilo 28 osiguravajućih kuća. Dve trećine bile su filijale stranih osiguravajućih društava.

Sve do Drugog svetskog rata osiguranje je bilo poput igara na sreću. Osiguranje u predratnoj Jugoslaviji nije poznavalo prevenciju i represiju, te osiguravači nisu činili ništa u cilju sprečavanja i umanjenja šteta. Obavezan je bio samo vatrogasni doprinos, te se u takvim okolnostima nisu mogle izbeći fingirane štete. Do 1937. godine nije postojala držana kontrola osiguranja kakvu danas poznaju svi pravni sistemi. Osiguranje je, zapravo, služilo raspodeli profita, odnosno dividendi akcionarima, a ne zaštiti interesa klijenata. To je vodilo prihvatanju rizičnih poslova koje su vodila nedovoljno kompetentna lica, što je rezultiralo bankrotom jednog od najvećih austrijskih društava onog vremena „Feniks", koje je imalo najveći portfelj osiguranja života u Jugoslaviji.[9] Kao odgovor na veliko nepoverenje osiguranika usled propasti „Feniksa", doneta je Uredba o nadzoru nad osiguravajućim preduzećima, koja je stupila na snagu 1937. godine. Njome su postavljeni temelji onoga što je i danas odlika sistema osiguranja: državna kontrola, koja se odnosila na plasman rezervi osiguravajućih društava, zabranu otuđenja i opterećenja imovine itd.[10]

[9] D. Mrkšić, Z. Petrović, K. Ivančević, *Pravo osiguranja*, Privredna akademija, Novi Sad, 2006, str. 23.
[10] P. Šulejić, *Pravo osiguranja, Peto izmenjeno i dopunjeno izdanje,* Pravni fakultet Univerziteta u Beogradu, Beograd, 2005, str. 35.

2. Osiguranje posle Drugog svetskog rata – državni intervencionizam

Po mišljenju profesora Šulejića, period posle Drugog svetskog rata u Jugoslaviji može da se podeli u pet etapa, koje su pogodne za analizu budući da je došlo do značajnih promena u oblasti osiguranja uzrokovanih promenama u društveno-političkom sistemu.[11] To su sledeće etape:

Sistem centralizovanog državnog osiguranja, koji je važio od 1945. do 1961. godine. Do završetka Drugog svetskog rata na tržištu Jugoslavije dominirale su strane kompanije za osiguranje, a 1. marta 1945. doneta je Odluka o spajanju u državni osiguravajući zavod za osiguranje i reosiguranje svih konfiskovanih osiguravajućih preduzeća. Taj zavod je tokom iste godine preimenovan u *Državni zavod za osiguranje i reosiguranje* (dalje: DOZ), nakon čega sva osiguravajuća preduzeća prelaze u državnu svojinu. Vlada je 1947. godine donela Uredbu o organizaciji i poslovanju DOZ-a. DOZ prelazi u nadležnost Ministarstva finansija i postaje ekskluzivni osiguravač, takoreći monopolista, za poslove osiguranja od rizika požara i drugih rizika, svih poslova obaveznog osiguranja (osim socijalnog), ekskluzivni reosiguravač za sve poslove osiguranja, a obavljao je i poslove ulaganja dugoročnih sredstava iz svojih tehničkih i ostalih rezervi u državne hartije od vrednosti. Kako za privatne osiguravače čija imovina nije bila konfiskovana na osnovu Uredbe nije bilo posla, DOZ je 1947. godine postao jedini osiguravač i reosiguravač u zemlji.[12] Osiguranje je u tom periodu bilo javna služba sa strogo centralizovanom organizacijom.

Sistem decentralizovanog komunalnog osiguranja postojao je u periodu od 1962. do 1967. godine. Zakonom o osiguravajućim zavodima i zajednicama osiguranja iz 1962. godine počinje period decentralizacije.[13] Tada počinje osnivanje više osiguravajućih zavoda, odnosno zajednica osiguranja. Obično su se osnivali za teritoriju jedne ili više opština i činili Republičku zajednicu osiguranja, a te zajednice su skupa činile sistem jugoslovenske zajednice za osiguranje i reosiguranje. Osiguravajući zavodi bavili su se svim vrstama osiguranja imovine i lica na teritoriji opština, dok su zajednice osiguranja bile reosiguravači zavoda. Ideja je bila da se decentralizacijom DOZ-a ostvari racionalnije korišćenje kapaciteta osiguranja. Ali taj cilj nije postignut, jer je decentralizacija bila samo kozmetičkog karaktera, a suštinski je zadržan neizmenjeni sistem.

Sistem komercijalizovanog tržišnog osiguranja bio je na snazi je od 1968. do 1974. godine. Tokom 1968. sprovodi se reorganizacija sektora osiguranja. Nosioci osiguranja su osiguravajući zavodi, koje mogu da osnuju radne organizacije, društveno-političke zajednice i građani. Osiguravajući zavodi bili su privredne organizacije

[11] P. Šulejić, *Pravo osiguranja, Peto izmenjeno i dopunjeno izdanje*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2005, str. 35–43.
[12] V. Čolović, str. 31,
[13] *Službeni list SFRJ*, br. 27/61.

koje sprovode osiguranje kao delatnost od posebnog društvenog interesa.[14] Oni su zamišljeni kao preduzeća koja imaju svoju imovinu i koja su samostalna. Ali pošto je osiguranje proglašeno delatnošću od posebnog društvenog interesa, pored samoupravljanja radnog kolektiva, postojalo je i društveno upravljanje u kome su učestvovali osiguranici i osnivači zavoda.[15] Funkcije osiguranja su prikupljanje sredstava radi naknade štete u slučaju nastupanja štetnog događaja i učestvovanje u preduzimanju preventivnih i represivnih mera. Zavodi slobodno biraju reosiguravače i odgovaraju za izvršenje obaveza preuzetih po osnovu osiguranja. Osnovnim zakonom o osiguranju i osiguravajućim organizacijama iz 1967. godine bila je predviđena i mogućnost osnivanja privrednih organizacija koje se isključivo bave poslovima posredovanja, zastupanja, procenjivanja štete i vršenja drugih usluga u vezi s poslovima osiguranja.[16]

Iako se sistemu osiguravajućih zavoda mogu uputiti brojne primedbe, s današnje tačke gledišta taj sistem je doneo nekoliko promena, za koje se s pravom može reći da su reformatorske. Ukratko, osiguranje tada prvi put počinje da funkcioniše po principima tržišnog mehanizma, ukidaju se teritorijalni monopoli i usvaja princip dobrovoljnosti osiguranja, osim u zakonom propisanim slučajevima. Taj sistem je bio izložen kritikama već od 1971. godine, u periodu ustavnih amandmana. *Sistem osiguranja zasnovan na načelima Ustava iz 1974. godine* karakteriše sledeće: formiraju se zajednice rizika kao novi oblik organizovanja zasnovan na principima udruženog rada i dogovorne ekonomije; Ustavom i zakonom izjednačavaju se funkcija naknade štete i prevencije; međusobni odnosi regulišu se samoupravnim sporazumima; itd.

Zakonom o osnovama sistema osiguranja imovine i lica iz 1990. godine dotadašnje zajednice transformišu se u nove finansijske organizacije koje nose karakter tržišnog subjekta privređivanja.[17] Mogli bismo reći da tada započinje sistem tržišnog osiguranja, budući da se postavljaju temelji tržišnog poslovanja. Ali istini za volju, to je bio samo začetak tržišnog modela privređivanja, koji će biti uveden Zakonom o osiguranju iz 2004. godine.[18]

Da zaključimo: nakon raspada SFRJ, sve republike uvele su tržišne sisteme privređivanja. Tokom devedesetih godina XX veka njihov ekonomski rast i razvoj se u velikoj meri razlikovao u zavisnosti od toga da li su ratna dejstva bila prisutna ili ne na njihovim teritorijama. Za Srbiju je to vreme bilo izuzetno složeno i teško,

[14] V. Čolović, *Osiguravajuća društva, Zakonodavstvo Srbije, pravo EU, uporedno pravo,* Institut za uporedno pravo, Beograd, 2010, str. 32.

[15] P. Šulejić, *Pravo osiguranja, Peto izmenjeno i dopunjeno izdanje*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2005, str. 37.

[16] Značajno je napomenuti da je izvršeno i ukrupnjavanje osiguravajućeg sektora budući da je umesto 128 osiguravajućih zavoda, koliko ih je bilo 1967. godine, formirano 11 zavoda krajem iste godine.

[17] *Službeni list SFRJ*, br. 17/90, 82/90 i *Službeni list SRJ,* br. 31/93 i 24/94.

[18] *Službeni glasnik RS*, br. 55/2004, 70/2004, 61/2005, 85/2005 – dr. zakon, 101/2007, 63/2009 – odluka US, 107/2009, 99/2011, 119/2012, 116/2013 i 139/2014.

obeleženo ekonomskim sankcijama UN od 1992. do 1996, hiperinflacijom, NATO bombardovanjem 1999. godine, neuspešnim i u osnovi pogrešnim konceptom tranzicije, faktorima koji su ostavili dugoročne negativne posledice na ekonomski razvoj zemlje i životni standard građana.

Društveni kapital i samoupravljanje predstavljali su specifičnost i osnovu privrednog ambijenta i poslovanja u SFRJ. Društveni kapital nije imao jasno određenog titulara, što je negativno uticalo na produktivnost, efikasnost i ekonomičnost, a samim tim i na konkurentnost u odnosu na privredna društva s drugim oblikom svojine. Već krajem osamdesetih godina započela je svojinska transformacija društvenog kapitala u privatni, odnosno državni kapital. Sprovođena je primenom različitih zakona sa više ili manje uspešnim konačnim rezultatom. Do 2021. godine društveni kapital je još uvek opstajao u pojedinim društvima za osiguranje, koja su činila značajan deo tržišta osiguranja u Srbiji. Tako je učešće društvenog kapitala u strukturi ukupnog kapitala u Kompaniji „Dunav osiguranje" bilo 51,86%, u „Dunavu Re" 4,58%, a u „Triglav osiguranju" a.d.o. Beograd 0,12%.

Posedovanje nasleđenog društvenog kapitala u strukturi ukupnog kapitala otežavalo je poslovanje društvima za osiguranje i stavljalo ih u neravnopravan položaj u odnosu na direktne konkurente, ali i na ostale učesnike na finansijskom tržištu. Navedena situacija uticala je na to da Vlada Republike Srbije, krajem aprila 2021. godine, usvoji Zakon o izmeni i dopunama Zakona o osiguranju. Taj zakon je uspeo da pomiri različite odredbe dotadašnjih zakona koji su se bavili pitanjem društvenog kapitala u društvima za osiguranje, kao i interese društava za osiguranje, države i zaposlenih. Naime, njime je predviđena promena vlasničkih prava na društvenom kapitalu tako što se 70% društvenog kapitala prenosi na Republiku Srbiju, do 25% društvenog kapitala se prenosi zaposlenima bez naknade (tzv. besplatne akcije), dok se najmanje 5% društvenog kapitala prenosi Akcionarskom fondu.

Sprovođenjem zakona, pomenuta osiguravajuća društva napokon imaju čistu strukturu kapitala, koja im omogućava nastavak poslovanja u modernom korporativnom okruženju, dok su zaposleni dobili besplatne akcije, kojima su odmah mogli da raspolažu.

II. Uređivanje i stabilizacija sektora osiguranja

Velike promene u sektoru osiguranja nastaju donošenjem Zakona o osiguranju iz 2004. godine, koji stvara pretpostavke za razvoj tržišta osiguranja u pravom smislu reči, a vršenje nadzora biva povereno Narodnoj banci Srbije.[19] Isti je slučaj i po

[19] U vreme donošenja tog zakona, a naročito za vreme javne rasprave, predlagači su kao jednu od najznačajnijih novina isticali upravo prenošenje nadzornih ovlašćenja sa Ministarstva finansija na NBS. Ključni argument predlagača bilo je objedinjavanje nadzorne funkcije nad svim finansijskim institucijama.

važećem zakonu o osiguranju.[20] Naglašeno je da se nadzor vrši radi zaštite interesa osiguranika i drugih korisnika osiguranja.[21] To je savremena tendencija, jer se zaštita slabije strane ugovora o osiguranju može znatno unaprediti ako se ova postavi kao cilj sprovođenja nadzora.[22]

NBS u sektoru osiguranja zatiče stanje koje karakteriše: odsustvo dobre prakse u poslovanju, adekvatnog upravljanja, sigurnosti ulaganja sredstava osiguranja radi izmirivanja preuzetih obaveza prema osiguranicima i trećim licima, odsustvo transparentnosti rada, redovnog izveštavanja, nekompletnost poslovnih knjiga, pa time i nepouzdanost iskazanih podataka, prelivanje sredstava osiguranja u povezana preduzeća, neuredno izmirivanje obaveza prema osiguranicima i trećim licima, dvostruko izdavanje polisa, pogrešno postavljeni ciljevi poslovanja društava za osiguranje – umesto zaštite interesa osiguranika i korisnika osiguranja, cilj je bio zaštita interesa vlasnika, nadalje visok stepen nezakonitosti u poslovanju, značajan broj pravnih lica koja posluju u sektoru osiguranja bez dozvole za rad.[23] Obaveze prema osiguranicima finansirane su iz tekućih priliva, što znači da su premije naplaćene za nove polise služile za izmirivanje obaveza po ranije izdatim polisama, umesto njihovog sigurnog ulaganja.[24] Sve to doprinelo je potpunom gubljenju poverenja javnosti u ovaj sektor.

Da bi ostvarila postavljeni cilj u navedenim okolnostima, NBS je svoje aktivnosti usmerila u nekoliko pravaca:

- Stabilizacija sektora osiguranja
- Vraćanje poverenja javnosti u sektor osiguranja
- Kreiranje osnove za razvoj sektora
- Stvaranje i razvoj funkcije supervizije
- Kontinuirana edukacija zaposlenih.

Na osnovu izveštaja NBS za 2004. godinu, sektor osiguranja u Srbiji bio je po stepenu razvijenosti znatno ispod proseka zemalja članica Evropske unije. Učešće premije u bruto domaćem proizvodu u Srbiji te godine bilo je ispod 2%, dok je u 25 zemalja članica EU iznosilo 8,3%, a u istočnoevropskim zemljama oko 3%. Prema premiji po stanovniku od oko 50 USD Srbija je zauzimala tek 70. mesto u svetu. Na prvom mestu bila je Švajcarska sa 5.716 USD, dok je Slovenija sa 920 USD

NBS je prema njihovom uverenju mnogo kompetentnija za vršenje nadzora na finansijskom tržištu. V.: N. Petrović Tomić, *Pravo osiguranja*, sistem, str. 225.

[20] *Službeni glasnik RS*, br. 139/2014 i 44/2021.

[21] R. Ayadi, C. O' Brian, *The Future of Insurance Regulation and Supervision in EU*, CEPS, 2006, str. 6.

[22] Detaljnije o zaštiti slabije strane: M. Glintić, „Zaštita prava slabije ugovorne strane u skladu sa principima evropskog ugovornog prava osiguranja", *Strani pravni život*, br. 3/2020, str. 57-73.

[23] Na razvijenim tržištima osiguranja situacija je potpuno drugačija. V.: R. H. Jerry II, *Understanding Insurance Law*, Lexis Nexis, New York 2007, 1021; M. Ćurković, V. Miletić, *Pravo osiguranja Europske ekonomske zajednice,* Croatia osiguranje, Zagreb 1993, str. 29.

[24] Predrag Šulejić, *Pravo osiguranja, Peto izmenjeno i dopunjeno izdanje*, Pravni fakultet u Beogradu, Beograd, 2005, str. 123–128.

zauzimala 28. mesto. Prema ukupnoj premiji, Srbija je u 2004. godini bila na 66. mestu sa 433.000.000 USD.

Ugašen je veliki broj insolventnih osiguravajućih društava. Njihov broj smanjen je sa 40 u 2004. godini na 19 u 2005. Ne zaboravimo da je na kraju 1996. na našem tržištu bilo 77 društava za osiguranje i tri društva za reosiguranje. Mnoga od njih su u periodu do 2004. izgubila dozvolu za rad.

Na tržištu osiguranja u 2005. godini poslovalo je 19 društava za osiguranje, od kojih se 16 bavilo isključivo poslovima osiguranja, dva društva samo poslovima reosiguranja, dok se jedno društvo bavilo poslovima osiguranja i reosiguranja. U 2005. godini smanjen je za 50% i broj ostalih učesnika na tržištu osiguranja – posrednika i zastupnika.

U strukturi premije u 2005. godini, učešće neživotnih osiguranja iznosilo je 90,5%, dok je učešće životnih osiguranja bilo svega 9,5%. U strukturi premije neživotnih osiguranja, imovinska osiguranja učestvovala su sa 33%, a zatim sledi osiguranje od odgovornosti za upotrebu motornih vozila sa 31%.

Značajan pokazatelj rezultata preduzetih aktivnosti na stabilizaciji i uređivanju tržišta osiguranja jeste i odnos porasta tehničkih rezervi i ukupne premije. Porast tehničkih rezervi od 99% (sa 11,5 mlrd dinara u 2004. na 22,8 mlrd dinara u 2005.) značajno je veći od porasta ukupne premije od 53%, što govori o tome da su društva počela da napuštaju lošu praksu neadekvatnog formiranja tehničkih rezervi. Pored toga, poboljšan je kvalitet ulaganja tehničkih rezervi u smislu manjeg ulaganja u nekretnine, povezana pravna lica i hartije kojima se ne trguje na organizovanom tržištu.

Zakonom o osiguranju iz 2014. godine, koji je i danas na snazi, stvoreni su bolji mehanizmi za zaštitu građana, ali i svi neophodni preduslovi da se pruže moderne usluge osiguranja.[25] Zakonom je predviđena adekvatna informisanost građana pre zaključivanja ugovora, kao i informisanost o tome kome treba da se obrate kako bi ostvarili svoja prava po osnovu zaključenog ugovora o osiguranju, o načinu i rokovima za podnošenje odštetnog zahteva, raskidu ugovora, kao i o načinima zaštite njihovih prava kod nadležnih organa.[26] Istovremeno, uvedeni su novi oblici tehničkih rezervi i pooštrene metode za obračun postojećih oblika rezervi, čime je njihov iznos za manje od decenije udvostručen. Time se pruža snažna poruka svim korisnicima usluge osiguranja da će uplaćena premija biti namenski korišćena i sačuvana.

[25] Narjess Boubakri, „Corporate governance and issues from the insurance industry", *The Journal of Risk and Insurance,* 2011, Vol. 78, No. 3, str. 502.

[26] Detaljnije: N. Petrović Tomić, *Zaštita potrošača usluga osiguranja, Analiza i predlog unapređenja regulatornog okvira*, Pravni fakultet u Beogradu, Beograd, 2015, str. 141–201; A. Keglević, *Građanskopravni aspekti obveze obavještavanja kod potrošačkog ugovora o osiguranju,* doktorski rad, Pravni fakultet Univerziteta u Zagrebu, Zagreb, 2012, str. 102.

Uveden je sistem upravljanja sa četiri osnovne funkcije – aktuarskom, funkcijom upravljanja rizikom, funkcijom interne revizije i funkcijom interne kontrole, pa se pored intenzivne eksterne kontrole, implementira i stimuliše mehanizam zaštite i praćenja unutar osiguravajućeg društva.[27]

Stvoren je zakonski okvir vrlo sličan onome u razvijenim evropskim zemljama, koji je omogućio stimulativan i stabilan ambijent za izgradnju i dalji napredak sektora osiguranja.[28] Naime, Zakonom iz 2014. gotovo u potpunosti su preuzete Direktive EU integrisane u režim Solventnosti I, pa čak i neki delovi direktive Solventnost II, tako da se naš sistem nalazi u međufazi, sa zadatkom svih učesnika na tržištu da se pripremi za punu implementaciju Direktive Solventnost II (krajnji rok za njenu punu primenu je prijem naše zemlje u EU).[29]

III. Tržište osiguranja u 2022.

Na osnovu podataka NBS, sektor osiguranja u Srbiji se po stepenu razvijenosti i pored kontinuiranog rasta iz godine u godinu i dalje nalazi znatno ispod proseka zemalja članica Evropske unije. Prema učešću premije u bruto domaćem proizvodu sa oko 2%, Srbija još nije dostigla nivo u zemljama članicama EU, gde to učešće iznosi oko 7%. Premija po stanovniku u Srbiji je 2021. iznosila 176 dolara, dok je u Sloveniji bila 1.047 dolara.

Na kraju 2022. godine u Srbiji je poslovalo 20 društava za osiguranje. Isključivo poslovima osiguranja bavi se 16 društava, a samo poslovima reosiguranja četiri društva. Isključivo životnim osiguranjem bave se četiri društva, isključivo neživotnim, odnosno i životnim i neživotnim osiguranjem bavi se po šest društava. Posmatrano po vlasničkoj strukturi, od 20 društava, 15 ih je u većinskom stranom vlasništvu.

U strukturi premije u 2022. učešće neživotnih osiguranja iznosilo je 78,6%, dok se učešće životnih osiguranja smanjilo sa 22,7% u 2021. na 21,4% u 2022. usled većeg nominalnog rasta premije neživotnih osiguranja od rasta premije životnih osiguranja.

U strukturi ukupnog portfelja pet vrsta neživotnih osiguranja učestvuju sa 66,8%: dobrovoljno zdravstveno osiguranje, osiguranje motornih vozila – kasko, osiguranje imovine od požara i drugih opasnosti, ostala osiguranja imovine i osiguranje od odgovornosti za upotrebu motornih vozila.

Osiguranje od odgovornosti za upotrebu motornih vozila – AO u 2022. zadržava vodeće učešće u ukupnoj premiji sa 29,1%, a zatim slede životna osiguranja

[27] Detaljnije: N. Petrović Tomić, *Pravo osiguranja, Sistem, Knjiga I*, Službeni glasnik, Beograd 2019, str. 276–280; P. Marano, „Nova nadzorna paradigma: kultura nošenja rizika i etički kodeks", Pravo osiguranja, uprava i transparenstnost – osnove pravne sigurnosti, Palić, 2015, str. 171–175.

[28] I. Tošić, „Uticaj Direktive Solventnost II na sektor osiguranja u Evropi", *Godišnjak Fakulteta pravnih nauka*, br. 7/2017, str. 301–313.

[29] Detaljnije o Direktivi Solventnost II: M. Dreher, *Trearies on Solvency II*, Springer Vergal, Berlin, 2015, str. 345–424.

sa 21,4% i imovinska osiguranja sa 19,9%. Učešće DZO je sa 5,8% u 2021. poraslo na 7,4% u 2022. godini, što je rezultat rasta ove premije od čak 43,5%

Uporedni prikaz sektora osiguranja 2004/2005, 2015. i 2021/2022.

Pokazatelj	**2004/2005.**	**2015.**	**2021/2022.**
Ukupna premija	433 mil USD	727 mil USD	1,3 mlrd USD
Premija po stanovniku	50 USD	102 USD	179 USD
Učešće premije neživotnih osiguranja u ukupnoj premiji	90,5%	76,1%	78,6%
Učešće premije životnih osiguranja u ukupnoj premiji	9,5%	23,9%	21,4%
Broj društava za osiguranje	19	24	20
Vlasnička struktura – strana	5	18	15
Vlasnička struktura – domaća	14	6	5
Tehničke rezerve	11,5 mlrd din	131,0 mlrd din	229,7 mlrd din

IV. Uloga Udruženja osiguravača Srbije u promovisanju delatnosti osiguranja

Društva za osiguranje i reosiguranje okupljena su u okviru profesionalne asocijacije – Udruženja osiguravača Srbije (dalje: UOS). Osnovna specifičnost UOS u odnosu na druge privredne asocijacije ogleda se u poverenim javnim ovlašćenjima. Naime, u svim ili gotovo svim zakonodavstvima osnovano je telo – Garantni fond, radi obezbeđenja obeštećenja za štete nastale u saobraćaju kada iz određenih razloga osiguravajuće pokriće ne deluje.[30] Obaveza osnivanja Garantnog fonda uvedena je Drugom direktivom o osiguranju od građanske odgovornosti za upotrebu motornih vozila (Direktiva 84/5/EEZ), radi jednake i bolje zaštite žrtava saobraćajnih nezgoda.[31] I naš zakon o obaveznom osiguranju u saobraćaju sadrži odredbe o Garantnom fondu.[32] Garantni fond je od osnivanja bio u nadležnosti UOS. Reč je o javnom ovlašćenju koje je neodvojivo od delatnosti osiguranja, a koje se vrši u najboljem interesu oštećenih lica.[33] Slučajevi kada postoji obaveza fonda u našem pravu su: šteta od neosiguranog vozila, šteta od nepoznatog vozila i stečaj osiguravača. Garantni fond zaokružuje sistem zaštite trećih oštećenih lica u saobraćaju i pruža gotovo bezuslovnu zaštitu svim licima koja su oštećena upotrebom motornog vozila, a tu štetu ne mogu

[30] N. Petrović Tomić, *Pravo osiguranja, Sistem,* str. 583; M. Ćurković, „Štete nanesene strancima u Jugoslaviji od nepoznatih i neosiguranih motornih vozila", *Osiguranje i privreda*, br. 5, 1979, str. 49–52.

[31] N. Petrović Tomić, *Pravo osiguranja, Sistem, Knjiga I*, str. 610–611.

[32] *Službeni glasnik RS*, br. 51/2009, 78/2011, 101/2011, 93/2012 i 7/2013 – Odluka US.

[33] N. Petrović Tomić, *Osnovi prava osiguranja, Drugo, dopunjeno izdanje*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2023, str. 256.

nadoknaditi od društva za osiguranje: nepoznata vozila, neosigurana vozila i vozila osigurana kod društva u stečaju. Nema razlike u kriterijumima za naknadu štete i brzini likvidacije u odnosu na društva za osiguranje. Kod šteta koje su pričinjene od strane nepoznatih vozila nadoknađuje se šteta isključivo ukoliko je bilo povreda lica, zbog brojnih malverzacija sa ovim pravom u prošlosti.

Osim funkcije Garantnog fonda, UOS obavlja i sledeće značajne zadatke.

Funkcija Biroa zelene karte: Udruženje je član Sistema zelene karte u Briselu, koji čini 50 mahom evropskih zemalja.[34] Taj sistem omogućava kretanje vozila unutar granica sistema uz priznavanje domaćih polisa osiguranja AO, bez obaveze posedovanja skupih graničnih osiguranja. Podsećamo da je UOS od juna 2011. godine potpisnik Multigarantnog sporazuma (MGA), odnosno član Podsistema registarske oznake unutar Sistema zelene karte, kojim je vozačima vozila uobičajeno stacioniranih u Srbiji omogućen nesmetan ulazak u države koje su takođe potpisnice ovoga sporazuma, bez kontrole zelene karte. Time su građani Srbije u potpunosti izjednačeni s građanima EU i još nekoliko zemalja potpisnica Sporazuma, što znači da je UOS svojim valjanim radom već 2011. godine postigao standarde potrebne za pristup Sporazumu.

Zahvaljujući finansijskoj disciplini u likvidaciji šteta koja naša vozila pričine u inostranstvu naša zemlja je stalni član Sistema zelene karte i čak ima svog predstavnika u najvišim organima njegove uprave. Sistem podrazumeva dve funkcije, obradu, likvidaciju i refundaciju šteta koje pričine inostrana vozila na teritoriji naše zemlje, odnosno plaćanje šteta koje pričine naša vozila u inostranstvu.

Funkcija Informacionog centra: prikuplja podatke o polisama osiguranja od auto-odgovornosti, kao i štetama iz ovog osiguranja, sa dva osnovna cilja: 1) formiranje relevantne statistike za formiranje cena AO, koja će naročito biti upotrebljiva u periodu liberalizacije 2) vođenje bonus/malus sistema gde se u momentu izdavanja

[34] Sistem zelene karte nastao je na osnovu principa utvrđenih Preporukom br. 5, koju je 1949. godine sastavila radna grupa formirana od strane Ekonomske komisije UN za Evropu. Preporuka je upućena vladama država Evrope, s ciljem da se ostvari uticaj na osiguravače da zaključe sporazume sa osiguravačima drugih zemalja. Preporuka sledi dva cilja. Prvi je izjednačavanje saobraćajnih nezgoda sa elementom inostranosti s domaćim saobraćajnim nezgodama u pogledu naknade štete. Drugi cilj je zaštita vlasnika ili vozača motornog vozila u inostranstvu. Osnovni principi Preporuke su: 1) osiguravači osnivaju organizaciju koja se zove Biro, koja odgovara za fukcionisanje sistema zelene karte u izvršenje obaveza osiguravača; 2) Biro obezbeđuje osiguravačima ispravu o osiguranju – zelenu kartu, a oni je distribuiraju svojim osiguranicima; 3) isprava potvrđuje osiguranje od odgovornosti i obezbeđuje imaocu isto pokriće kakvo ima u državi registracije; 4) štete koje izazove imalac zelene karte u posećenoj državi isplaćuje Biro te zemlje, a njih zatim refundira Biro države koji je izdao zelenu kartu. Polazeći od načela iz Preporuke, predstavnici nacionalnih biroa zemalja članica sistema zelene karte izradili su tipski sporazum, na osnovu koga su zaključivani sporazumi između biroa. Bilateralni sporazum koji su zaključivali biroi na osnovu tipskog sporazuma zove se i Londonski sporazum, jer je usvojen na Generalnoj skupštini Saveta biroa održanoj u Londonu. Detaljnije: M. Ćurković, *Ugovori o obveznom osiguranju u cestovnom prometu,* Savjet stručne biblioteke „Croatia" zajednica osiguranja imovine i osoba, Zagreb 1989, str. 100.

polise društvo obraća UOS-u i u svakom trenutku dobija povratnu informaciju o pripadajućem bonusu/malusu, čime se omogućava promptno izdavanje polise sa adekvatnim tarifiranjem.

Funkcija promocije sektora osiguranja i zaštite interesa osiguravača: UOS sprovodi koordinisan nastup svih osiguravača ka društvenoj zajednici i zakonodavcu, gde se naročito ističe mogućnost jedinstvenog uticaja na kreiranje zakonodavnog ambijenta od interesa za osiguravače. Naročito ističemo ulogu UOS u promovisanju društveno odgovornog poslovanja na nivou delatnosti i zalaganje za unapređenje zaštite korisnika usluge osiguranja.

Funkcija utvrđivanja jedinstvene tarife premija i uslova osiguranja od auto-odgovornosti: Uloga UOS je da utvrdi jedinstvenu minimalnu premiju i zajedničke uslove osiguranja od auto-odgovornosti, a NBS daje saglasnost na njih. Tako će biti do trenutka liberalizacije tržišta, za koji je krajnji rok prijem u EU.

V. Zaključak

Na osnovu uvida u istorijski razvoj osiguranja na ovim prostorima i poznavanja domaćeg tržišta, moguće je izneti pretpostavke o tendencijama razvoja. Prvo, tržište osiguranja je jedno od najbrže rastućih, s obzirom na njegov značaj ne samo u ostvarivanju zaštitne uloge shvaćene u klasičnom smislu, već generalno u „društvu rizika", kako se sve češće naziva posttehnološko društvo. Ekonomska i zdravstvena kriza koja je zadesila ceo svet tokom pandemije virusa kovid, kao i u postkovid fazi, na koju se nadovezala energetska kriza, koja je podstakla i inflatorni pritisak, pokazala je da ubuduće treba više investirati u mehanizme zaštite od rizika. U takvim okolnostima od tržišta osiguranja očekuje se da pokaže spremnost da preuzme ulogu lidera upravljanja globalnim rizicima. Osiguravači se nalaze pred ozbiljnim izazovom, jer su u pitanju rizici bitno drugačiji od onih koje oni inače primaju u pokriće. Sve što već znaju o rizicima i sva statistička mašinerija nemoćni su pred brojnim rizicima globalnog karaktera koje treba pokriti po cenovno prihvatljivim uslovima. Budući da nam iskustvo, a još više ekonomski pokazatelji govore da su kapaciteti tržišta (re) osiguranja limitirani, ekonomski održivo osiguranje zahtevaće partnerstvo s državom češće nego ikada u istoriji osiguranja. Kada je reč o domaćem tržištu osiguranja, kojim će se tempom ostvarivati rast, zavisi najpre od izmena regulatornog okvira, kako u statusnom delu (dalja implementacija direktive Solvency II), tako i u nadzornom delu i delu zaštite korisnika usluga.

Drugo, kapital poverenja bez koga delatnost osiguranja ne može da opstane treba da se neguje iz dana u dan i pravnim i vanpravnim putevima. Kada govorimo o vanpravnim mehanizmima sticanja i održavanja socijalnog kapitala kakvo je poverenje, neophodno je da u sektoru osiguranja poslovanje bude zasnovano i na uvažavanju standarda poslovne etike i principa društveno odgovornog poslovanja. Drugim

rečima, treba investirati u fer i korektno postupanje prema klijentima osiguranja, na dnevnom nivou. Naglašavamo da i NBS u svojstvu ne samo tela nadzora već i regulatora na tržištu osiguranja ima jasan stav kada je reč o unapređenju poslovanja u delatnosti osiguranja. Iz Smernica koje je NBS usvojila nakon donošenja Zakona o osiguranju iz 2014. godine jasno proizlazi da ona od subjekata na tržištu osiguranja očekuje da razvijaju dobru praksu fer postupanja prema klijentima. Uostalom, i nadzorna funkcija obuhvata ne samo kontrolu zakonitosti poslovanja, već i dobre običaje i poslovnu etiku.

Pogled na istorijski razvoj osiguranja na našim prostorima sugeriše da tržište osiguranja nije imuno na dva faktora, koji su kod nas uslovili turbulentan poslovni ambijent. To su društveno-političko okruženje i ekonomska situacija u zemlji. Što se prvog faktora tiče, dostigli smo određeni nivo svesti o značaju preventive i upravljanja rizikom. Takođe, pravni okvir više ne ograničava osiguravače i reosiguravače kako je to nekada bio slučaj, dok NBS vršenjem nadzorne i regulatorne funkcije na tržištu osiguranja obezbeđuje finansijsku disciplinu i zaštitu korisnika usluga. Ostalo je da treba raditi na buđenju svesti građana, potencijalnih korisnika usluga o korisnosti osiguranja kao nužnog pratioca svih rizičnih situacija. Strategija koja bi dovela do veće zastupljenosti osiguranja od interesa je i za UOS, koje radi na promociji interesa industrije. Može se očekivati da će Udruženje nastaviti sa promocijom sektora osiguranja kako bi korisnici počeli da na osiguranje gledaju kao na investiciju, a ne kao na trošak.

Da zaključimo: pre usvajanja detaljne zakonske regulative osiguravači su u osiguranju videli izvor dobiti i nisu mnogo vodili računa o obavljanju delatnosti osiguranja u interesu osiguranika. To je dovelo do velikog broja stečajeva i likvidacija. Tek u devetnaestom veku dolazi do razvoja osiguranja i reosiguranja u pravom smislu te reči. To se naročito odnosi na Nemačku, čija društva su se udruživala u cilju preuzimanja poslova osiguranja koji prevazilaze granice jedne zemlje. Naporedo sa tim procesom, dolazi do usvajanja prvih zakona kojima se uređuje ugovor o osiguranju. Naročito je značajna pojava zakona o ugovoru o potrošačkom osiguranju, koji usvajaju principe za koje možemo reći da su se i danas, u nešto izmenjenom obliku, zadržali. Do usvajanja tih zakona, pogotovo u Nemačkoj i Francuskoj, na ugovor o osiguranju se primenjivalo samo opšte ugovorno pravo, što je ondašnje potrošače usluga osiguranja činilo lakim plenom osiguravača.

Dakle, slažemo se sa profesorkom Petrović Tomić da istorijski razvoj osiguranja kao privredne delatnosti može da se posmatra kao civilizacijski fenomen, na čije uobličavanje je uticala potreba za sigurnošću i zaštitom. Kako su izmenjeni uslovi života krajem XIX i početkom XX veka učinili brojne aspekte života savremenog čoveka rizičnim, to je njegova tražnja za osiguranjem počela da raste. Dobro osmišljeni sistem osiguranja treba da potencira potrebu za zaštitom od rizika i da ponudi prilagođene pakete osiguravajuće zaštite.

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UDK: 368(497.11)(094)
DOI: 10.5937/TokOsig2402265S

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IMPORTANCE OF INSURANCE AND PROSPECTS OF DEVELOPMENT IN SERBIA

REVIEW ARTICLE

Abstract

Insurance is an activity with a long-established tradition in Serbia that goes as far back as Dušan's Code. The author attempts to establish the developmental path that insurance has taken from the first communities of risk to insurance companies, as institutional investors that play a significant role in modern economy. Special attention is paid to the shift to the market mechanism and the transition that meant the establishment of the insurance sector as highly regulated and, above all, profitable. The paper does not leave out the role of the Association of Serbian Insurers, as an umbrella organization that has significantly contributed to the promotion and protection of the interests of the insurance industry. In the conclusion, proposals are made as to how the market should develop pro futuro, with an emphasis on the fact that insurance is a growing industry that makes an important part of sustainable development.

Key words: *insurance, Insurance Law, market, profitability, protection of insurance beneficiaries, transformation of capital.*

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Paper received: 10. 4. 2024.
Paper accepted: 17. 5. 2024.

I. Development of insurance in Serbia until the adoption of the Insurance Law of 2004

1. Developmental path of insurance until the Second World War: from a game of chance to gradual regulation

In difference from the modern age, which is linked to the development of insurance as an activity that provides protection against risks and is characterized by regulation on all levels, before the end of the 18th i.e. the beginning of the 19th century, we cannot talk about insurance in the true sense of the word, nor about insurance companies. Modern insurance, which is science-based and thoroughly regulated, as well as managed by licensed and qualified persons, belongs to the second half of the 19th century.[2] In order to get to that form of organization, insurance went through a specific developmental path, which we will discuss in this paper. We will focus only on the history of insurance companies in our region, which does not necessarily mean the territory of Serbia, but also the territories that were connected to Serbia anywise. Two patterns that we have observed while researching into the development of the insurance sector, and especially insurance companies, concern historical circumstances and the socio-political context.

Insurance, as an activity based on the community of risk, records the beginnings of its development in Serbia as early as the Middle Ages. Namely, the first indications of what we will later call compulsory insurance can be found in Dušan's Code from 1349. Although the Code does not mention the word insurance verbatim, it establishes collective responsibility for the compensation of loss, that is, the transition from tribal and village communities of risk to the first risk communities. However, insurance, like most economic activities, could not develop in the true sense until the end of the 19th century.[3]

[2] In more detail about the history of insurance: Z. Petrović, V. Čolović, D. Knežević, *Istorija osiguranja u Srbiji, Crnoj Gori i Jugoslaviji do 1941. godine*, Belgrade, 2013.

[3] "The idea of insurance - which was developed as early as in the Ancient World - is to create a community of risk, comprised of all individuals jeopardized by the same hazard, to enable the distribution of risk among all members. The community of risk, therefore, rests on the idea of *reciprocity and solidarity*. But the real life of the community of risk and the emergence of insurance is connected to the emergence of the calculus of probabilities and the law of large numbers. *The law of large numbers* is based on the establishment of certain regularities in the occurrence of certain events. This is possible based on statistical data on a large number of cases. The key is to be able to identify regularities in repetition. *The greater the number of observed cases, the greater the regularity in the occurrence of an event, and the smaller the deviation*. If an event is observed individually, it is a case; where a large number of cases is observed, particular regularities, that is, patterns (a pattern occurs in a mass of cases!) follow. Practice has shown that insurers can rely more on the application of the law of large numbers if the number of observed cases is greater. Therefore, by applying the law of large numbers, the average value of the observed quantity is determined. For insurers, owing to the application of the law of large numbers, running the insurance

One of the first laws important for the insurance industry in Serbia was the Serbian Civil Code, the adoption of which was initiated by Prince Miloš Obrenović in 1829. The Code was adopted only 15 years later, more precisely in 1844 during the rule of Prince Aleksandar Karađorđević, and was written on the model of the Austrian Civil Code from 1811. The Serbian Civil Code mentions insurance in two articles (Articles 798 and 799). What makes them worth mentioning is their importance for the insurance in modern conditions too. Namely, *the Serbian Civil Code regulates the principle of the influence of the insured's fault on the caused damage, which is one of the basic principles of insurance law*.[4] Considering its role in the moralization of insurance and its wider social acceptance, the Serbian Civil Code is an indispensable source in the history of insurance. The second article regulates the consequences of insurance of an already occurred risk, which is also one of the most important rules of insurance.

Almost half a century later, in 1892, the Law on Insurance Companies was passed, which regulated solely the operations of foreign insurance companies that were in fact the only insurance companies in our region,[5] and later, in 1898, the Law on Joint Stock Companies was passed, which regulated the operations of domestic insurance companies.[6]

At that time, the Serbian language did not have the word for insurance, so the term of Italian origin ASIKURACIJA was used, while the agents of insurance companies were called ASIKURANTI.

The first insurance in Belgrade was concluded in 1839 by a certain Lazar Zuban, a judge of the Court of Appeal. It was recorded that after only a few days his house burned down in a fire and that he collected compensation of 175 thalers from the insurance company "Assicurazioni Generali".[7]

business has become much simpler. *The probability* of the occurrence of an event is defined as the ratio between the number of favorable outcomes and the total number of outcomes regarding its realization. By applying the calculus of probabilities, the degree of probability of the occurrence of a certain hazard, that is, the insured risk, is determined. Along with the law of large numbers, the calculus of probabilities is the scientific basis of the technical organization of insurance. For the greater credibility of the results of the application of the calculus of probabilities, the insurance portfolio needs to be as large as possible." V.: N. Petrović Tomić, *Pravo osiguranja, Sistem, Volume One*, Official Gazette, Belgrade, 2019, pp. 74-75.

[4] Predrag Šulejić, *Pravo osiguranja, Peto izmenjeno i dopunjeno izdanje*, Faculty of Law, University of Belgrade, Belgrade, 2005, p. 34.

[5] This is probably one of the reasons why there was significant influence on insurance, and particularly on reinsurance, from abroad. Also V. Čolović, *Osiguravajuća društva, Zakonodavstvo Srbije, pravo EU, uporedno pravo,* The Institute for Comparative Law, Belgrade, 2010, p. 30.

[6] In the beginning, insurers considered insurance a source of profit and did not pay much attention to the performance of insurance activities in the interest of the insured. It was to their advantage that there was no regulation that would apply to insurance companies. This led to a large number of bankruptcies and liquidations.

[7] Vladimir Čolović, *Osiguravajuća društva, Zakonodavstvo Srbije, pravo EU, uporedno pravo*, The Institute for Comparative Law, Belgrade, 2010, p. 29.

The first domestic insurance company "Belgrade Cooperative" was founded in 1897, and its first president was Đorđe Vajfert. It is interesting that already in the first year of operation, that cooperative achieved notable results and issued 482 life insurance and 858 fire insurance policies. The state supported that project and entrusted the first domestic insurance company with the insurance of all government buildings for the period of 20 years. It was the first step in the emancipation of the state when it comes to insurance.

In his work "Opinions on Insurance", Čedomilj Mijatović, Minister of Finance of the Kingdom of Serbia, wrote something that seems extremely important even today:[8]

"I would like it to come, and I hope a fortunate time will come in the 20th century, when every Serbian groom will gift his bride a document on their wedding day that guarantees her livelihood in the event of his death, when every father will, on the day his child is born, ensure that the child, when becomes of age, receives at least so much capital as to buy tools for work, as well as a dowry for the girl, that every unmarried man will consider it a dear and compelling duty to ensure that on the day of his death, at least 1.000 dinars are deposited to his municipality for charitable goals, a time when there will be no house that is not insured against fire, no field, no vineyard, no orchard that is not insured against loss from natural disasters, and when not only every office worker but also every farmer and every artisan will be able to secure a pension for his wife and children, and finally when every working man will secure his own upkeep in case of old age or temporary incapacity, not as a gift or alms from the municipality or the state, but as a result of his efforts and his fair contract with a domestic insurance institution."

The third decade of the 21st century is slowly passing by, and we are still waiting for this fortunate time to come.

During the Balkan wars, insurance companies extended their practice to the so-called war risk, based on a special premium. The day after the beginning of the First World War, a law was enacted that stipulated that the premium for war risks did not have to be paid in advance. The companies were obliged to assume the war risk for all insureds, and every insured who wanted his insurance to remain valid had to make a statement about it in advance, within 15 days from the entry into force of the law, with a promise to pay the premium later. The war premium would thus be paid by the insureds who survive the war, which would help the insurance company to pay the insured sums to the families of those who were killed in the war. After many post-war disputes, the state passed a regulation obliging the companies to also pay the insured sums to those who did not make a statement, and that precedent cost the insurance companies dearly.

Before World War II, there were 28 insurance companies in Yugoslavia. Two thirds were branches of foreign insurance companies.

[8] Available at: https://zivotnoosiguranje.co.rs/misljenja-o-osiguranju-19-vek-srbija/ Accessed on: 01.04.2024

Up until World War II, insurance was like games of chance. Insurance in pre-war Yugoslavia did not know for prevention and repression, so insurers did nothing to prevent and mitigate loss. Only the fire contribution was required, and in such circumstances, fictitious losses could not be avoided. Until 1937, there was no state control of insurance as recognized by all legal systems today. Insurance, in fact, served to distribute profits, i.e. dividends to shareholders, and not to protect the interests of clients. This led to the acceptance of perilous business conducted by insufficiently competent persons, which resulted in the bankruptcy of one of the largest Austrian companies at the time, "Fenix", which had the largest life insurance portfolio in Yugoslavia.[9] In response to the great mistrust of insureds due to the downfall of "Phoenix", the Decree on Supervision of Insurance Companies was adopted, which came into force in 1937. It laid the foundations of what is still a trait of the insurance system today: state control, which related to the placement of the insurance companies' reserves, the prohibition of property alienation and encumbrance, etc.[10]

2. Insurance after the Second World War – state interventionism

According to professor Šulejić, the period after the Second World War in Yugoslavia can be divided into five stages, which are suitable for analysis given the fact that the field of insurance experienced significant changes caused by the changes in the socio-political system.[11] These are the following:

The system of centralized state insurance, valid from 1945 to 1961. Until the end of the Second World War, the market of Yugoslavia was dominated by foreign insurance companies, and on 1 March 1945, a decision was issued to merge all confiscated insurance undertakings into the state insurance institute for insurance and reinsurance. During the same year, that institute was renamed the *State Institute for Insurance and Reinsurance* (hereinafter: SIIR), after which all insurance undertakings became state-owned. In 1947, the government passed the Decree on the Organization and Operation of SIIR. SIIR falls within the jurisdiction of the Ministry of Finance and becomes an exclusive insurer, a monopolist so to speak, for the insurance against fire and other risks, all mandatory insurance business (except social), an exclusive reinsurer for all insurance operations, and it also carried out the activities of investment of long-term assets from its technical and other reserves into government securities. Since there was no work for private insurers whose assets were not confiscated on the basis of the Decree, SIIR became the only insurer and

[9] D. Mrkšić, Z. Petrović, K. Ivančević, *Pravo osiguranja*, Business Academy, Novi Sad, 2006, p. 23.
[10] P. Šulejić, *Pravo osiguranja, Peto izmenjeno i dopunjeno izdanje,* Faculty of Law, University of Belgrade, Belgrade, 2005, p. 35.
[11] P. Šulejić, *Pravo osiguranja, Peto izmenjeno i dopunjeno izdanje*, Faculty of Law, University of Belgrade, Belgrade, 2005, pp. 35–43.

reinsurer in the country in 1947.[12] In that period, insurance was a public service with a strictly centralized organization.

The system of decentralized communal insurance was in force from 1962 to 1967. The period of decentralization begins with the Law on Insurance Institutes and Insurance Communities from 1962.[13] That is when the establishment of more insurance institutes, i.e. insurance communities, began. They were usually established for the territory of one or more municipalities and formed the Republic Insurance Community, and these communities together formed the system of the Yugoslav Community for Insurance and Reinsurance. The insurance institutes engaged in all types of property and personal insurance in the territory of municipalities, while insurance communities were reinsurers of the institutes. The idea was to achieve a more rational use of the insurance capacity by decentralizing SIIR. However, that goal was not achieved, because the decentralization was only of a cosmetic nature, while essentially the unchanged system was kept.

The system of commercialized market insurance was in force from 1968 to 1974. During 1968, the reorganization of the insurance sector was carried out. Insurance carriers are insurance institutes, which can be established by labor organizations, socio-political communities and citizens. Insurance institutes were economic organizations that carry out insurance as an activity of special social interest.[14] They were conceived of as companies that have their own assets and are independent. But since insurance was declared an activity of special social interest, in addition to the self-management of the workers' collective, there was also social management in which the insureds and the founders of the institutes participated.[15] The insurance functions are the collection of funds for the payment of indemnity in case of occurrence and participation in taking preventive and repressive measures. The institutes freely choose the reinsurers and are responsible for the performance of the obligations assumed under the insurance. The Basic Law on Insurance and Insurance Organizations from 1967 also envisaged the possibility of founding economic organizations that carry out only brokerage, agency, loss assessment and other insurance-related services.[16]

Although many objections can be made as regards the system of insurance institutes, from today's point of view, that system has brought several changes, which can rightly be said to be reformatory. In short, insurance then for the first time

[12] V. Čolović, *Osiguravajuća društva, Zakonodavstvo Srbije, pravo EU, uporedno pravo,* p. 31.
[13] *Official Gazette of SFRY,* no. 27/61.
[14] V. Čolović, *Osiguravajuća društva, Zakonodavstvo Srbije, pravo EU, uporedno pravo,* p. 32.
[15] P. Šulejić, *Pravo osiguranja, Peto izmenjeno i dopunjeno izdanje*, Faculty of Law, University of Belgrade, Belgrade, 2005, p. 37.
[16] It is important to note that the consolidation of the insurance sector was also carried out, given the fact that instead of 128 insurance institutes, as there were in 1967, 11 institutes were formed at the end of the same year.

begins to function according to the principles of the market mechanism, territorial monopolies are abolished and the principle of voluntary insurance is adopted, except in cases prescribed by law. That system was exposed to criticism as early as 1971, during the period of constitutional amendments. *The insurance system based on the principles of the 1974 Constitution* is characterized by the following: risk communities are formed as a new form of organization based on the principles of associated labor and agreement economy; the function of loss compensation and prevention are equated under the Constitution and the law; mutual relations are regulated by self-management agreements; etc.

With the Law on Fundamentals of the System of Property and Personal Insurance from 1990, the previous communities are transformed into new financial organizations that have the character of a market economy entity.[17] It could be said that this is when the market insurance system began, since the foundations of market operations were laid. But truth be told, that was only the beginning of the market-based economy model that would be introduced under the Insurance Law of 2004.[18]

To conclude: after the dissolution of the SFRY, all republics introduced market-based economy systems. During the 1990s, their economic growth and development differed to a great extent depending on whether there were war operations on their territories or not. For Serbia, that time was extremely complex and difficult, marked by UN economic sanctions from 1992 to 1996, hyperinflation, NATO bombing in 1999, an unsuccessful and fundamentally wrong concept of transition, factors that left long-term negative consequences on the country's economic development and living standards of citizens.

Social capital and self-management were the peculiarity and basis of the economic environment and business activity in SFRY. Social capital did not have a clearly defined titleholder, which had a negative impact on productivity, efficiency and economy, and therefore on competitiveness in relation to companies with other form of ownership. Already at the end of the 1980s, the ownership transformation of social capital into private, that is, state capital, began. It was carried out by the implementation of various laws with more or less successful final result. Until 2021, social capital still existed in certain insurance companies, which comprised a significant part of the insurance market in Serbia. Thus, the share of social capital in the structure of the total capital in "Dunav Insurance Company" was 51,86%, in "Dunav Re" 4,58%, and in "Triglav osiguranje" a.d.o. Belgrade 0,12%.

The possession of inherited social capital in the structure of total capital made it difficult for insurance companies to operate and placed them in an unequal

[17] *Official Gazette of SFRY*, no. 17/90, 82/90 and *Official Gazette of FRY,* pp. 31/93 and 24/94.
[18] *Official Gazette of RS*, no. 55/2004, 70/2004, 61/2005, 85/2005 – other law, 101/2007, 63/2009 – Decision of the Constitutional Court, 107/2009, 99/2011, 119/2012, 116/2013 and 139/2014.

position in relation to direct competitors, but also to other participants in the financial market. The aforementioned situation influenced the Government of the Republic of Serbia to adopt the Law on Amendments to the Insurance Law late in April 2021. The said law succeeded to reconcile various provisions of previous laws that dealt with the issue of social capital in insurance companies, as well as the interests of insurance companies, the state and the employees. Namely, it envisaged a change in the ownership rights in the social capital by transferring 70% of the social capital to the Republic of Serbia, up to 25% of the social capital is transferred to the employees with no compensation (so-called free shares), while at least 5% of the social capital is transferred to the Shareholders Fund.

By implementing the law, the mentioned insurance companies finally have a clean capital structure, which enables them to continue operating in a modern corporate environment, while the employees received free shares, which they could immediately dispose of.

II. Regulation and stabilization of insurance sector

Major changes in the insurance sector are brought about by adoption of the Insurance Law of 2004, which creates the conditions for the development of the insurance market in the true sense of the word, and the supervision is entrusted to the National Bank of Serbia.[19] The same is the case under the applicable Insurance Law.[20] It is emphasized that the supervision is performed to protect the interests of the insureds and other insurance beneficiaries.[21] This is a modern tendency, as the protection of the weaker party to the insurance contract can be notably improved if it is set as the goal of the supervision.[22]

The NBS finds a situation in the insurance sector characterized by: the absence of good practice in business, adequate management, safety of investment of insurance funds for the purpose of settling the obligations towards insureds and third parties, absence of transparency of work, of regular reporting, incompleteness of business books, hence the unreliability of the presented data, transfer of insurance funds to associated companies, unduly settlement of obligations towards insureds and third parties, double issuance of policies, wrongly set business goals of

[19] At the time of the adoption of that law, and in particular during the public discussion, the proponents emphasized the transfer of supervisory powers from the Ministry of Finance to the NBS as one of the most significant novelties. The key argument of the proponents was the unification of the supervisory function over all financial institutions. According to their belief, the NBS is much more competent in supervising the financial market. V.: N. Petrović Tomić, *Pravo osiguranja*, sistem, p. 225.

[20] *Official Gazette of the RS*, no. 139/2014 and 44/2021.

[21] R. Ayadi, C. O' Brian, *The Future of Insurance Regulation and Supervision in EU*, CEPS, 2006, p. 6.

[22] In more detail on the protection of the weaker party: M. Glintić, „Zaštita prava slabije ugovorne strane u skladu sa principima evropskog ugovornog prava osiguranja", *Strani pravni život*, no. 3/2020, pp. 57-73.

insurance companies - instead of protecting the interests of insureds and insurance beneficiaries, the goal was to protect the interests of owners, furthermore, a high degree of illegality in business, a significant number of legal entities operating in the insurance sector without a license to operate.[23] Obligations towards the insureds were funded from current inflows, which means that the premiums collected for new policies served to settle obligations under previously issued policies, instead of their safe investment.[24] All this contributed to the complete loss of public trust in this sector.

In order to achieve the set goal in the stated circumstances, the NBS directed its activities in several directions:

- Stabilization of the insurance sector
- Restoring public trust in the insurance sector
- Creation of the basis for the development of the sector
- Creation and development of the supervisory function
- Continuous education of employees.

Based on the NBS report for 2004, the level of development of the insurance sector in Serbia was significantly below the average of the European Union member states. The share of the premium in the gross domestic product in Serbia that year was below 2%, while in the 25 EU member states it was 8,3%, and in Eastern European countries it was approximately 3%. According to the premium per capita of around 50 USD, Serbia ranked only 70th in the world. Switzerland ranked first with 5.716 USD, while Slovenia was 28th with 920 USD. According to the total premium, in 2004 Serbia ranked 66th with 433.000.000 USD.

A large number of insolvent insurance companies was closed. Their number decreased from 40 in 2004 to 19 in 2005. Let's not forget that at the end of 1996, there were 77 insurance companies and three reinsurance companies on our market. Many of them lost their operating license in the period up to 2004.

In 2005, 19 insurance companies operated in the insurance market, 16 of which were engaged only in insurance activities, two only in reinsurance activities, and one carried on both insurance and reinsurance business. In 2005, the number of other participants in the insurance market – brokers and agents - also recorded a drop by 50%.

In the premium structure in 2005, the share of non-life insurance was 90,5%, while the share of life insurance accounted for only 9,5%. In the structure of non-life insurance premiums, property insurance accounted for 33%, followed by motor third party liability insurance with 31%.

[23] In developed insurance markets the situation is completely different. V.: R. H. Jerry II, *Understanding Insurance Law*, Lexis Nexis, New York 2007, 1021; M. Ćurković, V. Miletić, *Pravo osiguranja Europske ekonomske zajednice,* Croatia osiguranje, Zagreb 1993, p. 29.

[24] P. Šulejić, *Pravo osiguranja, Peto izmenjeno i dopunjeno izdanje*, Faculty of Law in Belgrade, Belgrade, 2005, pp. 123–128.

A significant indicator of the results of the activities undertaken to stabilize and regulate the insurance market is the ratio of the increase in technical reserves to the total premium. The increase in technical reserves of 99% (from 11,5 billion dinars in 2004 to 22,8 billion dinars in 2005) is significantly higher than the increase in the total premium of 53%, which suggests that companies have started to abandon the bad practice of inadequate formation of technical reserves. In addition, the quality of investment of technical reserves has improved in terms of less investment in real estate, associated legal entities and securities that are not traded on the organized market.

Under the Insurance Law from 2014, which is still in force, better mechanisms have been created for the protection of citizens, as well as all the necessary prerequisites for the provision of modern insurance services.[25] The Law provides for proper informing of citizens prior to concluding a contract, as well as information on who they should contact in order to exercise their rights under the concluded insurance contract, on the manner and deadlines for submitting a claim for indemnity, cancellation of the contract, as well as on the ways to protect their rights with the competent authorities.[26] At the same time, new forms of technical reserves and stricter methods for the calculation of existing forms of reserves were introduced, doubling their amount in less than a decade. This provides a strong message to all insurance service users that the paid premium will be purposefully used and kept.

A management system with four main functions - actuarial, risk management, internal audit and internal control was introduced, so in addition to an intensive external control, a protection and monitoring mechanism is implemented and stimulated within the insurance company.[27]

A legal framework very similar to that in developed European countries was created, which provided for a stimulating and stable environment for the construction and further progress of the insurance sector.[28] Namely, the 2014 Law almost completely took over the EU Directives integrated into the Solvency I regime, and even some parts of the Solvency II Directive, so that our system is in an intermediate stage, with the task of all market participants to prepare for the full implementation of the Directive Solvency II (the deadline for its full application is the admission of our country to the EU).[29]

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[25] Narjess Boubakri, „Corporate governance and issues from the insurance industry", *The Journal of Risk and Insurance,* 2011, Vol. 78, No. 3, p. 502.

[26] In more detail: N. Petrović Tomić, *Zaštita potrošača usluga osiguranja, Analiza i predlog unapređenja regulatornog okvira*, Faculty of Law in Belgrade, Belgrade, 2015, pp. 141–201; A. Keglević, *Građanskopravni aspekti obveze obavještavanja kod potrošačkog ugovora o osiguranju,* doctoral thesis, Faculty of Law of University of Zagreb, Zagreb, 2012, p. 102.

[27] In more detail: N. Petrović Tomić, *Pravo osiguranja, Sistem, Volume I*, Official Gazette, Belgrade 2019, pp. 276–280; P. Marano, „Nova nadzorna paradigma: kultura nošenja rizika i etički kodeks", Pravo osiguranja, uprava i transparenstnost – osnove pravne sigurnosti, Palić, 2015, pp. 171–175.

[28] I. Tošić, „Uticaj Direktive Solventnost II na sektor osiguranja u Evropi", *Godišnjak Fakulteta pravnih nauka*, no. 7/2017, pp. 301–313.

[29] In more detail about the Solvency II Directive: M. Dreher, *Trearies on Solvency II*, Springer Vergal, Berlin, 2015, pp. 345–424.

III. Insurance market in 2022

On the basis of the NBS data, the level of development of the insurance sector in Serbia, despite continuous growth from year to year, is still significantly below the average of the EU member states. According to the share of the premium in the gross domestic product with approximately 2%, Serbia has not yet reached the level of the EU member states, where that share is around 7%. The premium per capita in Serbia in 2021 was 176 dollars, whereas in Slovenia it amounted to 1.047 dollars.

At the end of 2022, 20 insurance companies were operating in Serbia. Sixteen companies are engaged in insurance activities only, and four in reinsurance activities only. Four companies are engaged only in life insurance, six only in non-life, and six companies carry on both life and non-life business. Looking at the ownership structure, out of 20 companies, 15 are majority foreign-owned.

In the premium structure in 2022, the share of non-life insurance was 78,6%, while the share of life insurance decreased from 22,7% in 2021 to 21,4% in 2022 due to the higher nominal growth of non-life insurance premium than the growth of life insurance premium.

In the total portfolio structure, five types of non-life insurance participate with 66,8%: voluntary health insurance, motor insurance - casco, insurance of property against fire and other perils, other property lines and motor third party liability insurance.

Motor third party liability insurance - MTPL in 2022 retains the leading share in the total premium with 29,1%, followed by life insurance with 21,4% and property lines with 19,9%. The share of voluntary health insurance rose from 5,8% in 2021 to 7,4% in 2022, which is the result of the growth of this premium of as much as 43,5%.

Comparative overview of insurance sector 2004/2005, 2015 and 2021/2022

Indicator	2004/2005	2015	2021/2022
Total premium	433 mil USD	727 mil USD	1,3 bn USD
Premium per capita	50 USD	102 USD	179 USD
Non-life premium share in total premium	90,5%	76,1%	78,6%
Life premium share in total premium	9,5%	23,9%	21,4%
Number of insurance companies	19	24	20
Ownership structure – foreign	5	18	15
Ownership structure – domestic	14	6	5
Technical reserves	11,5 bn din	131,0 bn din	229,7 bn din

IV. Role of the Association of Serbian Insurers in promoting insurance industry

Insurance and reinsurance companies are gathered within a professional association - Association of Serbian Insurers (hereinafter: the ASI). The main peculiarity of the ASI in relation to other business associations is reflected in the entrusted public powers. Namely, in all or almost all legislations, a body is established - the Guarantee Fund, for the purpose of securing the compensation for losses incurred in traffic when, for certain reasons, the insurance coverage does not work.[30] The obligation to establish the Guarantee Fund was introduced by the Second Directive on Insurance against Civil Liability in respect of the Use of Motor Vehicles (Directive 84/5/EEC), for the purpose of equal and better protection of victims of traffic accidents.[31] Our Law on Compulsory Traffic Insurance also contains provisions on the Guarantee Fund.[32] The Guarantee Fund has been under the jurisdiction of the ASI since its establishment. It is a public authority that is inseparable from the activity of insurance, and which is carried out in the best interest of the claimants.[33] The cases when there is an obligation of the Fund in our law are: damage caused by an uninsured vehicle, damage caused by an unknown vehicle and bankruptcy of the insurer. The Guarantee Fund integrates the system of protection of the third-party claimants in traffic and provides almost unconditional protection to all persons who sustained damage caused by the use of the motor vehicle, which cannot be compensated by insurance companies: unknown vehicles, uninsured vehicles and vehicles insured by a company in bankruptcy. There is no difference in the criteria for the loss compensation and the speed of settlement compared to insurance companies. In the event of losses caused by unknown vehicles, the loss is indemnified only if there were personal injuries, due to numerous frauds with this right in the past.

Apart from the function of the Guarantee Fund, the ASI performs the following important tasks as well.

The function of the Green Card Bureau: The Association is a member of the Green Card System in Brussels, which includes 50 mainly European countries.[34]

[30] N. Petrović Tomić, *Pravo osiguranja, Sistem,* p. 583; M. Ćurković, „Štete nanesene strancima u Jugoslaviji od nepoznatih i neosiguranih motornih vozila", *Osiguranje i privreda*, no. 5, 1979, pp. 49–52.

[31] N. Petrović Tomić, *Pravo osiguranja, Sistem, Volume I*, pp. 610–611.

[32] *Official Gazette of the RS*, no. 51/2009, 78/2011, 101/2011, 93/2012 i 7/2013 – Decision of the Constitutional Court.

[33] N. Petrović Tomić, *Osnovi prava osiguranja, Drugo, dopunjeno izdanje*, Faculty of Law, University of Belgrade, Belgrade, 2023, p. 256.

[34] The green card system was created on the basis of principles established by Recommendation no. 5, created in 1949 by a working group formed by the UN Economic Commission for Europe. The recommendation was addressed to the governments of European countries, with the aim of influencing insurers to conclude agreements with insurers of other countries. The Recommendation follows to goals. The first one

This system enables the circulation of vehicles within the borders of the system with the recognition of domestic MTPL insurance policies, without the obligation to have expensive border insurance. We remind you that since June 2011, the ASI has been a signatory of the Multilateral Guarantee Agreement (MGA), i.e. a member of the License Plates Subsystem within the Green Card System, which enables drivers of vehicles normally stationed in Serbia to freely enter countries that are also signatories to this Agreement, without green card control. With this, the citizens of Serbia are completely equal to the EU citizens and several other countries that are signatories to the Agreement, which means that already in 2011, with its proper operation, the ASI met standards required for the access to the Agreement.

Owing to financial discipline in the settlement of losses caused by our vehicles abroad, our country is a permanent member of the Green Card System and even has its representative in the highest bodies of its administration. The System includes two functions, processing, settlement and reimbursement of losses caused by foreign vehicles in the territory of our country, i.e. payment of losses caused by our vehicles abroad.

The function of the Information Center: collects data on MTPL insurance policies as well as losses under this insurance, with two main goals: 1) creation of relevant statistics for the formation of MTPL prices, which will be particularly useful in the period of liberalization 2) management of bonus/malus system where at the moment of policy issue, the company addresses the ASI and at any time receives feedback on the associated bonus/malus, enabling prompt policy issue with proper rating.

The function of promoting the insurance sector and protecting the interests of insurers: the ASI carries out a coordinated approach of all insurers towards the social community and the legislator, where the possibility of a unique influence on the creation of a legislative environment of interest to insurers is particularly highlighted. We particularly emphasize the role of the ASI in promoting socially responsible business on the industry level and advocating for the improvement of the protection of insurance service beneficiaries.

is the equation of foreign traffic accidents with domestic traffic accidents in terms of loss compensation. The second goal is the protection of the owner or driver of a motor vehicle abroad. The basic principles of the Recommendation are: 1) the insurers establish an organization called the bureau, which is responsible for the functioning of the green card system and the performance of the insurer's obligations; 2) the bureau provides insurers with an insurance document - a green card, and they distribute it to their insureds; 3) the document confirms liability insurance and provides the holder with the same coverage as he has in the country of registration; 4) losses caused by the green card holder in the visited country are paid by the bureau of that country, and then reimbursed by the bureau of the country that issued the green card. Starting from the principles of the Recommendation, the representatives of the national bureaus of the member states of the green card system drafted a standard agreement, on the basis of which the agreements between the bureaus were concluded. The bilateral agreement concluded by the bureaus based on the standard agreement is also called the London Agreement, because it was adopted at the General Assembly of the Bureau Council held in London. In more detail: M. Ćurković, *Ugovori o obveznom osiguranju u cestovnom prometu,* Savjet stručne biblioteke „Croatia" zajednica osiguranja imovine i osoba, Zagreb 1989, str. 100.

The function of determining a uniform premium tariff and MTPL insurance conditions: The role of the ASI is to determine the uniform minimum premium and joint motor third party liability terms and conditions, and the NBS gives the approval for them. This will be the case until the moment of market liberalization, for which the deadline is admission to the EU.

V. Conclusion

Based on an insight into the historical development of insurance in this region and knowledge of domestic market, it is possible to make assumptions about development tendencies. First, the insurance market is one of the fastest growing, given its importance not only in realizing the protective role understood in classical terms, but in general in "risk society", as post-technological society is being more and more called. The economic and health crisis that hit the whole world during the coronavirus pandemic, as well as in the post-covid phase, followed by the energy crisis, which also fueled inflationary pressure, showed that in the future more investment should be made in risk protection mechanisms. In such circumstances, the insurance market is expected to show readiness to take on the role of a global risk management leader. Insurers are facing a serious challenge, since the risks involved are notably different from those that they normally underwrite. Everything they already know about risks and all the statistical machinery are powerless in the face of numerous risks of a global character that need to be covered at a favorable price. Since experience, and even more economic indicators, tell us that the capacities of the (re)insurance market are limited, economically sustainable insurance will require a partnership with the state more often than ever in the history of insurance. When it comes to the domestic insurance market, the rate at which growth will be achieved depends primarily on changes in regulatory framework, both in the status part (further implementation of the Solvency II directive), as well as in the supervisory part and the protection of service users.

Second, the capital of trust, without which the insurance industry cannot survive, should be nurtured day by day by both legal and extralegal means. When talking about the extralegal mechanisms of acquiring and maintaining social capital, such as trust, it is necessary for the business operations in the insurance sector to be based on the respect for the standards of business ethics and the principles of socially responsible business. In other words, one should invest in fair and correct treatment of insurance clients, on a daily basis. We emphasize that the NBS, in its capacity not only as a supervisory body but also as a regulator in the insurance market, has a clear position when it comes to improving operations in the insurance industry. From the Guidelines adopted by the NBS after the adoption of the Insurance Law of 2014, it is clear that it expects entities on the insurance market to develop good practice of fair treatment of clients. After all, the supervisory function includes not only the control of the legality of business, but also good customs and business ethics.

A look at the historical development of insurance in our region suggests that the insurance market is not immune to two factors that have caused a turbulent business environment here. These are the socio-political environment and the economic situation in the country. As regards the first factor, we have reached a certain level of awareness of the importance of prevention and risk management. Also, the legal framework no longer restricts insurers and reinsurers, as it used to be the case, while the NBS, by performing its supervisory and regulatory function on the insurance market, ensures financial discipline and protection of service users. What remains is to work on raising the awareness of citizens, potential users of services, about the usefulness of insurance as a necessary companion in all perilous situations. A strategy that would lead to a greater presence of insurance is also of interest to the ASI, which works on the promotion of the interests of the industry. The Association can be expected to continue with the promotion of the insurance sector in order for the users to start looking at insurance as an investment and not as an expense.

To conclude: before the adoption of detailed legislation, insurers saw insurance as a source of profit and did not pay much attention to the performance of insurance activities in the interest of the insured. This led to a large number of bankruptcies and liquidations. It was only in the nineteenth century that the development of insurance and reinsurance in the true sense of the word took place. This particularly applies to Germany, whose companies joined together in order to take over insurance operations that go beyond the borders of one country. Along with that process, the first laws regulating the insurance contract were being adopted. The appearance of the consumer insurance contract act is particularly significant, adopting principles that can be said to have been retained even today, in a somewhat modified form. Until the adoption of those laws, especially in Germany and France, only general contractual law was applied to the insurance contract, which made users of insurance services easy prey for insurers.

Therefore, we agree with Professor Petrović Tomić that the historical development of insurance as an economic activity can be viewed as a civilizational phenomenon, whose shaping was influenced by the need for security and protection. As the changed living conditions at the end of the 19th and the beginning of the 20th century made many aspects of the life of the modern man risky, his demand for insurance began to grow. A well-devised insurance system should emphasize the need for protection against risk and offer customized insurance protection packages.

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