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Prof. dr Nataša Petrović-Tomić [1]
Prof. dr Ivana Bodrožić [2]

NAČELNA PITANJA REVERZIBILNOG ODNOSA KRIVIČNOG PRAVA I PRAVA OSIGURANJA

ORIGINALNI NAUČNI RAD

Apstrakt

U radu se *a priori* polazi od pretpostavke da se, u kontekstu kompleksnosti pravnog sistema kao takvog i željenog stepena njegove koherentnosti, između krivičnog prava, kao javnog prava, i prava osiguranja, kao privatnog prava, pojavljuje odnos povezanosti, koji je obeležen reverzibilnošću.

Iako u osnovi potpuno različite pravne discipline, u savremeno doba, a prema svojoj osnovnoj funkciji i usmerenosti, one imaju niz dodirnih tačaka i odnos koji se zasniva na međusobnom uticaju. O karakteru odnosa te dve grane prava, u kontekstu održivosti željenog stepena funkcionisanja celokupnog tržišta osiguranja, kao značajnog segmenta modernog i efikasnog finansijskog sektora, u radu se vodi polemika, uz osnovnu istraživačku ideju da se krivično pravo posmatra kao *ultima ratio societatis* u zaštiti prava i interesa osiguranika, osiguravača i reosiguravača, odnosno u najširem smislu celokupne delatnosti osiguranja.

Dominantno teorijska rasprava, zasnovana najvećma na pravno-dogmatskom metodu, pionirska je ove vrste u domaćoj pravnoj teoriji. Zasnovana je na ideji o potrebi povezivanja različitih pravnih aspekata osiguranja, u cilju obezbeđivanja projektovanog stepena sigurnosti, to jest zaštite tržišta osiguranja. Autorke ukazuju na međusobnu uslovljenost oblikovanja krivičnopravnih normi uslovima savremenog ekonomskog

[1] Redovna profesorka, Pravni fakultet Univerziteta u Beogradu. e-mail: nataly@ius.bg.ac.rs.
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[2] Vanredna profesorka, Kriminalističko-policijski univerzitet u Beogradu. e-mail: ivana.bodrozic@kpu.edu.rs. ORCID https://orcid.org/0000-0001-5010-7832.
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kriminaliteta, te pitanjima kako kriminalitet *vice versa* oblikuje usluge osiguranja. U zaključku autorke ukazuju na značaj daljeg, kontinuiranog istraživanja u ovoj oblasti radi adekvatnog razvoja *de lege ferenda* rešenja u nacionalnom, krivičnom zakonodavstvu.

Ključne reči: krivično pravo, pravo osiguranja, reverzibilnost, kriminalitet i osiguranje.

I Uvodna razmatranja

Krivično pravo savremene demokratske države zasnovano je na utilitarističkom principu, koji podrazumeva da ono kao racionalan sistem pravnih propisa ima prioritetno zaštitnu funkciju. Osnovni cilj i svrha postojanja krivičnog prava jeste zaštita društva od kriminaliteta, odnosno društveno opasnih obrazaca ponašanja kojima se ugrožavaju ili povređuju najvažnija dobra čoveka i društva.

Pravo osiguranja, s druge strane, predstavlja skup pravnih propisa kojima se reguliše celokupno tržište osiguranja, kao značajan segment modernog i efikasnog finansijskog sektora, uključujući ugovore, poslove osiguranja, kao i postupanje sa odštetnim zahtevima. I pravo osiguranja prevashodno jeste zasnovano na ideji o zaštiti interesa osiguranika od potencijalnih osiguranih slučajeva, tačnije nastupanje štete prouzrokovane osiguranim slučajem, ali u krajnjoj liniji i na ideji o zaštiti osiguravača i reosiguravača, a u savremenom kontekstu i lica izvan ugovornog odnosa osiguranja.[3] Njegova zaštitna funkcija se prirodno nadovezuje na etimološko značenje. U svim jezicima termin osiguranje (engl.: *insurance*; franc.: *assurance*; nem.: *Versicherung*; špan.: *seguro*) ukazuje na sigurnost, bezbednost, pružanje zaštite, itd.[4] Preuzimanjem posledica određenog događaja (osiguranog rizika čijim ostvarenjem nastaje osigurani slučaj) osiguravač pruža zaštitu pojedincu čineći neometanim njegov dalji život.[5] Zaštitna funkcija osiguranja utoliko pre dolazi do izražaja kada je reč o pravnim licima i uopšte privrednim subjektima, kojima nepredviđeni događaji mogu naneti ogromne štete. Osiguranje omogućava da do zastoja u njihovom poslovanju ne dođe.

U toj zaštitnoj funkciji oličena je bazična povezanost ove dve naizgled potpuno različite pravne discipline. Polazeći od kompleksnosti pravnog sistema i projek-

[3] Nataša Petrović Tomić, *Pravo osiguranja, Sistem, Knjiga I*, Službeni glasnik, Beograd, 2019, 41–43.

[4] Helmut Heiss, „Insurance contracts“, *Encyclopedia of Private International Law* (eds. Jürgen Basedow *et al.*), Vol. 2, Entries I-Z, Edward Edgar Publishing, Northampton, 2017, 954–955.

[5] Da stvari budu jasnije, zaštitna funkcija osiguranja nastupa *post festum*. Osiguravač nema čarobni štapić kojim bi mogao sprečiti da osiguranik doživi prirodne nepogode, povredu usled nesrećnog slučaja, invaliditet ili odgovornost usled preduzimanja neke radnje. Osiguranje stupa na scenu upravo kada se ostvari događaj od koga se osiguranik osigurao (osigurani slučaj). Umesto da se sam bori s posledicama nemilog događaja, osiguranik ili korisnik prava iz osiguranja ostvaruje naknadu ili osiguranu sumu, koja mu omogućava da lakše sanira posledice neizvesnih događaja.

tovanog stepena njegove koherentnosti, autorke u radu analiziraju upravo karakter i vrstu odnosa između krivičnog prava, kao dela javnog prava, i prava osiguranja, kao privatnog prava. Zaštitna funkcija i usmerenost ka maksimalnom izbegavanju štetne posledice predstavljaju osnov njihovog odnosa, o čijoj se reverzibilnosti odnosno uslovljenosti i vodi osnovna polemika u radu.

S krajnjim ciljem utvrđivanja prerogativa njihove međusobne uslovljenosti i usklađenosti, posmatrano najpre iz perspektive njih kao delova pravnog sistema, autorke postavljaju sledeće grupe pitanja i nude odgovore na nekoliko složenih pravnih tema: Kakav je odnos osnovnih načela krivičnog prava i prava osiguranja, sledstveno tome da li su i u kojoj meri krivičnopravne norme uslovljene razvojem savremenih oblika ekonomskog kriminaliteta u čijim okvirima se nalaze i inkriminacije koje za neposredni objekat zaštite imaju osiguranje kao delatnost *per se*? Na kraju, postavlja se pitanje kako kriminalitet oblikuje usluge osiguranja.

II O odnosu načela krivičnog prava i prava osiguranja

Osiguranje kao institut ima prioritetno ciljnu funkciju. Ona se ogleda u pružanju zaštite.[6] **Zaštitna funkcija osiguranja, u savremenom kontekstu posmatrano, odnosi se ne samo na osiguranika odnosno korisnika, već i na lica izvan ugovornog odnosa osiguranja**.[7] Osnovna funkcija krivičnog prava takođe je zaštitna. **Krivično pravo pretenduje da propisivanjem nedozvoljenih obrazaca ponašanja i njima pripadajućih krivičnih sankcija bude najsnažniji instrument državne reakcije na društveno štetno ponašanje kojim se povređuju ili ugrožavaju najvrednija dobra i vrednosti. Ono je duboko zasnovano na ideji o izuzetnosti, odnosno o *ultima ratio societatis* karakteru**.[8]

Posmatrano kroz prizmu osnovnih funkcija obe pravne grane, autorke polaze od unekoliko modifikovane latinske sentencije, vezane za utvrđivanje stepena demokratičnosti društva, *Quis custodiet ipsos custodes?* – koja postavlja pitanje: **ko će nas čuvati od čuvara?** Iz nje modifikovano i derivirano istraživačko pitanje jeste pitanje ko će i (kako) čuvati čuvare, to jest koji su načini i modaliteti koji krivičnom pravu, kao pravu sa zaštitnom funkcijom, stoje na raspolaganju, u zaštiti onih koji obezbeđuju zaštitu. Reč je o dvostrukom hipotetičkom kauzalitetu koji treba da pruži odgovor na pitanje kakvo je mesto i uloga krivičnog prava u zaštiti prava osiguranja, tačnije celokupnog tržišta osiguranja.

[6] Marija Karanikić Mirić, „Forma ugovora o osiguranju", *Tokovi osiguranja*, br. 1/2025, 22–23; N. Petrović Tomić (2019a), 41.

[7] Reč je o širenju zaštitne funkcije osiguranja, koja nastaje kao proporcionalna posledica kontinuiranog razvoja prava osiguranja. Nataša Petrović Tomić, *Osnovi prava osiguranja,* Pravni fakultet Univerziteta u Beogradu, Beograd, 2023, 21–26.

[8] Zoran Stojanović, *Krivično pravo – Opšti deo,* Pravna knjiga, Beograd, 2019, 3.

Kako se pitanje sistematike jedne grane prava najpre odnosi na pitanje njenog odnosa s drugim granama prava, a sve u kontekstu očekivane koherentnosti pravnog sistema, u radu će se dve pravne grane, obe zasnovane na ideji ostvarivanja zaštitne funkcije, posmatrati u kontekstu njihovog međusobnog odnosa. Pravo osiguranja, koje pripada porodici građanskog, tačnije poslovnog prava, kao svoj predmet prepoznaje različite vrste odnosa: imovinskopravne, statusnopravne i upravnopravne, u vezi s kojima istovremeno koristi i građanskopravni i javnopravni metod.[9] Krivično pravo, nasuprot tome, predstavlja čistu granu javnog prava.

Obe pravne grane poznaju određene svojstvene im principe odnosno načela, koja predstavljaju osnov i graničnik njihovog bitisanja kao pozitivnopravnih disciplina.

Iako naizgled pitanja načela jesu pitanja naglašeno dogmatskopravne prirode, ona *a contrario* imaju naglašen praktični značaj, jer od njihove određenosti i pravca kojim usmeravaju celokupnu pravnu disciplinu zavisi tumačenje i primena normi, koja u krajnjoj liniji i jeste najvažniji segment jedne pravne discipline.

Odnos krivičnog prava i prava osiguranja može se posmatrati kroz analizu odnosa njihovih osnovnih načela. Ta načela imaju različite ciljeve, ali se međusobno prepliću, najpre u onim odnosima u kojima obrasci ponašanja subjekata tržišta osiguranja imaju obeležja krivičnog dela. Osnovna načela krivičnog prava su načelo zakonitosti, načelo legitimnosti, načelo krivice, načelo humanosti i načelo srazmernosti i pravednosti. Osnovna načela prava osiguranja su: načelo savesnosti i poštenja, načelo obeštećenja, načelo ograničene i usmerene slobode ugovaranja i načelo pojačane zaštite slabije strane.

1. Ukratko o načelima krivičnog prava

Pođe li se od sadržine načela zakonitosti, koje se izražava latinskom formulacijom *nullum crimen nulla poena sine lege,* koja podrazumeva da nema krivičnog dela niti kazne bez zakona,[10] nije dozvoljeno da se bilo koje ponašanje učesnika tržišta osiguranja smatra krivičnim delom dok ono ne bude *explicitum* predviđeno Krivičnim zakonikom (KZ).[11] Kako se u KZ Republike Srbije pojavljuje samo jedno krivično delo

[9] Nataša Petrović Tomić, „O ograničenoj i usmerenoj slobodi ugovaranja u ugovornom pravu osiguranja: Fenomen ‘pokoravanja’ ugovora o osiguranju“, *Anali Pravnog fakulteta u Beogradu*, br. 1/2020, 100–125.

[10] Formulacija tog načela vezuje se za nemačkog teoretičara Anselma Fojerbaha (*Anselm Feuerbach*) i u najširem smislu podrazumeva „da niko ne može biti kažnjen za neko ponašanje, odnosno da prema njemu ne može biti primenjena krivična sankcija ako pre nego što ga je preduzeo ono nije bilo zakonom predviđeno kao krivično delo i ako za njega nije bila zakonom predviđena kazna“. Z. Stojanović, 20.

[11] Republika Srbija dobila je 2006. godine nov Krivični zakonik (*Službeni glasnik,* br. 85/2005, 88/2005 – ispr. 107/2005, ispr. 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 i 94/2024) koji je rezultanta dugogodišnjih nastojanja da se u oblasti materijalnog krivičnog prava izvrši kodifikacija, kao pravni mehanizam koji olakšava primenu prava, budući da najveći broj relevantnih odredaba iz kodifikovane oblasti sistematizuje u okviru jednog pravnog akta. Taj zakonski propis, od najvećeg dela naučne i stručne javnosti označen je kao savremeni, liberalno orijentisani zakonik, koji je čvrsto utemeljen na

koje kao svoj neposredni objekat zaštite prepoznaje zakonito obavljanje delatnosti osiguranja, krivično delo prevara u osiguranju, čl. 223a KZ, načelo zakonitosti podrazumeva da ono (kao uostalom i sva ostala krivična dela u Posebnom delu krivičnog zakonodavstva) mora biti precizno definisano.[12]

Načelo legitimnosti u krivičnom pravu podrazumeva da se legitimnim može smatrati samo ono krivično pravo čiji su osnov i granice postavljeni tako da se imaju smatrati opravdanim i nužnim u društvu. Kako je osiguranje rastuća delatnost i važan deo održivog razvoja društva kao celine,[13] što se može uvideti na osnovu podataka Narodne banke Srbije (NBS), to se njena razvojnost[14] pojavljuje kao društvena vrednost koja zaslužuje krivičnopravnu zaštitu. U pogledu potrebe izdvajanja krivičnog dela prevara u osiguranju, kao *lex specialis* norme u odnosu na krivično delo prevare iz čl. 208 KZ, legitimitet inkriminacije opravdan je stepenom značaja koji tržište osiguranja ima u odnosu na značaj u celokupnoj privrednoj delatnosti Republike Srbije. Kako se tržište osiguranja pojavljuje kao jedno od najbrže rastućih, a budući da njegov značaj u posttehnološkom društvu počinje da bude relevantan ne samo u kontekstu njegove osnovne zaštitne funkcije nego i funkcije koje ima u tzv. društvu rizika, postojanje krivičnopravne norme koja doprinosi osnaženju kapitala poverenja ima svoj jasan i nesporan društveni značaj.

U kontekstu načela krivice, koje u krivičnom pravu podrazumeva individualnu i subjektivnu odgovornost, odnosno pravilo da svako odgovara samo za svoje postupke, na osnovu kojih država, kao nosilac prava na kažnjavanje *(ius puniendi)* može da mu izrekne odgovarajući društveno-etički prekor u formi kazne, sankcionisanje učinilaca krivičnih dela prevara u osiguranju, kao i svih ostalih inkriminatornih izraza koji se u širem smislu mogu konsekventno primeniti na oblast osiguranja kao privrednu delatnost *per se,*[15] moraju biti zasnovana na krivici – i to njenom

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utilitarističkom principu i kojim je uspostavljena optimalna ravnoteža između osnovnih sloboda i prava čoveka i građanina, s jedne strane, i nužne represije, s druge. Ivana P. Bodrožić, „Kontinuirani krivičnopravni ekspanzionizam – na raskršću politike i prava", *Srpska politička misao*, br. 2/2020, 384.

[12] Načelo zakonitosti ima četiri segmenta: *lex scripta, lex praevia, lex stricta i lex certa*, a domet načela zakonitosti se u pomenutom kontekstu odnosi na potrebu da norma kojom se inkriminiše prevarno ponašanje u osiguranju mora biti u što je većoj meri određena i precizna.

[13] Ivana Soković, „Značaj osiguranja i perspektive razvoja u Srbiji", *Tokovi osiguranja,* br. 2/2024, 265.

[14] Koja se i dalje nalazi ispod proseka zemalja članica EU, kako prema učešću premije u bruto domaćem proizvodu tako i prema visini premije po stanovniku. *Ibid.,* 274.

[15] Osiguranje spada u red privrednih delatnosti koje karakteriše naglašena razvojnost. Ono može biti shvaćeno i kao svojevrstan civilizaciji fenomen, jer se njegovo uobličavanje pojavljivalo kao direktno proporcionalno razvoju potrebe čoveka za zaštitom i sigurnošću. Taj fenomen nije zaobišao ni krivično pravo. Opseg obrazaca ljudskog ponašanja koji se imaju smatrati krivičnim delima i koji su kao takvi predviđeni u Posebnom delu krivičnog prava određene države, poznat je pod terminom dinamika inkriminacija. Iako mu je kao osnovna naglašena i izdvojena zaštitna funkcija, u savremeno doba razvoj i dinamika kriminaliteta praćeni su strahom, odnosno paranojom sigurnosti, te se i krivičnom pravu pripisuje bezbednosna funkcija, koja mu nije svojstvena, i koja ga vodi ka totalnoj krizi legitimnosti.
Izmenjeni uslovi života i paralelno uslovi kriminaliteta, doveli su do pojačane potrebe za osiguranjem, ali i za sve oštrijom i širom krivičnopravnom zaštitom.

pretpostavljenom obliku – umišljaju, a samo izuzetno nehatu, onda kada zakon *explicitus* predviđa kažnjavanje i za ovaj blaži stepen krivice.

Načelo humanosti i srazmernosti pravednosti, kao i u svim ostalim slučajevima krivičnopravne zaštite, načelno posmatrano, i u slučajevima konkretizovanog neprava u oblasti tržišta osiguranja, podrazumeva human odnos prema učiniocu krivičnog dela i izricanje kazne, koja je po vrsti i meri odgovarajuća, tačnije srazmerna i pravedna učinjenom obliku konkretizovanog neprava.

2. O načelima prava osiguranja

Kada su načela prava osiguranja posredi, na prvom mestu je načelo savesnosti. Prema ZOO, učesnici obligacionih odnosa dužni su da se u zasnivanju i izvršavanju obaveza iz obligacionih odnosa ponašaju u skladu s načelom savesnosti i poštenja, tj. da ugovore izvršavaju *secundum bonam fidem et consuetudinem mercatorum*.[16] Iako bi se pomenuto načelo moglo shodno primenjivati i u osiguranju, teoretičari prava osiguranja poklanjaju veliku pažnju ovom načelu uzdižući ga na rang vrhovnog načela prava osiguranja.[17] Suština tog načela bi se ukratko mogla izraziti na sledeći način: ugovarač osiguranja i osiguravač dužni su da se u kontaktu s drugom ugovornom stranom ponašaju naročito savesno, tj. da otkriju drugoj strani svaku okolnost (činjenicu) koja utiče na rizik i visinu premije pre zaključenja ugovora.[18] Istorijski posmatrano, načelo savesnosti nastalo je u cilju prevazilaženja informacione asimetrije, koja je uticala na poslovne rezultate osiguravača.[19] Kako je kandidat za osiguranika bio u posedu svih relevantnih informacija o riziku, pozivom na ovo načelo nastala je obaveza prijavljivanja okolnosti od značaja za ocenu rizika. Interesantno je da je u vreme inauguracije tog principa akcenat bio na obavezama

U pogledu prava osiguranja i tržišta osiguranja, reč je o pozitivnoj tendenciji razvoja jedne privredne delatnosti, koja se uklapa u tradicionalne faze klasičnih privrednih ciklusa, ali u oblasti krivičnog prava ove težnje ka preventivno orijentisanim inkriminacijama i krivičnom pravu, koje bi trebalo da se koristi i u najranijim fazama kriminalne progresije, moraju biti ocenjene kao negativne kriminalno-političke težnje, koje krivično pravo vode u krizu legitimiteta i željenog stepena aplikabilnosti. I. Soković, 278; Đorđe Ignjatović, *Kriminologija,* Pravni fakultet Univerziteta u Beogradu, Beograd, 2021, 155; Jelena Radović Stojanović, *Osnovi ekonomije*, Kriminalističko-policijski univerzitet, Beograd, 2024, 180–181 i Ivana P. Bodrožić, *Terorizam kao kategorija nacionalnog i međunarodnog krivičnog prava,* Kriminalističko-policijski univerzitet, Beograd, 2022.

16 ZOO, čl. 12. Detaljnije o načelu savesnosti i poštenja Slobodan Perović, *Obligaciono pravo, Knjiga prva,* Sedmo izdanje, Novinsko-izdavačka ustanova „Službeni glasnik SFRJ", Beograd, 1990, 56–61.

17 Rebekah Dixon, *A Leap of Good Faith: A Possible Response to Unfair Claims-Handling Practices in Insurance,* Otago, 2012, 3–8.

18 John Lowry, Philip Rawlings, *Insurance Law, Doctrines and Principles,* Second Edition, Hart Publishing, Oregon, 2005, 77–78.

19 Nataša Petrović Tomić, Mirjana Glintić, „The Hybridization of the Regulatory Framework of Insurance Contract Law: Elements of a New Setting", *Annals of the Faculty of Law*, No. 2/2024, 223–250.

osiguranika da osiguravaču otkrije sve što zna o riziku, dok o analognoj obavezi osiguravača nije bilo govora.[20] Tek pod uticajem konzumerizma, pozivom na načelo savesnosti i poštenja uvodi se predugovorna obaveza osiguravača da pruži određene informacije ugovaraču osiguranja.

Načelo savesnosti i poštenja „služi za moralizaciju prava, za jačanje njegove etičnosti, i to tako što ograničava slobodu ugovaranja i **postavlja standard ophođenja prema drugoj strani koji svako mora da poštuje u pregovaranju, ugovaranju, ostvarivanju svojih prava i ispunjavanju svojih obaveza**".[21] Naglašavamo da se načelo savesnosti i poštenja tiče međusobnog tretmana učesnika u obligacionom odnosu, kako u njegovom zasnivanju, tako i u ostvarivanju prava i izvršavanju obaveza iz tog odnosa. **Iz tog načela proizlazi obaveza da učesnik u obligacionom odnosu uzme u obzir i interese druge strane, a pre svega njenu opravdanu veru odnosno poverenje da će se on ponašati na lojalan, pouzdan, neprotivrečan i obziran način.**

Načelo savesnosti i poštenja oslanja se na pojam uzročnosti između povezanosti štete i osiguranog rizika, na isti način kao što između radnje i nastale posledice krivičnog dela mora postojati utvrđena uzročnost u odnosu na koju se i utvrđuje stepen krivice. Ovde u jednom širem smislu u koliziji mogu biti načelo pretpostavke nevinosti, *in dubio pro reo* – u sumnji u korist optuženog, koje predstavlja načelo krivičnoprocesnog prava, i načelo savesnosti i poštenja. Primer može biti slučaj u kojem osiguravač odbije da isplati osiguranu sumu zbog sumnje na prevaru u osiguranju, dok krivični sud još nije utvrdio krivicu učinioca u zakonito sprovedenom krivičnom postupku.

Ukratko, princip obeštećenja znači da osiguranje može pokriti celokupnu štetu i ništa više od pretrpljene štete.[22] Naknada iz osiguranja ne može da bude veća od štete koju je pretrpeo osiguranik nastankom osiguranog slučaja.[23] Svrha osiguranja nije poboljšanje finansijske situacije osiguranika nakon obeštećenja, već omogućavanje da povrati prethodnu imovinsku situaciju.[24] Primena načela obeštećenja iziskuje da se u svakom konkretnom slučaju, najpre, pristupi utvrđivanju nastale štete. Pored tačnog odmeravanja pretrpljene štete, bitno je uzeti u obzir i sumu

[20] Herman Cousy, „Changing Insurance Contract Law: An Age-Old, Slow and Unfinished Story", *Insurance Regulation in the European Union: Solvency II and Beyond* (eds. Pierpaolo Marano, Michele Siri), Springer International Publishing, 2017, 35.

[21] Marija Karanikić Mirić, *Obligaciono pravo*, Službeni glasnik, Beograd, 2024, 78.

[22] Jasna Pak, *Pravo osiguranja*, Univerzitet Singidunum, Beograd, 2011, 229.

[23] „U poslovnom odnosu po osnovu osiguranja imovine, bez obzira na visinu osigurane sume, iznos na koji osiguranik ima pravo ne može biti veći od obima štete koju je pretrpeo." (Presuda Privrednog apelacionog suda, Pž 7279/2014(1) od 24. 11. 2014. godine – Sudska praksa privrednih sudova – Bilten br. 1/2015).

[24] Rafael Illeskas Ortiz, „Principios Fundamenstales del Contrato de Seguro", *Derecho de Seguros y Reaseguros*, Liber Amicorum en homenaje al profesor Arturo Díaz Bravo (ed. Carlos Ignacio Jaramillo), Ibañez, Bogotá, 2015, 17–18.

osiguranja budući da ona predstavlja gornju granicu obaveze osiguravača. Pored toga, bitna je i zbog uticaja na visinu premije osiguranja. Vrednost stvari u trenutku nastanka štete takođe je relevantna. Osiguravači ne mogu obračunati naknadu iz osiguranja uvažavanjem načela obeštećenja ako se ne bi vodilo računa o vrednosti koju je stvar imala u trenutku realizacije osiguranog slučaja. Na osiguraniku je teret dokazivanja vrednosti stvari.

Načelo obeštećenja, odnosno načelo indemniteta, podrazumeva da se u ostvarivanju prava iz osiguranja osiguranik može pozivati samo na naknadu stvarne štete, a nikako na sticanje neopravdane koristi. To se, sledstveno pravilima krivičnog prava, može povezati sa stavom da niko ne može zadržati imovinu koja proističe iz krivičnog dela.

Sloboda ugovaranja je u ugovornom pravu osiguranja ograničena u većoj meri nego kod ostalih ugovora. Zbog prirode tog kompleksnog ugovora (kojim se pribavlja složena i neopipljiva finansijska usluga) i tipične potrošačke pozicije strane koja pribavlja uslugu osiguranja zakonodavac natprosečno interveniše u ugovorni odnos osiguranja. Otuda smo skloni da za izvore ugovornog prava osiguranja tradicionalno vežemo obeležje detaljizma.[25] Iz ugla osiguravača i osiguranika, sloboda ugovaranja se svodi na slobodu izbora vrste ugovora o osiguranju koji se želi zaključiti. I to samo u domenu dobrovoljnih osiguranja. Ako je reč o nekom od rizika sa izraženom socijalnom konotacijom, ni sloboda izbora pokrića ne postoji, već se ugovor zaključuje radi ispunjenja zakonske obaveze. To je u skladu sa opštim odredbama ZOO, koji već na početku odeljka posvećenog zaključenju ugovora sadrži član naslovljen obavezno zaključenje i obavezna sadržina ugovora (čl. 27).

U grani prava koja uređuje odnose između strana nejednake upućenosti u predmet transakcije i/ili nejednake ekonomske snage, sloboda ugovaranja u izvornom obliku ne može opstati. U kojoj će meri biti ograničena sloboda ugovaranja, zavisiće najviše od značaja predmetnog pitanja za poziciju slabije strane. Ako je reč o pitanju čijom se regulativom direktno tangiraju interesi slabije strane, zakonodavac će pribeći ograničenju slobode ugovaranja kogentnim normama. Ako je pak u pogledu nekog pitanja dovoljno osiguravaču pružiti smernice u kom pravcu treba da se kreće, zakonodavac se može zadovoljiti i usmerenom slobodom ugovaranja, koja se postiže polukogentnim metodom.

Prilikom uređenja ugovora o osiguranju zakonodavac je iskoristio opštu normu koja pruža odstupnicu za ograničavanje slobode ugovaranja na dva načina: prvi je uvođenje obaveze da se zaključi neki ugovor, a drugi je određivanje sadržine ugovora, delimično ili u celini. U brojnim posebnim propisima uvedena je obaveza zaključenja ugovora za osiguranika, a njoj je korelativna obaveza osiguravača koji

[25] Nataša Petrović Tomić, „Razvoj ugovora o osiguranju u jugoslovenskom i srpskom pravu“, *Razvojne tendence v obligacijskem pravu, Ob 40-letnici Zakona o obligacijskih razmerjih* (ur. Damjan Možina), Inštitut za primerjalno pravo, Pravna fakulteta, Ljubljana, 2019, 389–412.

se bavi obaveznim vrstama osiguranja da prihvati ponude koje ne odstupaju od uslova pod kojima on inače pruža ta osiguranja. Štaviše, ima primera da je uvedena obaveza osiguravača da prihvati ponudu za zaključenje ugovora i kod dobrovoljnih osiguranja. Najbolji primer je dobrovoljno zdravstveno osiguranje, koje je tek nedavno dobilo zakonsku legitimaciju.[26] Što se tiče obavezne sadržine ugovora o osiguranju, ona je u bitnim crtama propisana ZOO. Ako se zna da u oblasti osiguranja dominira zakonsko uređenje obavezne sadržine ugovora, kao i da postoje još dva ograničenja slobode ugovaranja, lako je zaključiti u kom je stepenu derogirana sloboda ugovaranja. Nije stvar samo u tome da je ugovornim stranama nametnuta obaveza da pribave neki oblik osiguravajućeg pokrića. Njihovu slobodu ugovaranja više tangira zakonsko propagiranje obaveznog sadržaja tog ugovora, uz istovremenu prateću aparaturu sankcionisanja svake odredbe koja je u suprotnosti sa obaveznim zakonskim sadržajem ugovora, a koja je produkt dogovora strana.

Načelo pojačane zaštite slabije strane prva je asocijacija za moderno ugovorno pravo osiguranja. Međutim, ono je bilo poznato i pravnim sistemima koji su početkom dvadesetog veka kodifikovali materiju osiguranja. Naime, u prvoklasnim pravnim sistemima (poput nemačkog i francuskog) mnogo pre razvoja ugovornog potrošačkog prava postojao je veliki broj zakonskih odredbi posvećenih upravo zaštiti slabije strane ugovora o osiguranju.[27] U tom smislu tvrdimo da je *ugovorno pravo osiguranja preteča zaštite potrošača*.[28] Razlika je samo terminološka: dok se danas izričito govori o zaštiti potrošača usluga osiguranja, početkom dvadesetog veka provejavala je ideja zaštite osiguranika, korisnika prava i uopšte lica koje je u slabijoj poziciji.

Zakonsko regulisanje ugovora o osiguranju imperativnim normama instrument je zaštite osiguranika u odnosu na osiguravača mnogo stariji od potrošačkog zakonodavstva. Pre nego što se ta grana prava razvila, zakonodavci evropskih zemalja nastojali su da spreče korišćenje klauzula nepovoljnih po osiguranika upravo putem imperativnih normi. Najštetnije po interes osiguranika bile su jednostrano redigovane klauzule o ništavosti, isključenim štetama i gubitku prava iz osiguranja.[29] Osim

[26] Dobrovoljno zdravstveno osiguranje nije u pravom smislu reči dobrovoljno. ZZO je, naime, uvedena obaveza za osiguravače koji se bave tim osiguranjem da zaključe ugovor o dobrovoljnom zdravstvenom osiguranju sa ugovaračem osiguranja pod uslovima propisanim zakonom i podzakonskim aktima za sprovođenje ovog zakona, bez obzira na rizik kojem je osiguranik ovog osiguranja izložen, odnosno bez obzira na godine života, pol i zdravstveno stanje osiguranika. Vid. N. Petrović Tomić (2019a), 503–505.

[27] Zaštita slabije strane je „ideja vodilja istorije osiguranja“. Vid. Yvonne Lambert-Faivre, Laurent Leveneur, *Droit des assurances*, Dalloz, Paris, 2011, 1; Mandep Lakhan, Helmut Heiss, „Towards a European Insurance Contract Law: Restatemant – Common Frame of Reference – Optional Instrument?“, *Utrecht Journal of International and European Law*, Vol. 26, No. 71/2010, 1–11.

[28] Nataša Petrović Tomić, *Zaštita potrošača usluga osiguranja*, *Analiza i predlog unapređenja regulatornog okvira,* Pravni fakultet Univerziteta u Beogradu, Beograd, 2015, 54–55.

[29] Tako je francuski zakonik o ugovoru o osiguranju sadržao 83 norme posvećene ovom ugovoru, od kojih je čak 61 bila imperativna, dok su preostale (njih 21) bile poluimperativne. Y. Lambert-Faivre, L. Laveneur, 160.

toga, „originalnost" prava osiguranja su i tzv. *poluprinudne ili jednostrano prinudne norme*, koje su se zadržale do danas. Upravo su one u davna vremena predstavljale kamen temeljac zaštite ugovarača osiguranja. Na današnjem stupnju razvoja prava osiguranja može se govoriti o razvoju *potrošačkog ugovornog prava osiguranja* kao podgrane (ugovornog) prava osiguranja.

Načelo pojačane zaštite slabije strane i detaljnost regulative ugovora o osiguranju doveli su do postepenog povlačenja načela slobode ugovaranja u ovom delu ugovornog prava. Naime, danas se može govoriti o načelu ograničene i usmerene slobode ugovaranja, koje nastaje kao odgovor na brojne zakonodavne intervencije u ugovor o osiguranju.[30]

Kombinacijom osnovnih krivičnopravnih načela i načela prava osiguranja spajaju se dva potpuno različita pravna režima. Jedan javnopravne prirode, fokusiran na sankcionisanje društveno štetnog ponašanja, i jedan pretežno privatnopravne prirode, koji reguliše ugovorne odnose između osiguravača i osiguranika. Ta interakcija načela ukazuje na to da se **krivično pravo, kao i u odnosu s drugim pravnim granama, pojavljuje kao *last resort* sredstvo društvene reakcije na nezakonito poslovanje u osiguranju, koji je duboko supsidijaran, izrazito fragmentaran i akcesoran načelima i pravnim propisima prava osiguranja.**

Supsidijarnost je oličena u tome što se tek onda kada se redovni mehanizmi zaštite poslovanja u osiguranju pokažu kao neefikasni, pojavljuje krivičnopravna reakcija. Fragmentarnost se iskazuje postojanjem samo jednog inkriminatornog izraza prevara u osiguranju, u okviru *XXII Glave krivičnih dela protiv privrede*, a akcesornost usled zavisnosti krivičnog prava u odnosu na prvi instrumentarijum i izvore prava osiguranja, kojima se definišu najvažniji pojmovi kojima se krivičnim pravom pruža pojačana zaštita.

III Krivični zakonik i inkriminisanje društveno štetnih obrazaca ponašanja na tržištu osiguranja, kao vida savremenog ekonomskog kriminaliteta

U savremenom društvu, razvoj privrede jedne zemlje i obavljanje privrednih aktivnosti dobijaju takav značaj da država u sve većoj meri interveniše u privredi, kako bi se uspostavili i održavali normalni odnosi subjekata privrednog poslovanja na način koji odgovara privrednim interesima zemlje i potrebama građana. U takvim uslovima pojavljuju se različiti novi oblici kriminaliteta koji se, kao društvena pojava, po načinu vršenja uvek brzo prilagođavaju uslovima u društvu.

Kako je privredni život uvek dinamičan i podložan promenama, i privredni odnosno ekonomski kriminalitet po oblicima i strukturi brzo se menja. Zbog toga se

[30] Nataša Petrović Tomić, „O ograničenoj i usmerenoj slobodi ugovaranja u ugovornom pravu osiguranja: Fenomen 'pokoravanja' ugovora o osiguranju", *Anali Pravnog fakulteta u Beogradu*, br. 1/2020, 100–125.

i krivičnopravnom aspektu suzbijanja tog tipa kriminaliteta pridaje sve veći značaj, što vodi postojanju sve većeg broja pravnih, pa i krivičnopravnih propisa u ovoj oblasti.[31]

Postoje ozbiljne poteškoće u definisanju pojma privrednog krivičnog dela. U pravom smislu te reči, reč je o društveno štetnim obrascima ponašanjima čije sankcionisanje, u prvom redu, ima za cilj zaštitu privrednog sistema i njegovog funkcionisanja. Osnovna svrha inkriminisanja te kategorije delikata je sprečavanje smanjivanja poverenja u privredni sistem. Između ostalog, u pogledu modela privrede koji je poželjno štititi normama krivičnog prava, dominantno je prihvaćen stav da je u pitanju model tržišne privrede.[32]

Kako je udeo ekonomski motivisanog kriminaliteta u Republici Srbiji relativno visok, sabiranjem krivičnih dela protiv imovine i protiv privrede, u strukturi ukupnog kriminaliteta, dolazi se do broja od 48,6% krivičnih dela koja su ekonomski motivisana. Ona po svojoj pravnoj prirodi jesu šarolika, ali u svojoj osnovi sadrže ekonomske motive, te se kao takva registruju u okviru redovnih godišnjih statistika Republičkog zavoda za statistiku.[33] Navedeni podatak predstavlja materijalnu legitimaciju krivičnih dela protiv privrede, odnosno jedan od zakonodavnih motiva inkriminisanja. Kako se pravo osiguranja pojavljuje kao jedna od najbrže rastućih privrednih grana, naporedo s njenim razvojem, pojavljuje se i značajna oblast u okviru koje se javljaju novi pojavni oblici kriminalnog ponašanja, koji imaju potencijal da se predvide kao krivična dela.

U pozitivnom krivičnom zakonodavstvu Republike Srbije, KZ se smatra osnovnim pravnim aktom, u kojem se predviđa najveći deo ponašanja koja se imaju smatrati krivičnim delima. Kako bilo, kodifikacijom krivičnog zakonodavstva iz 2006. godine ipak je ostao određeni deo posebnih propisa, tzv. sporedno krivično zakonodavstvo, u okvirima kojih su se iz određenih legislativno-tehničkih razloga zadržale određene krivičnopravne odredbe, odnosno zasebna krivična dela.

Kada je oblast osiguranja u pitanju, jedino krivično delo kojim se neposredno štiti delatnost osiguranja jeste krivično delo prevare u osiguranju iz člana 223a, koje je sistematizovano u okvirima krivičnih dela koja kao svoj grupni zaštitni objekta imaju privredu.[34] I to je opravdano. Pored tog krivičnog dela, i brojne druge inkriminacije

[31] Đorđe Đorđević, Ivana Bodrožić, *Krivično pravo – Posebni deo*, Kriminalističko-policijski univerzitet, Beograd, 2024, 177.

[32] Zoran Stojanović, *Krivično pravo – Posebni deo,* Pravni fakultet Univerziteta u Novom Sadu, Novi Sad, 2022, 176–177.

[33] Visoko učešće ekonomski motivisanog kriminala u ukupnom kriminalu znači da ekonomski faktori u velikoj meri utiču na kriminal i da su jedan od važnijih uzroka kriminala u Republici Srbiji. Jelena Radović Stojanović, *Kriminal i ekonomija Srbije,* Kriminalističko-policijski univerzitet, Beograd, 2021, 55–57.

[34] Kako srpski krivičnopravni ambijent karakteriše dinamična faza zakonodavnog intervencionizma, ova glava krivičnih dela bila je jedna od onih koje su u okvirima čak osam izmena i dopuna KZ vršenih od 2006. do trenutka u realnom vremenu, značajno i temeljito menjana 2016. godine. Tada su krivična dela iz ove glave strukturalno i sadržinski značajno unapređena, sistematizovana su po srodnosti, propisano

mogu biti korišćene u zaštiti prava i interesa subjekata tržišta osiguranja,[35] ali se samo prevara u osiguranju smatra klasičnom l*ex specialis* normom u ovoj oblasti.

U Zakonu o osiguranju (ZO),[36] u okviru *Glave XV* pod nazivom Kaznene odredbe, Odeljak 1. Krivična dela predviđena su tri posebna krivična dela iz oblasti osiguranja: neovlašćeno obavljanje delatnosti osiguranja, čl. 256 ZO,[37] davanje lažnih mišljenja i izveštaja, čl. 257 ZO[38] i davanje lažne procene, čl. 258 ZO.[39]

Krivično delo prevara u osiguranju uvedeno je u KZ 2009. godine. U svojoj prvoj redakciji u KZ-u bilo je sistematizovano u okviru *Glave XXI Krivičnih dela protiv imovine*, u članu 208a i predstavljalo je poseban oblik krivičnog dela prevare. Prevara u osiguranju, dakle, predstavljala je normu koja se u odnosu na krivično delo prevare iz čl. 208 nalazi u odnosu *lex specialis derogat lege generali.* Radnja te prve verzije prevare u osiguranju iz 2009. godine podrazumevala je navođenje drugog lica da u vezi sa osiguranjem učini nešto na štetu svoje ili tuđe imovine, činjenjem ili propuštanjem. Zakon je u toj verziji krivičnog dela izdvajao tipične radnje izvršenja, kao lažno prikazivanje činjenica, prikrivanje činjenica, podnošenje neistinite dokumentacije ili neki drugi način dovođenja ili održavanja u zabludi. Biće krivičnog dela je kao subjektivno obeležje podrazumevalo nameru da se sebi ili drugom pribavi protivpravna imovinska korist. Pomenute delatnosti morale su biti preduzete u odnosu na osiguranje, bez preciziranja o kojoj se vrsti osiguranja radilo. Delo je imalo dva teža oblika koja su podrazumevala nastupanje teže posledice, kao i lakši oblik.[40]

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je čak sedam novih inkriminacija, što je očiti primer krivičnopravnog ekspanzionizma, koji se kao kriminalno-politički trend mora označiti kao negativan, a izvršene su i terminološke korekcije i normativna preoblikovanja, ali i dekriminalizovana tri krivična dela. Nataša Delić, *Krivično pravo – Posebni deo,* Pravni fakultet Univerziteta u Beogradu, Beograd, 2023, 242–243; I. Bodrožić (2020).

[35] Prevara u obavljanju privredne delatnosti, čl. 223 KZ; pronevera u obavljanju privredne delatnosti, čl. 224 KZ; zloupotreba poverenja u obavljanju privredne delatnosti, čl. 224a KZ; oštećenje poverilaca, čl. 233 KZ i brojna druga.

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

[37] **Neovlašćeno obavljanje delatnosti osiguranja:** Odgovorno lice u društvu za osiguranje, društvu za reosiguranje, društvu za posredovanje u osiguranju i društvu za zastupanje u osiguranju, kao i kod zastupnika u osiguranju, koje obavlja delatnost osiguranja za koju nije dobijena dozvola Narodne banke Srbije, kazniće se za krivično delo kaznom zatvora od tri do šest godina.
Odgovorno lice pravnog subjekta koje, u svojstvu pružaoca usluga, s drugim licima zaključuje ugovore o osiguranju ili ugovore koji su po svojoj pravnoj prirodi ugovori o osiguranju, kazniće se za krivično delo kaznom zatvora od tri do šest godina.

[38] **Davanje lažnih mišljenja i izveštaja***:* ovlašćeni aktuar ili revizor koji protivno odredbama ovog zakona sačini lažno mišljenje, odnosno izveštaj, kazniće se za krivično delo kaznom zatvora od jedne do tri godine.

[39] **Davanje lažne procene:** odgovorno lice u društvu za osiguranje, društvu za reosiguranje, društvu za posredovanje u osiguranju i društvu za zastupanje u osiguranju, kao i kod zastupnika u osiguranju, koje pri utvrđivanju i proceni rizika i šteta sačini lažne procene i izjave, kazniće se za krivično delo novčanom kaznom ili kaznom zatvora do tri godine.

[40] Ljubiša Lazarević, *Komentar Krivičnog zakonika,* Drugo izmenjeno i dopunjeno izdanje, Pravni fakultet Univerziteta Union, Beograd, 2011, 704.

Kako je reč bila o specijalnom obliku prevare koja je bila vezana za delatnost osiguranja, biće krivičnog dela prevare u osiguranju oslanjalo se, odnosno poklapalo, s bićem krivičnog dela prevare, kao klasičnog krivičnog dela imovinskog kriminaliteta.[41]

Pomenute izmene KZ iz 2016. godine kojima je zakonodavac intenzivno intervenisao u okviru krivičnih dela protiv privrede izuzetno su se odrazile na inkriminisanje krivičnog dela prevara u osiguranju. Ono je najpre presistematizovano, dakle prebačeno iz Glave krivičnih dela protiv imovine u Glavu krivičnih dela protiv privrede, što ocenjujemo kao poželjno, jer se kao zaštitni objekat novog krivičnog dela sa istim nazivom ali promenjenim obeležjima bića najpre pojavljuje osiguranje kao privredna delatnost.

Razlozi zbog kojih je opravdana bila tako ozbiljna intervencija odnose se najpre na dominantni objekat zaštite, dakle na ono čemu se zaštita analiziranim krivičnim delom u prvom planu nastoji obezbediti, a drugo na potrebu da se suštinski obezbedi zaštita od tzv. osiguraničke prevare,[42] na način kako to radi najveći broj uporednih krivičnopravnih zakonodavstava.

Republika Srbija se, kao kandidat za članstvo u Evropskoj uniji (EU) nalazi na putu kompletne zakonodavne reforme, pa se ti oblici harmonizacije konsekventno odnose i na propise u oblasti krivičnog zakonodavstva. Krivično delo **prevara u osiguranju** predviđeno od 2016, a zatečeno sa stanjem Krivičnog zakonika iz 2024. godine u **čl. 223a**:

(1) Ko u nameri da od društva za osiguranje naplati ugovorenu sumu, uništi, ošteti ili sakrije osiguranu stvar, pa zatim prijavi štetu, kazniće se zatvorom od tri meseca do tri godine.

(2) Kaznom iz stava 1 ovog člana kazniće se i ko u nameri da od društva za osiguranje naplati ugovorenu sumu za slučaj telesnog oštećenja, telesne

[41] **Prevara u osiguranju,** u prvobitnoj verziji KZ iz 2009 iz **čl. 208a** glasilo je: (1) Ko u nameri da sebi ili drugom pribavi protivpravnu imovinsku korist dovede koga lažnim prikazivanjem ili prikrivanjem činjenica, davanjem lažnih mišljenja i izveštaja, davanjem lažne procene, podnošenjem neistinite dokumentacije ili ga na drugi način dovede u zabludu ili ga održava u zabludi, a u vezi sa osiguranjem i time ga navede da ovaj na štetu svoje ili tuđe imovine nešto učini ili ne učini, kazniće se zatvorom od šest meseci do pet godina i novčanom kaznom. (2) Ko delo iz stava 1 ovog člana učini samo u nameri da drugog ošteti, kazniće se zatvorom do šest meseci i novčanom kaznom. (3) Ako je delom iz st. 1 i 2 ovog člana pribavljena imovinska korist ili je naneta šteta u iznosu koji prelazi četristo pedeset hiljada dinara, učinilac će se kazniti zatvorom od jedne do osam godina i novčanom kaznom. (4) Ako je delom iz st. 1 i 2 ovog člana pribavljena imovinska korist ili je naneta šteta u iznosu koji prelazi milion i petsto hiljada dinara, učinilac će se kazniti zatvorom od dve do deset godina i novčanom kaznom. Dragoljub Simonović, *Krivična dela u srpskoj legislativi,* Službeni glasnik, Beograd, 2010, 414.

[42] Izmenama i dopunama, krivično delo prevara u osiguranju je preciznije određeno, jer je krivično delo prevara u osiguranju (član 208a KZ-a) u potpunosti praktično bilo obuhvaćeno postojećim krivičnim delom prevare. Krivično delo prevara u osiguranju je delo tzv. osiguraničke prevare, a koje delo se znatno razlikuje od krivičnog dela prevare, pa se zato i uvodi u mnoga krivična zakonodavstva, onako kako je to uobičajeno i u uporednom zakonodavstvu, što opravdava uvođenje ovog krivičnog dela kao posebnog dela, jer za razliku od krivičnog dela prevare, ovde je kriminalna zona znatno šire postavljena i nije potrebno dovođenje ili održavanje u zabludi pasivnog subjekta.

povrede ili narušenja zdravlja, prouzrokuje sebi takvo oštećenje, povredu ili narušenje zdravlja, pa zatim podnese zahtev osiguravajućem društvu.

(3) Ako je delom iz st. 1 i 2 ovog člana pribavljena imovinska korist ili je naneta šteta koja prelazi iznos od četristo pedeset hiljada dinara, učinilac će se kazniti zatvorom od jedne do osam godina.

(4) Ako je delom iz st. 1 i 2 ovog člana pribavljena imovinska korist ili je naneta šteta koja prelazi iznos od milion i petsto hiljada dinara, učinilac će se kazniti zatvorom od dve do deset godina.

Krivično delo ima osnovni i dva teža oblika. Radnja izvršenja osnovnog oblika je određena alternativno i može se sastojati ili iz uništenja, oštećenja ili sakrivanja osigurane stvari ili u prijavljivanju šteta, koje takođe ima dva akta – prouzrokovanje sebi oštećenja, povrede ili narušenja zdravlja i podnošenja zahteva osiguravajućem društvu.

Objekat radnje može biti osigurana stvar ili sam izvršilac.

Delo se vrši sa umišljajem, a izvršilac može biti svako lice.

Teži i najteži oblik vezuju se za pribavljanje imovinske koristi ili nastupanje štete u određenom iznosu.

Tako postavljeno krivično delo prevare u osiguranju u odnosu na krivična dela iz čl. 257 i 258 ZO potencijalno je moglo biti problematično u razgraničenju.

Međutim, zakonski opisi tih krivičnih dela dovoljno se razlikuju u odnosu na definisanje radnje izvršenja krivičnog dela prevara u osiguranju, te oni jedni sa drugima nisu u koliziji i postoji opravdanje za njihovo paralelno egzistiranje u ova dva propisa.[43]

IV Značaj krivičnog prava u oblikovanju usluga osiguranja

Krivično pravo tradicionalno je zasnovano na ideji o sopstvenoj razvojnosti ili(ti) *Ius criminale semper reformandum est* – krivično pravo je u stalnom razvoju. Ono prati razvitak novih oblika kriminalnog ponašanja i oblikuje norme kojima se nastoje sprečiti i suzbiti i novi pojavni oblici kriminaliteta. U tom razvoju ono je zasnovano na sopstvenim načelima (ali i ograničeno njima), kao i na karakteru koji mora biti karakter izuzetnosti. Savremeni evropski krivičnopravni sistemi karakterišu se, osim razvojnošću, i negativnim kriminalno-političkim tendencijama, na koje nije ostao imun ni zakonodavac u Republici Srbiji.[44] Iako je o intervencionizmu, povećavanju broja inkriminacija

[43] Zoran Stojanović, *Komentar Krivičnog zakonika,* Deseto dopunjeno izdanje, Službeni glasnik, Beograd, 2020, 748–749.

[44] Kako je krivično pravo postalo jedna od komponenti ciljeva Unije, EU je dobila eksplicitne nadležnosti u oblasti materijalnog krivičnog prava. Minimalna pravila o materijalnom krivičnom pravu olakšavaju princip uzajamnog priznavanja, omogućavaju približavanje kaznene politike država članica i kandidata za punopravno članstvo i postavljaju osnove za zajedničke opise bića krivičnih dela, omogućavajući na

i ograničenosti tako hipertrofiranog krivičnog prava reči bilo u delu rada kojim se ukazuje i na ograničenja ovakvih težnji, to nikako, s druge strane, ne bi trebalo razumeti kao težnju da se ostane isključivo na formi i strukturi postojećih inkriminacija.[45]

Razvoj tržišta osiguranja,[46] uticaj novih poslovnih rešenja i usluga, ali i potreba očuvanja održivog razvoja ovog tržišta,[47] vodi neminovno i prilagođavanju krivičnopravnih normi. Taj proces je dvosmeran i može se, iz ugla potencijalnih rešenja, sagledati kroz nekoliko slučajeva.

Krivično pravo značajno utiče na oblikovanje usluga osiguranja jer postavlja pravni okvir koji osiguravajuće kompanije moraju poštovati prilikom uobličenja polisa, procene rizika i obrade potraživanja.[48] Evo ključnih načina na koje krivično pravo oblikuje usluge osiguranja:

taj način reagovanje na globalne kriminalne tokove. Zakonodavac EU bi stoga trebalo da bude oprezan kada vrši uticaj na oblikovanje krivičnopravnih odgovora u procesima približavanja materijalnog krivičnog prava svojih država članica. Principi kriminalizacije nude zakonodavcu argumentativni okvir, koji se može koristiti za utvrđivanje da li je kriminalizacija legitimna i opravdana, a uvek se mora voditi računa i o osobenostima pravnog nasleđa i pravne tradicije. Opširnije o principima kriminalizacije, negativnim tendencijama i budućnosti materijalnog krivičnog prava EU, kao orijentira harmonizacije nacionalnih krivičnih zakonodavstava, videti više: Sanne Buisman,„The Future of EU Substantive Criminal Law", *European Journal of Crime, Criminal Law and Criminal Justice,* Vol. 30, No. 2/2022, 161–162.

45 Vid. fn. 15.

46 Na obeležavanju jubileja časopisa *Tokovi osiguranja*, viceguverner NBS, Željko Jović, izneo je sledeće podatke koji govore u prilog razvoju tržišta osiguranja i njegovog mesta u celokupnom finansijskom tržištu: „U finansijskom sektoru, koji je pod nadzorom NBS, drugo mesto po bilansnoj aktivi, po kapitalu i broju zaposlenih zauzima osiguranje. Premija osiguranja po stanovniku iznosi 216 dolara a njeno učešće u bruto domaćem proizvodu je 1,9 procenata. Poređenja radi, premija po stanovniku u zemljama u razvoju Evrope i centralne Azije je 207 dolara a učešće u BDP-u 2,3 odsto. Podaci za prvo polugodište ove godine ukazuju na rast svih parametara u delatnosti osiguranja, te je ukupna premija u odnosu na isti period prethodne godine veća za 13,2 odsto, tehničke rezerve su povećane za 12,3 posto, adekvatnost kapitala iznosi 212,9 procenata i on je viši od zakonom propisane obaveze, što uz pokazatelj profitabilnosti od 92,2 odsto i pozitivan privremeni rezultat u iznosu od 6,5 mlrd dinara govori u prilog stabilnosti sektora osiguranja." „Četrdeseti rođendan časopisa *Tokovi osiguranja*", *http:// https://www.dunav.com/cetrdeseti-rodjendan-casopisa-tokovi-osiguranja/,* pristupljeno: 1. 6. 2025.

47 O održivosti razvoja kao *conditio sine qua non* kompletnog tržišta osiguranja, kao i regulatornog okvira koji ga prati, na primeru prvobitne podnormiranosti zakonodavnog okvira, pa sledstveno tome željenom regulatornom napretku, u oblasti dopunskog zdravstvenog osiguranja u Republici Srbiji, opširnije u: Nataša Petrović Tomić, „Dopunsko zdravstveno osiguranje u funkciji doprinosa razvoju održivog sistema zdravstvene zaštite u Republici Srbiji", *Tokovi osiguranja,* br. 1/2024, 7–70.

48 O pitanjima na koji način kriminalitet utiče na potražnju za osiguranjem, ali i o pitanju uticaja ponuđenih usluga osiguranja na stvaranje novih pojavnih oblika kriminaliteta u oblasti osiguranja, Tom Bejker (*Tom Baker)* i Anja Šortland (*Anja Shortland)* razmatraju pet studija slučaja (krađa automobila, krađa umetničkih dela, otmica i otmica radi otkupa i prevara s platnim karticama) i ukazuju na koevolucioni proces kroz koji osiguravači sarađuju sa osiguranicima, vladama i pravnim i vanpravnim trećim licima kako bi ublažili gubitke, pogotovo kada kriminalne inovacije destabilizuju tržište osiguranja. *Insurance as crime governance* – „Osiguranje kao upravljanje kriminalom" sintagma je u vezi sa kojom se i autorke ovog rada nastoje izraziti u jednom širem potencijalno *de lege ferenda* odnosu. Tom Baker, Anja Shortland, „How Crime Shapes Insurance and Insurance Shapes Crime", *Journal of Legal Analysis,* Vol. 15, No. 1/2023, 185–196.

1. **Definisanje krivičnih dela i osiguravajućih pokrića:** krivično pravo određuje šta se smatra nezakonitim ponašanjem (npr. krađa, pronevera, prevara, uništenje imovine). Osiguravajuće kuće koriste ove definicije da oblikuju polise, na primer osiguranje od krađe ili uništenje ili oštećenje tuđe stvari. Međutim, polise po pravilu isključuju pokriće za štete nastale usled umišljajnih krivičnih dela počinjenih od strane osiguranika, jer krivično pravo zabranjuje profitiranje od zločina.[49]
2. **Uticaj na procenu rizika:** krivično pravo utiče na aktuarske modele kojima osiguravači procenjuju rizike. Na primer, na područjima s visokom stopom kriminala (npr. krađa automobila), premije osiguranja su veće, jer krivično pravo indirektno signalizira veću verovatnoću štetnih događaja.
3. **Zaštita od prevara u osiguranju:** krivično pravo, pogotovo odredbe o prevarama, oblikuje mehanizme za sprečavanje lažnih potraživanja. Osiguravači razvijaju usluge sa strogim uslovima i procedurama provere kako bi se zaštitili od krivičnih dela poput lažnog prijavljivanja šteta. Na primer, u slučaju osiguranja imovine, polise mogu zahtevati dokaze o vlasništvu ili policijski izveštaj.
4. **Osiguranje od odgovornosti:** krivično pravo utiče na usluge osiguranja od građanske i profesionalne odgovornosti. Na primer, u slučajevima gde krivično delo (kod umišljajno izvršenih krivičnih dela protiv bezbednosti javnog saobraćaja) izazove štetu, polise odgovornosti ograničavaju pokriće ako je osiguranik počinio krivično delo sa umišljajem.[50]
5. **Obavezna osiguranja:** krivično pravo može zahtevati određene vrste osiguranja. Na primer, u Srbiji, Zakon o obaveznom osiguranju u saobraćaju (koji ima elemente krivičnog prava u slučaju nepoštovanja) obavezuje vlasnike vozila na osiguranje od auto-odgovornosti, što direktno oblikuje ovaj segment tržišta osiguranja.[51]

[49] U krivičnom pravu takođe eksplicitno je određeno u čl. 91 KZ da:
„ (1) Niko ne može zadržati imovinsku korist pribavljenu krivičnim delom.
(2) Korist iz stava 1. ovog člana oduzeće se, pod uslovima predviđenim ovim zakonikom i sudskom odlukom kojom je utvrđeno izvršenje krivičnog dela." KZ, čl. 91.

[50] Opširnije o postupcima po regresnoj tužbi osiguravača protiv osiguranika, kao i o pitanjima utvrđivanja odgovornosti za prouzrokovanje udesa videti: Milica Goravica, „Utvrđivanje odgovornosti za prouzrokovanje udesa u postupcima po regresnoj tužbi osiguravača protiv osiguranika", *Tokovi osiguranja,* br. 1/2025, 201–206.

[51] O distinkciji između tzv. moralnog hazarda i krivičnopravnog hazarda, dakle situacija kada određeno lice ima viši nivo tolerancije da poveća svoju izloženost potencijalnom riziku, usled svesti o ograničenim troškovima takvog postupanja, usled postojanja polise osiguranja, kao i o potrebi ispunjenosti najmanje dva uslova da bi moralni hazard prerastao u krivičnopravni hazard i implicirao kažnjavanje, videti opširnije u: Per-Johan Horgby, Annette Wittkau- Horgby, „Beyond Moral Hazyard-Some Thoughts on Criminal Hazard and Insurance", *Nordic Insurance Quarterly (NFT),* No. 2/2008, 147–153.

6. **Usklađenost sa zakonima o sprečavanju pranja novca i finansiranja terorizma:**[52] krivično pravo, pogotovo u oblasti privrednih krivičnih dela, nameće obaveze osiguravačima da proveravaju klijente i izvore sredstava. To utiče na oblik usluge, jer osiguravači moraju uključiti procedure za proveru identiteta i usklađenost sa zakonima, što može povećati troškove i usložiti procese.
7. **Isključenja u polisama:** krivična dela često dovode do isključenja iz pokrića. Na primer, ako je šteta nastala usled terorističkog akta (krivično delo po KZ), standardne polise imovinskog osiguranja ne pokrivaju takve događaje, što podstiče razvoj specijalizovanih usluga za pokriće rizika od terorizma.

Zaključno, krivično pravo oblikuje usluge osiguranja kroz regulaciju rizika, definisanje uslova pokrića, sprečavanje zloupotreba i usklađivanje sa zakonskim obavezama. Osiguravači moraju pažljivo balansirati između zaštite klijenata i poštovanja krivičnopravnih normi kako bi ponudili održive i sa zakonom usklađene usluge.

V Zaključna razmatranja

Osobenosti pravnog sistema kao skupa normi kojima se regulišu javnopravni i privatnopravni odnosi, određuju međusobne odnose pojedinih pravnih grana. Krivično pravo i pravo osiguranja, u njegovim okvirima, imaju specifičan, kako je u radu potvrđeno, reverzibilan odnos.

Najpre je reč o pravnim granama koje kao osnovnu funkciju imaju zaštitnu funkciju, pa se između njih uspostavlja odnos povezanosti osnovnom usmerenošću, to jest ciljna povezanost. Krivično pravo se u ovom odnosu pojavljuje kao snažniji i ekskluzivniji instrument zaštite onih odnosa koji prethodno, primarno nisu uspeli da budu obezbeđeni normama prava osiguranja.

Krivično pravo pruža zaštitu zakonitom funkcionisanju osiguranja kao delatnosti u okvirima finansijskog sektora i kao takvo direktno štiti i privrednu aktivnost, pogotovo u odnosu na grupni zaštitni objekat koji krivično delo prevara u osiguranju ima u okvirima Posebnog dela KZ-a.

Krivičnopravne norme sadržane su i u okvirima ZO, što pokazuje da se ovaj propis u oblasti krivičnopravne zaštite nalazi u okvirima sporednog zakonodavstva, ali kako je u radu potvrđeno, legitimno i bez nepotrebnih preklapanja inkriminacija.

Poštujući svoj *ultima ratio* karakter i supsidijarnost s drugim granama prava, kojima pruža krivičnopravnu zaštitu, krivično pravo racionalno sadrži samo jedno

[52] Osobenosti novog pristupa definisanju krivičnih dela terorizma, nomotehničke korekcije, usklađivanje sa evropskim krivičnopravnim standardima doveli su ne samo do promena u okvirima materijalnog krivičnog zakonodavstva Republike Srbije, nego i do pratećih, sa njima povezanih propisa, poput Zakona o sprečavanju pranja novca i finansiranja terorizma, *Službeni glasnik RS*, br. 113/2017, 91/2019, 153/2020, 92/2023, 94/2024 i 19/ 2025, vid. I. Bodrožić (2022).

krivično delo, pri čemu se neposredno pruža zaštita od osiguraničke prevare, i ono je u okvirima pozitivnopravnih propisa imalo interesantnu dinamiku. Nije samo preoblikovano, nego i presistematizovano, na način da to odgovara i evropskim standardima, ali i standardima nacionalnog krivičnog zakonodavstva. Kako to Elena Makulan *(Elena Maculan)* i Alicija Gil Gil (*Alicia Gil Gil)* smatraju, važno je održavanje statusa krivičnog prava kao *ius puniendi* i kao oruđa države, ali ne kao jedinog raspoloživog oruđa, niti apsolutne obaveze – za postizanje krajnjeg cilja zaštite pravnih interesa i time obezbeđivanja mirnog suživota među pojedincima koji čine zajednicu, već i kao dopunskog i supsidijarnog.[53]

Odnos krivičnog prava i prava osiguranja, upravo posmatran kroz navedenu prizmu, prikazan je kroz sedam ključnih načina kojima krivično pravo može uticati na oblikovanje usluga osiguranja, u nastojanjima da celokupnom tržištu osiguranja obezbedi održivost i željeni stepen zaštite.

Kako je reč o pionirskom radu u oblasti teorijske analize odnosa krivičnog prava i prava osiguranja, autorke se nadaju da će ponuđeni načini i opcije međusobnog, povratnog, to jest reverzibilnog uticaja, biti osnov i *Teezer* za neka dalja istraživanja u ovoj oblasti, koja bi, svako zasebno, mogla biti specijalna tema nekog naučnog članka, poslenika materijalnog krivičnog prava ili prava osiguranja, a u najdirektnijoj vezi s praktičnim aspektima njihove primene.

Literatura

- Baker, T., Shortland, A., How Crime Shapes Insurance and Insurance Shapes Crime“, *Journal of Legal Analysis,* Vol. 15, 1/2023.
- Bodrožić, I., „Kontinuirani krivičnopravni ekspanzionizam – na raskršću politike i prava“, *Srpska politička misao*, br. 2/2020, 381–396.
- Bodrožić, I., *Terorizam kao kategorija nacionalnog i međunarodnog krivičnog prava*, Kriminalističko-policijski univerzitet, Beograd, 2022.
- Buismann, S. S., „The Future of EU Substantive Criminal Law“, *European Journal of Crime, Criminal Law and Criminal Justice,* Vol. 30, No. 2/2022.
- „Četrdeseti rođendan časopisa Tokovi osiguranja“, *http:// https://www.dunav.com/cetrdeseti-rodjendan-casopisa-tokovi-osiguranja/,* pristupljeno: 01. 06. 2025.

[53] Ovo omogućava upotrebu krivičnog prava samo ukoliko je korisno i neophodno. Kada postoje drugi mehanizmi koji pružaju tu zaštitu na zadovoljavajući način, ili kada krivično pravo rizikuje da, ako se primeni, postane opasnost za ove pravne interese, ukoliko na kraju destabilizuje pravni sistem kome je poverena ova zaštita, onda krivično gonjenje i kažnjavanje moraju da naprave korak unazad i da budu prilagođeni i ograničeni prema specifičnim okolnostima svakog slučaja. Elena Maculan, Alicia Gil Gil, „The Rationale and Purposes of Criminal Law and Punishment in Transitional Contexts“, *Oxford Journal of Legal Studies,* Vol. 40, No. 1/2020, 157.

- Delić, N., *Krivično pravo-Posebni deo,* Pravni fakultet Univerziteta u Beogradu, Beograd, 2023.
- Dixon, R., *A Leap of Good Faith: A Possible Response to Unfair Claims-Handling Practices in Insurance,* Otago, 2012.
- Đorđević, Đ., Bodrožić, I., *Krivično pravo-Posebni deo,* Kriminalističko-policijski univerzitet, Beograd, 2024.
- Goravica, M., „Utvrđivanje odgovornosti za prouzrokovanje udesa u postupcima po regresnoj tužbi osiguravača protiv osiguranika", *Tokovi osiguranja,* br. 1/2025.
- Heiss, H., „Insurance contracts", *Encyclopedia of Private International Law* (eds. Jürgen Basedowe *et al*.), Vol. 2, Entries I-Z, Edward Edgar Publishing, Northampton 2017.
- Horgby, P, J., Horgby, A. W., „Beyond Moral Hazyard-Some Thoughts on Criminal Hazard and Insurance", *Nordic Insurance Quarterly (NFT),* No. 2/2008.
- Ignjatović, Đ., *Kriminologija,* Pravni fakultet Univerziteta u Beogradu, Beograd, 2021.
- Illeskas Ortiz, R., „Principios Fundamenstales del Contrato de Seguro", *Derecho de Seguros y Reaseguros,* Liber Amicorum en homenaje al profesor Arturo Díaz Bravo (ed. Carlos Ignacio Jaramillo J), Grupo editorial, Ibaňez, Bogotá, 2015.
- Karanikić Mirić, M., *Obligaciono pravo*, Službeni glasnik, Beograd, 2024.
- Karanikić Mirić, M., „Forma ugovora o osiguranju", *Tokovi osiguranja*, br. 1/2025.
- Lakhan, M. Heiss, H., „Towards a European Insurance Contract Law: Restatemant – Common Frame of Reference – Optional Instrument?", *Utrecht Journal of International and European Law,* Vol. 26, No. 71/2010.
- Lambert-Faivre, Y., Leveneur, L., *Droit des assurances*, Dalloz, Paris, 2011.
- Lazarević, LJ., *Komentar Krivičnog zakonika,* Dugo izmenjeno i dopunjeno izdanje, Pravni fakultet Univerziteta Union, Beograd, 2011.
- Lowry, J., Rawlings, P., *Insurance Law, Doctrines and Principles*, Second Edition, Hart Publishing, Oregon 2005.
- Maculan, E., Gil Gil A., „The Rationale and Purposes of Criminal Law and Punishment in Transitional Contexts", *Oxford Journal of Legal Studies,* Vol. 40, No. 1/2020.
- Pak, J., *Pravo osiguranja,* Univerzitet Singidunum, Beograd 2011
- Perović, S., *Obligaciono pravo, Knjiga prva,* Sedmo izdanje, Novinsko-izdavačka ustanova „Službeni glasnik SFRJ", Beograd, 1990.
- Petrović Tomić, N., *Zaštita potrošača usluga osiguranja, Analiza i predlog unapređenja regulatornog okvira*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2015.

- Petrović Tomić, N., *Pravo osiguranja – Sistem,* Knjiga prva, Službeni glasnik, Beograd, 2019.
- Petrović Tomić, N., „Razvoj ugovora o osiguranju u jugoslovenskom i srpskom pravu“, *Razvojne tendence v obligacijskem pravu, Ob 40-letnici Zakona o obligacijskih razmerjih* (ur. Damjan Možina), Inštitut za primerjalno pravo, Pravna fakulteta, Ljubljana 2019.
- Petrović Tomić, N., „O ograničenoj i usmerenoj slobodi ugovaranja u ugovornom pravu osiguranja: Fenomen 'pokoravanja' ugovora o osiguranju, *Anali Pravnog fakulteta u Beogradu*, br. 1/2020.
- Petrović Tomić, N., *Osnovi prava osiguranja,* Pravni fakultet Univerziteta u Beogradu, Beograd, 2023.
- Petrović Tomić, N., „Dopunsko zdravstveno osiguranje u funkciji doprinosa razvoju održivog sistema zdravstvene zaštite u Republici Srbiji“, *Tokovi osiguranja,* br. 1/2024.
- Petrović Tomić, N., Glintić, M., „The Hybridization of the Regulatory Framework of Insurance Contract Law: Elements of a New Setting“, *Annals of the Faculty of Law*, No. 2/2024.
- Radović-Stojanović, J., *Kriminal i ekonomija Srbije,* Kriminalističko-policijski univerzitet, Beograd, 2021.
- Radović-Stojanović, J., *Osnovi ekonomije,* Kriminalističko-policijski univerzitet, Beograd, 2024.
- Simonović, D., *Krivična dela u srpskoj legislativi,* Službeni glasnik, Beograd, 2010.
- Soković, I., „Značaj osiguranja i perspektive razvoja u Srbiji“, *Tokovi osiguranja,* br. 2/2024.
- Stojanović, Z., *Krivično pravo – Opšti deo,* Pravna knjiga, Beograd, 2019.
- Stojanović, Z., *Komentar Krivičnog zakonika,* Deseto dopunjeno izdanje, Službeni glasnik, Beograd, 2020.
- Stojanović, Z., *Krivično pravo – Posebni deo,* Pravni fakultet Univerziteta u Novom Sadu, Novi Sad, 2022.

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Professor Nataša Petrović-Tomić, PhD[1]
Professor Ivana Bodrožić, PhD[2]

GENERAL ISSUES OF THE REVERSIBLE RELATIONSHIP BETWEEN CRIMINAL AND INSURANCE LAW

ORIGINAL SCIENTIFIC PAPER

Summary

This paper is based *a priori* on the assumption that, within the complexity of the legal system as such and the desired level of its coherence, there exists a relationship of interconnection between criminal law, as public law, and insurance law, as private law, which is characterized by reversibility.

Although fundamentally distinct legal disciplines, in the contemporary era, and in accordance with their primary functions and orientations, criminal law and insurance law share a number of points of intersection and a relationship based on mutual influence. The paper discusses the nature of this relationship in the context of maintaining a functional and sustainable insurance market, which is a significant component of a modern and efficient financial sector. The central research premise is that criminal law should be viewed as the *ultima ratio societatis* in protecting the rights and interests of policyholders, insurers, and reinsurers, i.e. in the broadest sense, the entire insurance industry.

This predominantly theoretical discussion, grounded mainly in the legal-dogmatic method, represents a pioneering contribution of its kind within the domestic legal theory. It is based on the idea that different legal aspects of insurance must be interconnected in order to to ensure the projected level of security, that is, protection

1 Full Professor, Faculty of Law, University of Belgrade. E-mail: nataly@ius.bg.ac.rs.
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2 Associate Professor, University of Criminal Investigation and Police Studies in Belgrade. E-mail: ivana.bodrozic@kpu.edu.rs; ORCID https://orcid.org/0000-0001-5010-7832.
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of the insurance market. The authors emphasize the interdependence between the formation of criminal law norms and the conditions of contemporary economic crime, as well as how crime, *vice versa*, shapes insurance services. In conclusion, the authors highlight the importance of further and continuous research in this area, in order to develop adequate *de lege ferenda* solutions within the national criminal legislation.

Keywords: criminal law, insurance law, reversibility, crime and insurance

I Introductory considerations

The criminal law of a modern democratic state is based on a utilitarian principle, which implies that it functions as a rational system of legal norms whose primary role is protective. The fundamental goal and purpose of criminal law is to protect society from criminal behavior, that is, from socially dangerous patterns of conduct that threaten or violate the most important values of individuals and society as a whole.

Insurance law, on the other hand, encompasses a body of legal rules regulating the entire insurance market, which constitutes a significant segment of the modern and efficient financial sector, including insurance contracts, insurance activities, and claims handling. Insurance law is primarily based on the idea of protecting the interests of the insured against potential insured events, more precisely, the occurrence of damage caused by a covered risk. Ultimately, it also incorporates the protection of insurers, reinsurers, and, in the modern context, even third parties outside the contractual relationship.[3] Its protective function is naturally aligned with its etymological meaning. In all languages, the term *insurance* (English: *insurance*, French: *assurance*, German: *Versicherung*, Spanish: *seguro*) signifies safety, security, the provision of protection, etc.[4] By assuming the consequences of a particular event (the insured risk, whose realization constitutes an insured event), the insurer provides protection to the individual, thereby enabling the uninterrupted continuation of their life.[5] This protective function becomes even more prominent in the case of legal entities and business enterprises, for whom unexpected events can cause significant financial losses. Insurance ensures that such events do not disrupt their operations.

3 Nataša Petrović Tomić, *Pravo osiguranja, Sistem, Knjiga I*, Službeni glasnik, Belgrade, 2019, 41–43.

4 Helmut Heiss, "Insurance contracts", *Encyclopedia of Private International Law* (eds. Jürgen Basedow et al.), Vol. 2, Entries I-Z, Edward Edgar Publishing, Northampton, 2017, 954–955

5 To clarify, the protective function of insurance is triggered *post festum*. The insurer does not possess a magic wand to prevent the insured from experiencing natural disasters, accidental injuries, disability, or liability arising from certain actions. Insurance becomes relevant precisely at the moment the insured event occurs. Instead of facing the consequences of an adverse event alone, the insured, or the beneficiary of the insurance, receives compensation or a sum insured, which facilitates the mitigation of the impact of uncertain events.

Within this protective role lies the fundamental connection between these two seemingly unrelated branches of law. Taking into account the complexity of the legal system and the intended degree of its coherence, the authors of this paper analyze the nature and type of relationship between criminal law, as a branch of public law, and insurance law, as a branch of private law. Their mutual focus toward preventing or minimizing harmful consequences forms the basis of their relationship - a relationship whose reversibility and conditionality are the subject of the central discussion in this paper.

With the ultimate aim of determining the prerogatives of their mutual dependence and harmonization, particularly from the perspective of these branches as integral parts of the legal system, the authors raise several groups of questions and offer answers to complex legal issues: What is the relationship between the fundamental principles of criminal law and insurance law? To what extent are criminal law norms shaped by the development of modern forms of economic crime, within which certain criminal offenses may directly target insurance as an economic activity *per se*? Finally, how does crime shape insurance services?

II On the relationship between the principles of criminal law and insurance law

Insurance, as as a legal institution, has a primarily purpose-driven function, which is reflected in the provision of protection.[6] **The protective function of insurance, especially in the modern context, pertains not only to the insured or beneficiary but also extends to persons outside the insurance contractual relationship.**[7] Similarly, the core function of criminal law is protective. **Criminal law aims to be the strongest instrument of state response to socially harmful behavior by prescribing prohibited forms of conduct and corresponding criminal sanctions for violations that harm or endanger the most fundamental values and goods. It is deeply grounded in the idea of exceptionality, embodying the concept of *ultima ratio societatis*.**[8]

Viewed through the prism of the fundamental functions of these two branches of law, the authors begin with a modified version of a Latin maxim used to assess the level of democracy in a society: *Quis custodiet ipsos custodes?* - which poses the question: **Who will guard the guards themselves?** From this, a modified

[6] Marija Karanikić Mirić, „Forma ugovora o osiguranju", *Tokovi osiguranja*, No. 1/2025, 22–23; N. Petrović (2019a), 41.

[7] This refers to the expansion of the protective function of insurance, which arises as a proportional consequence of the continuous development of insurance law. Nataša Petrović Tomić, *Osnovi prava osiguranja,* Faculty of Law, University of Belgrade, Belgrade, 2023, 21–26.

[8] Zoran Stojanović, *Krivično pravo – Opšti deo,* Pravna knjiga, Belgrade, 2019, 3.

and derived research question emerges: who and (how) will guard the guards, i.e. what means and modalities does criminal law, as a branch of law with a protective function, have at its disposal to protect those who provide protection? This involves a dual hypothetical causality intended to answer the question of the place and role of criminal law in the protection of insurance law, or more precisely, the entire insurance market.

Since the systematic study of any branch of law primarily concerns its relationship with other branches within the context of the expected coherence of the legal system, this paper examines these two legal branches, both founded on the idea of fulfilling a protective function, in the context of their mutual relationship. Insurance law, which belongs to the family of civil law, more precisely business law, governs various types of legal relations: property-law relations, status-law relations, and administrative-law relations. In addressing these, it simultaneously applies both private law and public law methods.[9] Criminal law, in contrast, represents a distinct branch of public law.

Both legal branches have their inherent principles that form the foundation and boundaries of their existence as positive legal disciplines. Although, at first glance, questions of principles appear to be predominantly dogmatic-legal, they, *a contrario*, carry significant practical importance. This is because the clarity and direction these principles provide guide the interpretation and application of legal norms, which ultimately represents the most crucial segment of any legal discipline.

The relationship between criminal law and insurance law can be analyzed through the relationship between their fundamental principles. These principles have different objectives but intersect primarily in situations where the behavior of insurance market participants exhibits characteristics of a criminal offense. The fundamental principles of criminal law are: the principle of legality, the principle of legitimacy, the principle of culpability, the principle of humanity, and the principle of proportionality and fairness. The fundamental principles of insurance law are: the principle of good faith and fair dealing, the principle of indemnity, the principle of limited and directed freedom of contract, and the principle of enhanced protection of the weaker party.

1. Brief overview of the principles of criminal law

Starting with the content of the principle of legality, expressed in the Latin maxim *nullum crimen, nulla poena sine lege,* which means that there is no crime and no punishment without a law,[10] it follows that no behavior by participants in

[9] Nataša Petrović Tomić, „O ograničenoj i usmerenoj slobodi ugovaranja u ugovornom pravu osiguranja: Fenomen 'pokoravanja' ugovora o osiguranju", *Anali Pravnog fakulteta u Beogradu*, No. 1/2020, 100–125.

[10] The formulation of this principle is attributed to the German theorist Anselm Feuerbach and, in the broadest sense, means that "no one can be punished for a certain behavior, nor can a criminal sanction be

the insurance market may be considered a criminal offense unless it is *explicitum* provided for in the Criminal Code (CC).[11] Since the Criminal Code of the Republic of Serbia contains only one criminal offense that explicitly identifies the lawful conduct of insurance activities as its direct object of protection, insurance fraud, Article 223a CC, the principle of legality requires that this offense (like all other offenses in the Special Part of criminal legislation) must be precisely defined.[12]

The principle of legitimacy in criminal law entails that only such criminal law can be considered legitimate whose foundations and limits are deemed socially justified and necessary. Given that insurance is a growing industry and an essential component of the sustainable development of society as a whole,[13] as demonstrated by data from the National Bank of Serbia (NBS), its development[14] emerges as a social value worthy of criminal law protection. With regard to the need to distinguish the criminal offense of insurance fraud as a *lex specialis* provision in relation to the general offense of fraud under Article 208 of the CC, the legitimacy of the incrimination is justified by the significant role the insurance market plays within the broader economic activity of the Republic of Serbia. Since the insurance market is among the fastest growing, and considering that its importance in post-technological society is becoming relevant not only in the context of its primary protective function, but also in its role within the so-called risk society, the existence of a criminal law norm that contributes to strengthening the capital of trust has clear and undeniable social significance.

In the context of the principle of culpability, which in criminal law implies individual and subjective responsibility, meaning that each person is liable solely for their own actions, based on which the state, as the bearer of the *ius puniendi* (right to punish), may impose a socially and ethically appropriate punishment, the sanctioning of perpetrators of insurance fraud, as well as of all other criminalized behaviors that may more broadly apply to the field of insurance as an economic activity *per*

imposed, if at the time the behavior occurred, it was not already prescribed by law as a criminal offense, and if no penalty was prescribed for it." – Z. Stojanović, 20.

[11] The Republic of Serbia adopted a new CC in 2006 (*Official Gazette of the Republic of Serbia*, Nos. 85/2005, 88/2005 – correction, 107/2005 – correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, and 94/2024), which was the result of years of efforts to codify substantive criminal law. Codification serves as a legal mechanism that facilitates legal application by systematizing most relevant provisions within a single legal act. This law has been widely regarded by both scholars and practitioners as a modern, liberally oriented code, firmly grounded in utilitarian principles, and one that establishes an optimal balance between fundamental human and civil rights on the one hand, and necessary state repression on the other. Ivana P. Bodrožić, "Kontinuirani krivičnopravni ekspanzionizam – na raskršću politike i prava", *Srpska politička misao*, No. 2/2020, 384.

[12] The principle of legality consists of four elements: *lex scripta, lex praevia, lex stricta*, and *lex certa*. In this context, the reach of the principle of legality refers to the need for the provision incriminating insurance fraud to be as specific and precise as possible.

[13] Ivana Soković, "Značaj osiguranja i perspektive razvoja u Srbiji", *Tokovi osiguranja,* No. 2/2024, 265.

[14] Which still lags behind the EU average in terms of insurance premium share of GDP and premium per capita. *Ibid*., 274.

se,[15] must be grounded in culpability. More precisely, on its presumed form - intent, and only exceptionally on negligence, in cases where the law *explicitum* prescribes punishment for this milder degree of fault.

The principle of humanity and the principle of proportionality and fairness, as in all other instances of criminal law protection, also apply in cases concretized wrongdoing related to the insurance market. These principles require a humane approach toward the offender and the imposition of a punishment that is appropriate in both type and degree, i.e. proportionate and fair in relation to the specific form of wrongdoing committed.

2. On the principles of insurance law

When it comes to the principles of insurance law, the principle of good faith holds primary importance. According to the Law of Contract and Torts (ZOO), parties to contractual obligations are required to act in accordance with the principle of good faith and fair dealing when establishing and performing obligations arising from such relationships, i.e. to execute contracts *secundum bonam fidem et consuetudinem mercatorum*.[16] Although this principle may be accordingly applied to insurance law, insurance law theorists pay special attention to it, elevating it to the status of the supreme principle of insurance law.[17] The essence of this principle can be briefly expressed as follows: both the policyholder and the insurer are required

[15] Insurance is among the economic activities marked by strong development potential. It may also be viewed as a kind of civilizational phenomenon, having evolved in direct proportion to humanity's growing need for protection and security. This phenomenon has not escaped criminal law. The range of human behaviors deemed criminal and codified in the Special Part of a country's criminal law is known as the dynamics of incrimination. Though criminal law's primary function is protective, the evolution of crime and associated fear, especially the security paranoia of modern times, has led to the assignment of a security function to criminal law. This is a function alien to its original purpose and drives criminal law into a full-blown crisis of legitimacy.
Changes in life conditions and parallel developments in crime have led to increased demand for both insurance and more extensive criminal law protection.
In the context of insurance law and the insurance market, this reflects a positive development trend of a business activity aligned with the traditional stages of economic cycles. However, in criminal law, the tendency toward preventively oriented criminalization and the use of criminal law in the early phases of criminal progression must be viewed as negative criminal policy tendencies, ones that lead criminal law into a crisis of legitimacy and reduced applicability. I. Soković, 278; Đorđe Ignjatović, *Kriminologija*, Faculty of Law, University of Belgrade, 2021, 155; Jelena Radović Stojanović, *Osnovi ekonomije,* University of Criminal Investigation and Police Studies, Belgrade, 2024, 180–181; and Ivana P. Bodrožić, *Terorizam kao kategorija nacionalnog i međunarodnog krivičnog prava,* University of Criminal Investigation and Police Studies, Belgrade, 2022.

[16] ZOO, art.12. For more on the principle of good faith and fair dealing, see: Slobodan Perović, *Obligaciono pravo, Knjiga prva,* 7th Edition, Službeni glasnik SFRJ, Belgrade, 1990, 56–61.

[17] Rebekah Dixon, *A Leap of Good Faith: A Possible Response to Unfair Claims-Handling Practices in Insurance,* Otago, 2012, 3–8.

to act with particular good faith in their dealings with the other contracting party. Specifically, they must disclose to the other party any circumstance (fact) that affects the risk and the amount of the premium prior to the conclusion of the contract.[18] Historically, the principle of good faith emerged as a mechanism to overcome informational asymmetry, which impacted the business performance of insurers.[19] Since the applicant for insurance possessed all relevant information about the risk, the duty to disclose all circumstances relevant for risk assessment was introduced based on this principle. Interestingly, at the time this principle was introduced, the emphasis was placed solely on the insured's duty to disclose all risk-related information to the insurer, while no such corresponding obligation for the insurer was recognized.[20] It was only under the influence of consumerism, grounded in the principle of good faith and fair dealing, that a pre-contractual duty of disclosure by the insurer to the policyholder was introduced.

The principle of good faith and fair dealing "serves to moralize the law, to reinforce its ethical dimension, by limiting freedom of contract and **establishing a standard of conduct toward the other party that must be respected during negotiations, contracting, the exercise of rights, and the fulfillment of obligations**".[21] It is important to emphasize that this principle governs the reciprocal treatment of parties to the obligational relationship, both in its formation and in the execution of rights and obligations. **From this principle arises the duty on each party to consider the interests of the other party, and above all, their legitimate expectation or trust that the other will behave in a loyal, reliable, consistent, and considerate manner**.

The principle of good faith and fair dealing rests upon the concept of causality, specifically, the causal link between damage and the insured risk, in the same way that criminal law requires the establishment of causality between the act and the consequence of the criminal offense in order to assess the degree of culpability. In this broader sense, a potential conflict may arise between the presumption of innocence, *in dubio pro reo - when in doubt, in favor of the accused,* which is a fundamental principle of criminal procedure law, and the principle of good faith and fair dealing. An example would be a case where an insurer refuses to pay out the insured sum due to suspicion of insurance fraud, while the criminal court has not yet determined the perpetrator's guilt in a lawfully conducted criminal proceeding.

[18] John Lowry, Philip Rawlings, *Insurance Law, Doctrines and Principles,* Second Edition, Hart Publishing, Oregon, 2005, 77–78.

[19] Nataša Petrović Tomić, Mirjana Glintić, "The Hybridization of the Regulatory Framework of Insurance Contract Law: Elements of a New Setting", *Annals of the Faculty of Law*, No. 2/2024, 223–250.

[20] Herman Cousy, "Changing Insurance Contract Law: An Age-Old, Slow and Unfinished Story", *Insurance Regulation in the European Union: Solvency II and Beyond* (eds. Pierpaolo Marano, Michele Siri), Springer International Publishing, 2017, 35.

[21] Marija Karanikić Mirić, *Obligaciono pravo*, Službeni glasnik, Belgrade, 2024, 78.

In brief, the principle of indemnity means that insurance may cover the entire damage but no more than the actual damage suffered.[22] The indemnification from insurance cannot exceed the amount of damage the insured suffered due to the insured event.[23] The purpose of insurance is not to improve the insured's financial situation after indemnification, but to restore their previous financial position.[24] The application of the indemnity principle requires that in each specific case, the damage suffered must first be determined. In addition to accurately assessing the damage incurred, it is essential to consider the insured sum, as it represents the upper limit of the insurer's obligation. Furthermore, it significantly influences the amount of the insurance premium. The value of the insured item at the time the damage occurred is also relevant. Insurers cannot calculate compensation in accordance with the principle of indemnity without considering the value of the item at the time the insured event occurred. The burden of proving the value of the item lies with the insured.

The principle of indemnity prescribes that in exercising insurance rights, the insured may claim only actual damages and not pursue any unjust enrichment. This is, following criminal law rules, aligned with the notion that no one may retain property derived from a criminal offense.

Freedom of contract, in insurance contract law, is more limited than in other types of contracts. Due to the nature of this complex contract (which procures a complex and intangible financial service) and the typical consumer position of the party acquiring the insurance service, the legislator intervenes more extensively in the insurance contractual relationship. For this reason, we are inclined to associate the sources of insurance contract law traditionally with the feature of detailed regulation.[25] From the perspective of both the insurer and the insured, freedom of contract is essentially reduced to the freedom to choose the type of insurance contract they wish to conclude. And that only within the domain of voluntary insurance. When dealing with risks that have a pronounced social connotation, even freedom of coverage choice does not exist; instead, the contract is concluded to fulfill a legal obligation. This aligns with the general provisions of the ZOO, which, at the beginning of the

[22] Jasna Pak, *Pravo osiguranja*, Singidunum University, Belgrade 2011, 229.

[23] "In a business relationship based on property insurance, regardless of the insured amount, the amount the insured is entitled to cannot exceed the extent of the damage suffered." (Judgment of the Commercial Appellate Court, Pž 7279/2014(1) of November 24, 2014 – Judicial Practice of Commercial Courts – Bulletin No. 1/2015)

[24] Rafael Illeskas Ortiz, "Principios Fundamenstales del Contrato de Seguro", *Derecho de Seguros y Reaseguros*, Liber Amicorum en homenaje al profesor Arturo Díaz Bravo (ed. Carlos Ignacio Jaramillo), Ibaňez, Bogotá, 2015, 17–18.

[25] Nataša Petrović Tomić, „Razvoj ugovora o osiguranju u jugoslovenskom i srpskom pravu", *Razvojne tendence v obligacijskem pravu, Ob 40-letnici Zakona o obligacijskih razmerjih* (ed. Damjan Možina), Inštitut za primerjalno pravo, Pravna fakulteta, Ljubljana, 2019, 389–412.

section on contract conclusion, contains an article titled "Mandatory conclusion and mandatory content of the contract" (Art. 27).

In a branch of law that regulates relationships between parties with unequal familiarity with the subject of the transaction and/or unequal economic power, freedom of contract in its original form cannot be sustained. The extent to which freedom of contract is limited depends primarily on the importance of the issue for the position of the weaker party. If a regulation directly concerns the interests of the weaker party, the legislator will resort to limiting freedom of contract through mandatory norms. If, however, it is sufficient to provide the insurer with guidelines on how to proceed regarding a particular matter, the legislator may opt for directed freedom of contract, achieved by a semi-mandatory method.

In regulating insurance contracts, the legislator has used a general provision to impose limitations on freedom of contract in two primary ways: first, by introducing the obligation to conclude a contract, and second, by partially or fully prescribing its content. Numerous special regulations impose on the insured the obligation to conclude an insurance contract. Correspondingly, insurers engaged in compulsory types of insurance are required to accept offers that do not deviate from the terms under which they typically provide such insurance. Moreover, there are instances where insurers are required to accept an offer for voluntary insurance contracts as well. The best example is voluntary health insurance, which only recently received statutory legitimization.[26] As for the mandatory content of insurance contracts, it is essentially prescribed by the Law of Contract and Torts (ZOO). Given that in the field of insurance, mandatory content dominates, along with the existence of the two aforementioned limitations on freedom of contract, it is evident to what extent freedom of contract has been derogated. It is not merely about the parties being obliged to obtain some form of insurance coverage. Their freedom of contract is even more affected by the legislative imposition of mandatory contract content, coupled with sanctioning mechanisms for any contractual provision contrary to the mandatory legal content, even if such provision was mutually agreed upon by the parties.

The principle of enhanced protection of the weaker party is the first association with modern insurance contract law. However, this principle was already familiar to legal systems that codified insurance law in the early 20th century. In first-rate legal systems (such as German and French law), long before the development of consumer contract law, there existed a multitude of statutory provisions aimed specifically at protecting the weaker party in insurance contracts.[27] In that sense, *insurance*

[26] Voluntary health insurance is not truly voluntary. The Health Insurance Act (ZZO) introduced an obligation for insurers offering this type of insurance to conclude a contract under the terms prescribed by law and secondary legislation, regardless of the risk to which the insured is exposed, including age, gender, and health status. See: N. Petrović Tomić (2019a), 503–505.

[27] Protection of the weaker party is "the guiding idea in the history of insurance". See: Yvonne Lambert-Faivre, Laurent Leveneur, *Droit des assurances*, Dalloz, Paris, 2011, 1; Mandep Lakhan, Helmut Heiss, "Towards

contract law may be seen as a precursor to consumer protection law.[28] The difference lies only in terminology: whereas we explicitly speak of consumer protection in the context of insurance services today, in the early 20th century, the prevailing notion was the protection of the insured, the beneficiary, and, more generally, the party in a weaker position.

The legislative regulation of insurance contracts through mandatory norms has long served as an instrument of protection for the insured against the insurer, predating consumer legislation. Before that legal branch developed, European legislators sought to prevent the use of clauses unfavorable to the insured through the implementation of mandatory rules. The most harmful to the insured were unilaterally drafted clauses on nullity, excluded damages, and loss of insurance rights.[29] Additionally, the "originality" of insurance law lies in the use of so-called *semi-mandatory* or *unilaterally mandatory provisions*, which remain in force today. These norms were the foundation of insurance contract protection mechanisms in earlier times. At the current stage of development, one may speak of the emergence of *consumer insurance contract law* as a sub-branch of (contractual) insurance law.

The principle of enhanced protection of the weaker party and the detailed regulation of insurance contracts have gradually led to the retreat of the principle of contractual freedom in this area of contract law. Namely, today we can speak of a principle of limited and directed contractual freedom, which has emerged in response to numerous legislative interventions in insurance contracts.[30]

By combining the fundamental principles of criminal law and the principles of insurance law, two entirely different legal regimes converge. One is public law nature, focused on sanctioning socially harmful behavior, and the other is predominantly private law, regulating contractual relations between insurer and insured. This interaction of principles indicates that **criminal law, consistent with its role in relation to other legal branches, serves as a means of *last resort* in responding to unlawful conduct within the insurance sector**. **It remains profoundly subsidiary, highly fragmented, and accessory to the principles and legal norms of insurance law.**

Subsidiarity is reflected in the fact that **c**riminal law only intervenes when regular mechanisms for regulating the insurance activities prove ineffective. Fragmentation is reflected in the existence of only a single incriminating provision - insurance

a European Insurance Contract Law: Restatement – Common Frame of Reference – Optional Instrument?", *Utrecht Journal of International and European Law*, Vol. 26, No. 71/2010, 1–11.

28 Nataša Petrović Tomić, *Zaštita potrošača usluga osiguranja*, *Analiza i predlog unapređenja regulatornog okvira,* University of Belgrade Faculty of Law, Belgrade, 2015, 54–55.

29 The French Insurance Code contained 83 provisions on insurance contracts, 61 of which were mandatory, and the remaining 21 semi-mandatory. Y. Lambert-Faivre, L. Leveneur, 160.

30 N. Petrović Tomić (2020), 100–125.

fraud, found in *Chapter XXII of the Criminal Code on economic offence.* Accessory character stems from the dependence of criminal law on the primary instruments and sources of insurance law, which define the key concepts that criminal law aims to protect in a reinforced manner.

III The criminal code and the incrimination of socially harmful conduct patterns in the insurance market as a form of modern contemporary crime

In contemporary society, the economic development of a country and the conduct of economic activities have acquired such significance that the state increasingly intervenes in economy to establish and maintain normal relations among economic entities in a manner aligned with national economic interests and the needs of its citizens. Under such circumstances, various new forms of criminal behavior emerge, which, as a social phenomenon, always adapt rapidly to the prevailing societal conditions.

As economic life is always dynamic and subject to change, economic crime likewise evolves quickly in terms of its forms and structure. Accordingly, the criminal law response to this type of crime is gaining increasing importance, resulting in a growing number of legal, and specifically criminal, regulations in this area.[31]

There are significant difficulties in defining the concept of an economic criminal offense. In the proper sense, it refers to socially harmful behavioral patterns whose punishment primarily serves to protect the economic system and its functioning. The primary purpose of criminalizing this category of offenses is to prevent the erosion of trust in the economic system. Among other things, regarding the economic model deemed desirable for protection under criminal law, the dominant view is that it is the market economy model.[32]

Given that the share of economically motivated crime in the Republic of Serbia is relatively high, by aggregating crimes against property and against the economy accounts for 48.6% of all criminal offenses that are economically motivated. Although varied in their legal nature, these offenses share a underlying economic motives and are, thus, registered as such in the annual reports of the Statistical Office of the Republic of Serbia.[33] This data serves as material legitimacy for the existence

[31] Đorđe Đorđević, Ivana Bodrožić, *Krivično pravo – Posebni deo***,** University of Criminal Investigation and Police Studies, Belgrade, 2024, 177.

[32] Zoran Stojanović, *Krivično pravo – Posebni deo,* The University of Novi Sad Faculty of Law, Novi Sad, 2022, 176–177.

[33] The high share of economically motivated crime in overall crime means that economic factors have a significant influence on criminal activity and represent one of the more important causes of crime

of offenses against the economy and is one of the legislative motives behind their incrimination. As insurance law has emerged as one of the fastest-growing branches of the economy, its development is paralleled by the emergence of a significant area in which new forms of criminal behavior arise, which have the potential to be addressed as criminal offenses.

In the positive criminal legislation of the Republic of Serbia, the Criminal Code (CC) is considered the principal legal act that defines the vast majority of behaviors deemed criminal offenses. Nevertheless, following the codification of criminal legislation in 2006, certain special provisions, commonly referred to as subsidiary criminal legislation, have remained in force due to specific legislative and technical reasons. These contain individual criminal provisions and distinct criminal offenses.

In the field of insurance, the only criminal offense that directly protects insurance activities is the offense of insurance fraud, as prescribed in Article 223a of the CC. This offense is classified among crimes that collectively aim to protect the economy.[34] This is justified.

In addition to this criminal offense, numerous other incriminations may be used to protect the rights and interests of participants in the insurance market,[35] yet insurance fraud is regarded as the *classical lex specialis* provision in this area.

Alongside this offense, the Insurance Law (ZO),[36] under *Chapter XV* (Penal Provisions), Section 1 (Criminal Offenses**)**, sets forth three specific criminal offenses related to insurance: unauthorized performance of insurance activities (Art. 256 ZO),[37]

in the Republic of Serbia. Jelena Radović Stojanović, *Kriminal i ekonomija Srbije,* University of Criminal Investigation and Police Studies, Belgrade, 2021, 55–57.

[34] As the Serbian criminal law environment is characterized by a dynamic phase of legislative interventionism, this chapter on criminal offenses was among those that underwent significant and thorough changes in 2016, within the framework of no fewer than eight amendments to the CC enacted since 2006 up to the present. At that time, the offenses in this chapter were substantially improved both structurally and substantively; they were systematized by similarity, and as many as seven new incriminations were introduced, an evident example of criminal law expansionism, which, as a criminal-political trend, must be labeled as negative. Additionally, terminological corrections and normative reconfigurations were made, and three offenses were decriminalized. Nataša Delić, *Krivično pravo – Posebni deo*, Faculty of Law, University of Belgrade, Belgrade, 2023, 242–243; I. Bodrožić (2020).

[35] Fraud in the conduct of business activity (Article 223 of the CC); embezzlement in the conduct of business activity (Article 224 of the CC); abuse of trust in the conduct of business activity (Article 224a of the CC); damage to creditors (Article 233 of the CC), among many others.

[36] *Official Gazette of the Republic of Serbia*, Nos. 139/2014 and 44/2021.

[37] **Unauthorized conduct of insurance activities:** A responsible person within an insurance company, reinsurance company, insurance brokerage company, insurance agency, or among insurance agents, who engages in insurance activities without obtaining authorization from the National Bank of Serbia, shall be punished for a criminal offense with a prison sentence ranging from three to six years. A responsible person of a legal entity who, in the capacity of a service provider, enters into insurance contracts, or contracts that, by their legal nature, constitute insurance contracts, with other persons, shall be punished for a criminal offense with a prison sentence ranging from three to six years.

issuing false opinions and reports (Art. 257 ZO),[38] and issuing false assessments (Art. 258 ZO).[39]

The criminal offense of insurance fraud was introduced into the CC in 2009. In its original version, it was classified under *Chapter XXI Criminal Offenses Against Property*, as Article 208a, and represented a specific form of the general offense of fraud. Thus, insurance fraud represented a specific legal norm, standing in a *lex specialis derogat legi generali* relationship to the general offense of fraud under Article 208. The act of insurance fraud in this original 2009 version involved inducing another person, in connection with insurance, to act to the detriment of their own or another's property, either by commission or omission. The law, in that version of the offense, specified typical forms of conduct such as falsely presenting facts, concealing facts, submitting false documentation, or otherwise misleading or maintaining a state of deception. The elements of crime, as a subjective characteristic, included the intent to unlawfully obtain material gain for oneself or another. The aforementioned activities had to be undertaken in relation to insurance, without specifying the type of insurance involved. The offense included two aggravated forms, involving more severe consequences, and one basic form.[40]

As a special type of fraud related to the insurance industry, the elements of crime of insurance fraud corresponded to, or overlapped with, those of the general offense of fraud, as a classic property crime.[41]

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38 **Providing false opinions and reports:** An authorized actuary or auditor who, contrary to the provisions of this law, prepares a false opinion or report shall be punished for a criminal offense with a prison sentence of one to three years.

39 **Providing a false assessment:** A responsible person within an insurance company, reinsurance company, insurance brokerage company, insurance agency, or among insurance agents, who prepares false assessments or statements when determining and evaluating risks and damages, shall be punished for a criminal offense with a fine or a prison sentence of up to three years.

40 Ljubiša Lazarević, *Komentar Krivičnog zakonika*, Second Revised and Expanded Edition, Faculty of Law, Union University, Belgrade, 2011, 704.

41 **Insurance fraud**, in its original version from **Article 208a** of the 2009 CC, read as follows:
(1) Whoever, with the intent to obtain unlawful material gain for themselves or another, misleads someone, by misrepresenting or concealing facts, providing false opinions or reports, submitting false assessments, presenting false documentation, or by otherwise deceiving or maintaining a state of deception, in connection with insurance, and thereby induces that person to act or refrain from acting to the detriment of their own or another's property, shall be punished with a prison sentence of six months to five years and a fine. (2) Whoever commits the act referred to in paragraph 1 of this Article solely with the intent to cause harm to another, shall be punished with a prison sentence of up to six months and a fine. (3) If the offense referred to in paragraphs 1 and 2 of this Article results in material gain or damage exceeding 450,000 dinars, the offender shall be punished with a prison sentence of one to eight years and a fine. (4) If the offense referred to in paragraphs 1 and 2 of this Article results in material gain or damage exceeding 1,500,000 dinars, the offender shall be punished with a prison sentence of two to ten years and a fine. Dragoljub Simonović, *Krivična dela u srpskoj legislativi,* Službeni glasnik, Belgrade, 2010, 414.

However, the 2016 amendments to the CC, through which the legislator significantly intervened in the area of criminal offenses against the economy, had a notable impact on the incrimination of insurance fraud. The offense was reclassified**,** moving from the chapter on criminal offenses against property to the chapter on criminal offenses against the economy. This is considered desirable, as the protected legal interest under the new criminal offense, though it retained the same name but modified legal elements, is now insurance as an economic activity.

The reasons justifying this major legislative intervention include, first, the primary protected object**,** namely, what the analyzed criminal offense seeks to protect in the first place. Secondly, they relate to the necessity of effectively safeguarding against so-called insurance fraud[42] in a manner consistent with the approaches adopted by most comparative criminal law systems.

As the Republic of Serbia is a candidate for European Union (EU) membership, it is undergoing comprehensive legal reforms**,** including efforts to harmonize criminal law provisions as well. The criminal offense of **insurance fraud,** as regulated since 2016, remains in effect under the 2024 version of the CC**,** in **Article 223a**:

(1) Whoever, with the intent to collect the agreed sum from an insurance company, destroys, damages, or conceals the insured item and then reports the loss, shall be punished by imprisonment from three months to three years.

(2) The same punishment as in paragraph 1 shall apply to anyone who, with the intent to collect the agreed sum from an insurance company for bodily harm, injury, or health impairment, causes such harm, injury, or impairment to themselves and then submits a claim to the insurance company.

(3) If the acts referred to in paragraphs 1 and 2 result in financial gain or cause damage exceeding four hundred and fifty thousand dinars, the perpetrator shall be punished by imprisonment from one to eight years.

(4) If the acts referred to in paragraphs 1 and 2 result in financial gain or cause damage exceeding one million five hundred thousand dinars, the perpetrator shall be punished by imprisonment from two to ten years.

[42] Through the amendments and supplements, the criminal offense of insurance fraud was more precisely defined, as the offense of insurance fraud (Article 208a of the CC) had previously been practically encompassed entirely by the existing offense of fraud. Insurance fraud constitutes a form of so-called policyholder fraud, which significantly differs from the general offense of fraud. For this reason, it is introduced as a separate criminal offense in many criminal law systems, in line with comparative legal practice. This justifies its introduction as a distinct offense, since, unlike the general offense of fraud, the criminal domain in insurance fraud is defined more broadly, and there is no requirement for inducing or maintaining a misconception on the part of the passive subject.

The criminal offense has a basic form and two aggravated forms. The conduct constituting the basic form is defined alternatively and may consist either of the destruction, damage, or concealment of the insured item or of the reporting of a loss, which itself comprises two acts – causing harm, injury, or health impairment to oneself and submitting a claim to the insurance company.

The object of the act may be either the insured item or the perpetrator.

The offense is committed with intent, and the perpetrator may be any person.

The aggravated and the most severe forms are linked to obtaining financial gain or causing damage exceeding certain monetary thresholds.

This structuring of the criminal offense of insurance fraud, in relation to the offenses specified in Articles 257 and 258 of the Insurance Law, could potentially pose challenges in delineation.

However, the statutory descriptions of these offenses differ sufficiently regarding the definition of the act of the crime of insurance fraud, so that they do not conflict with each other, and there is justification for their parallel existence in these two legal provisions.[43]

IV The role of criminal law in shaping insurance services

Criminal law has traditionally been founded on the principle of its evolutionary nature, encapsulated in the maxim *Ius criminale semper reformandum est* - criminal law is in a state of continual development. It evolves in response to the emergence of new forms of criminal behavior and develops norms aimed at preventing and suppressing new manifestations of criminality. In this process, criminal law remains rooted in its own principles (while also being constrained by them), and it must retain its character of exceptional application. Contemporary European criminal law systems are characterized not only by this evolutionary capacity but also by certain negative criminal policy tendencies, to which the legislator in the Republic of Serbia has not remained immune.[44] Although issues such as legal interventionism, the expansion

[43] Zoran Stojanović, *Komentar Krivičnog zakonika, Tenth revised edition,* Official Gazette, Belgrade, 2020, 748–749.

[44] As criminal law became one of the components of the Union's objectives, the EU acquired explicit competence in the field of substantive criminal law. Minimum rules on substantive criminal law facilitate the principle of mutual recognition, enable the approximation of criminal policies of member states and candidate countries for full membership, and lay the foundation for common definitions of criminal offenses. This, in turn, allows for an effective response to global criminal flows. Therefore, the EU legislator should exercise caution when influencing the shaping of criminal law responses in the process of approximating the substantive criminal law of its member states.
The principles of criminalization provide the legislator with an argumentative framework that can be used to determine whether criminalization is legitimate and justified. At the same time, attention must

of incriminations, and the limitations of such hypertrophied criminal law have been addressed in earlier parts of this paper, particularly where the drawbacks of these tendencies are highlighted, this should not be interpreted as an argument in favor of preserving only the existing form and structure of incriminations.[45]

The development of the insurance market,[46] the influence of new business models and services, and the imperative of ensuring the sustainable development of this sector[47] necessarily lead to the adjustment of criminal law norms. This is a bidirectional process and, from the standpoint of potential legal solutions, it can be examined through several examples.

Criminal law significantly influences the structuring of insurance services by establishing a legal framework that insurance companies must adhere to when designing policies, assessing risks, and processing claims.[48] The key ways in which criminal law shapes insurance services include:

always be paid to the particularities of legal heritage and legal tradition. For a more detailed discussion of the principles of criminalization, negative tendencies, and the future of EU substantive criminal law as a guiding framework for the harmonization of national criminal laws, see: Sanne Buisman, "The Future of EU Substantive Criminal Law", *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 30, No. 2/2022, 161–162.

45 See fn. 15.

46 At the celebration of the anniversary of the journal *Tokovi osiguranja*, Deputy Governor of the National Bank of Serbia, Željko Jović, presented the following data, which support the development of the insurance market and its role within the overall financial sector: "In the financial sector supervised by the National Bank of Serbia, insurance ranks second in terms of total assets, capital, and number of employees. Insurance premiums per capita amount to 216 US dollars, representing 1.9 percent of the gross domestic product (GDP). For comparison, the premium per capita in developing countries of Europe and Central Asia is 207 US dollars, with a GDP share of 2.3 percent. Data for the first half of this year indicate growth in all parameters within the insurance industry, with total premiums increasing by 13.2 percent compared to the same period last year, technical reserves rising by 12.3 percent, and capital adequacy reaching 212.9 percent, exceeding the statutory requirement. Alongside a profitability ratio of 92.2 percent and a positive interim result of 6.5 billion dinars, these indicators testify to the stability of the insurance sector". "*Četrdeseti rođendan časopisa Tokovi osiguranja*", https://www.dunav.com/cetrdeseti-rodjendan-casopisa-tokovi-osiguranja/, accessed on June 1, 2025.

47 On the sustainability of development as a *conditio sine qua non* for the entire insurance market, as well as the regulatory framework that accompanies it, illustrated by the example of the initial underregulation of the legislative framework and, consequently, the desired regulatory progress in the field of supplementary health insurance in the Republic of Serbia, see in detail: Nataša Petrović Tomić, "Dopunsko zdravstveno osiguranje u funkciji doprinosa razvoju održivog sistema zdravstvene zaštite u Republici Srbiji", *Tokovi osiguranja*, No. 1/2024, 7–70.

48 Regarding the ways in which crime influences the demand for insurance, as well as the impact of offered insurance services on the emergence of new forms of criminality within the insurance sector, Tom Baker and Anja Shortland examine five case studies (car theft, art theft, kidnapping and ransom, and credit card fraud). They highlight a co-evolutionary process through which insurers collaborate with policyholders, governments, and both formal and informal third parties to mitigate losses, particularly when criminal innovations destabilize the insurance market.

1. **Definition of criminal offenses and insurance coverage**: criminal law defines what constitutes unlawful conduct (e.g. theft, embezzlement, fraud, destruction of property). Insurers rely on these definitions when drafting policies, such as those covering theft or damage to third-party property. However, insurance policies typically exclude coverage for damages resulting from intentional criminal acts committed by the insured, as criminal law prohibits profiting from criminal conduct.[49]
2. **Impact on risk assessment**: criminal law influences actuarial models used by insurers to evaluate risk. For instance, in areas with high crime rates (e.g. frequent car theft), insurance premiums are typically higher because criminal law indirectly signals an increased likelihood of insured events.
3. **Protection against insurance fraud**: criminal law, particularly provisions addressing fraud, helps shape mechanisms for preventing false claims. Insurers develop services with strict conditions and verification procedures to protect against criminal acts such as fraudulent claims. For example, property insurance policies may require proof of ownership or a police report as part of the claim process.
4. **Liability insurance**: criminal law affects services related to civil and professional liability insurance. For instance, in cases where a criminal offense (such as an intentional traffic safety violation) causes damage, liability coverage may be limited if the insured committed the offense with intent.[50]
5. **Mandatory insurance**: criminal law can require specific types of insurance. In Serbia, for example, the Law on Compulsory Traffic Insurance (which includes criminal law elements in the event of non-compliance) mandates that vehicle owners carry third-party liability insurance, directly shaping this segment of the insurance market.[51]

The phrase *Insurance as crime governance* reflects a concept that the authors of this paper also seek to express in a broader, potentially *de lege ferenda* context. For further reading, see: Tom Baker, Anja Shortland, "How Crime Shapes Insurance and Insurance Shapes Crime," *Journal of Legal Analysis*, Vol. 15, No. 1/2023, 185–196.

[49] Criminal law explicitly stipulates in Article 91 of the CC that: "(1) No one may retain property benefits obtained through the commission of a criminal offense. (2) The benefit referred to in paragraph 1 of this article shall be confiscated under the conditions prescribed by this Code and by a court decision establishing the commission of the criminal offense." Criminal Code, Article 91.

[50] For a detailed discussion on proceedings involving insurers' recourse claims against the insured, as well as issues concerning the determination of liability for causing accidents, see: Milica Goravica, "Utvrđivanje odgovornosti za prouzrokovanje udesa u postupcima po regresnoj tužbi osiguravača protiv osiguranika", *Tokovi osiguranja*, No. 1/2025, 201–206.

[51] For a detailed discussion on the distinction between so-called moral hazard and criminal hazard, i.e. situations in which an individual exhibits a higher tolerance for increasing their exposure to potential risk due to the awareness of limited costs associated with such behavior as a result of having insurance

6. **Compliance with anti-money laundering and counter-terrorism financing laws**:[52] criminal law, particularly in the area of economic crime, imposes obligations on insurers to verify client identities and the sources of their funds. This affects the structure of services, as insurers must implement procedures for identity checks and legal compliance, which may increase operational costs and complicate business processes.
7. **Policy exclusions**: criminal offenses often result in exclusions from coverage. For example, if damage is caused by a terrorist act (a criminal offense under the Criminal Code), standard property insurance policies typically do not cover such events. This has led to the development of specialized products for terrorism risk coverage.

In conclusion, criminal law shapes insurance services by regulating risk, defining coverage conditions, preventing abuse, and ensuring compliance with legal obligations. Insurers must strike a careful balance between client protection and adherence to criminal law standards in order to provide sustainable and legally compliant services.

V Concluding considerations

The characteristics of the legal system, as a set of norms regulating public and private legal relations, determine the mutual relationship between different branches of law. Criminal law and insurance law, within this framework, have a specific-reversible, as confirmed in this paper-relationship.

Primarily, these are branches of law whose fundamental function is protective in nature. Therefore, a connection is established between them based on a shared orientation, i.e. a goal-oriented linkage. In this relationship, criminal law acts as a more forceful and exclusive instrument for protecting legal relations that have not been successfully safeguarded by insurance law norms.

Criminal law protects to the lawful operation of insurance as an activity within the financial sector and, in doing so, directly protects economic activity, es-

coverage, as well as on the requirement that at least two conditions be met for moral hazard to escalate into criminal hazard and imply criminal liability, see: Per-Johan Horgby, Annette Wittkau-Horgby, "Beyond Moral Hazard - Some Thoughts on Criminal Hazard and Insurance," *Nordic Insurance Quarterly (NFT)*, No. 2/2008, 147–153.

[52] The specific features of the new approach to defining terrorist offenses, nomotechnical revisions, and the harmonization with European criminal law standards have led not only to changes within the substantive criminal legislation of the Republic of Serbia but also to amendments in related regulations, such as the Law on the Prevention of Money Laundering and the Financing of Terrorism (*Official Gazette of the Republic of Serbia*, Nos. 113/2017, 91/2019, 153/2020, 92/2023, 94/2024, and 19/2025). For further details, see: I. Bodrožić (2022).

pecially in relation to the collective legal interest protected by the criminal offense of insurance fraud, as regulated in the Special Part of the CC.

Criminal law norms are also contained within the Insurance Law (ZO), demonstrating that this regulation, within the domain of criminal protection falls under the category of subsidiary legislation. However, as confirmed in this paper, such criminal provisions are legitimate and do not create unnecessary overlaps in incriminations.

Respecting its nature as *ultima ratio* and its subsidiarity in relation to other branches of law, criminal law rationally encompasses only one criminal offense, through which direct protection is provided against insurance fraud. Within the framework of positive law, this offense has undergone a notable evolution: not has it only been reshaped but also resystematized in a manner aligned with both European and national criminal law standards. As Elena Maculan and Alicia Gil Gil argue, it is important to maintain the status of criminal law as *ius puniendi* and as an instrument of the state, but not as the only available instrument or an absolute obligation. Rather, it should function as a complementary and subsidiary tool.[53]

The relationship between criminal law and insurance law, observed through this prism, has been illustrated through seven key ways in which criminal law can influence the shaping of insurance services, to ensure sustainability and the desired level of protection across the insurance market.

As a pioneering work in the theoretical analysis of the relationship between criminal law and insurance law, the authors hope that the proposed methods and options for mutual, reciprocal, or reversible, influence will serve as a foundation and *teaser* for further research in this field. Each of these aspects could, on its own, become the subject of a dedicated scholarly article by a specialist in substantive criminal law or insurance law, particularly in direct connection with the practical aspects of their application.

Literature

- Baker, T., Shortland, A., „How Crime Shapes Insurance and Insurance Shapes Crime“, *Journal of Legal Analysis,* Vol. 15, No. 1/2023.
- Bodrožić, I., „Kontinuirani krivičnopravni ekspanzionizam – na raskršću politike i prava“, *Srpska politička misao,* No. 2/2020.

[53] This allows for the use of criminal law only when it is both useful and necessary. When other mechanisms exist that can provide such protection in a satisfactory manner, or when criminal law, if applied, risks becoming a threat to the very legal interests it is intended to protect, particularly if it ultimately destabilizes the legal system entrusted with that protection, then prosecution and punishment must take a step back and be adapted and limited according to the specific circumstances of each case. Elena Maculan, Alicia Gil Gil, "The Rationale and Purposes of Criminal Law and Punishment in Transitional Contexts," *Oxford Journal of Legal Studies*, Vol. 40, No. 1/2020, 157.

- Bodrožić, I., *Terorizam kao kategorija nacionalnog i međunarodnog krivičnog prava,* University of Criminal Investigation and Police Studies, Belgrade, 2022.
- Buismann, S. S., "The Future of EU Substantive Criminal Law", *European Journal of Crime, Criminal Law and Criminal Justice,* Vol. 30, No. 2/2022.
- „Četrdeseti rođendan časopisa Tokovi osiguranja", *http:// https://www.dunav.com/cetrdeseti-rodjendan-casopisa-tokovi-osiguranja/,* accessed: 01. 06. 2025.
- Delić, N., *Krivično pravo-Posebni deo,* University of Belgrade Faculty of Law, Belgrade, 2023.
- Dixon, R., *A Leap of Good Faith: A Possible Response to Unfair Claims-Handling Practices in Insurance,* Otago, 2012.
- Đorđević, Đ., Bodrožić, I., *Krivično pravo-Posebni deo,* University of Criminal Investigation and Police Studies, Belgrade, 2024.
- Goravica, M., „Utvrđivanje odgovornosti za prouzrokovanje udesa u postupcima po regresnoj tužbi osiguravača protiv osiguranika", *Tokovi osiguranja,* No. 1/2025.
- Heiss, H., "Insurance contracts", *Encyclopedia of Private International Law* (eds. Jürgen Basedowe *et al*.), Vol. 2, Entries I-Z, Edward Edgar Publishing, Northampton 2017.
- Horgby, P, J., Horgby, A. W., „Beyond Moral Hazyard-Some Thoughts on Criminal Hazard and Insurance", *Nordic Insurance Quarterly* (*NFT),* No. 2/2008.
- Ignjatović, Đ., *Kriminologija*, University of Belgrade Faculty of Law, Belgrade, 2021.
- Illeskas Ortiz, R., "Principios Fundamenstales del Contrato de Seguro", *Derecho de Seguros y Reaseguros*, Liber Amicorum en homenaje al profesor Arturo Díaz Bravo (ed. Carlos Ignacio Jaramillo J), Grupo editorial, Ibaňez, Bogotá, 2015.
- Karanikić Mirić, M., *Obligaciono pravo,* Official Gazette, Belgrade, 2024.
- Karanikić Mirić, M., „Forma ugovora o osiguranju", *Tokovi osiguranja,* No. 1/2025.
- Lakhan, M. Heiss, H., "Towards a European Insurance Contract Law: Restatemant – Common Frame of Reference – Optional Instrument?", *Utrecht Journal of International and European Law,* Vol. 26, Issue 71/2010.
- Lambert-Faivre, Y., Leveneur, L., *Droit des assurances*, Dalloz, Paris, 2011.
- Lazarević, LJ., *Komentar Krivičnog zakonika, 2nd revised and expanded edition,* Faculty of Law, Union University, Belgrade, 2011.
- Lowry, J., Rawlings, P., *Insurance Law, Doctrines and Principles, Second Edition*, Hart Publishing, Oregon, 2005.
- Maculan, E., Gil Gil A., „The Rationale and Purposes of Criminal Law and Punishment in Transitional Contexts", *Oxford Journal of Legal Studies,* Vol. 40, No. 1/2020.

- Pak, J., *Pravo osiguranja*, Singidunum University, Belgrade, 2011.
- Perović, S., *Obligaciono pravo, Knjiga prva, 7th edition*, Novinsko-izdavačka ustanova, *„Službeni glasnik SFRJ“*, Belgrade, 1990.
- Petrović Tomić, N., *Zaštita potrošača usluga osiguranja, Analiza i predlog unapređenja regulatornog okvira,* University of Belgrade Faculty of Law, Belgrade, 2015.
- Petrović Tomić, N., *Pravo osiguranja – Sistem, Knjiga prva, Official Gazette*, Belgrade, 2019.
- Petrović Tomić, N., „O ograničenoj i usmerenoj slobodi ugovaranja u ugovornom pravu osiguranja: Fenomen 'pokoravanja' ugovora o osiguranju“, *Anali Pravnog fakulteta u Beogradu,* No. 1/2020.
- Petrović Tomić, N., „Razvoj ugovora o osiguranju u jugoslovenskom i srpskom pravu“, *Razvojne tendence v obligacijskem pravu, Ob 40-letnici Zakona o obligacijskih razmerjih* (ed. Damjan Možina), Inštitut za primerjalno pravo, Pravna fakulteta, Ljubljana 2019.
- Petrović Tomić, N., *Osnovi prava osiguranja*, University of Belgrade Faculty of Law, Belgrade, 2023.
- Petrović Tomić, N., „Dopunsko zdravstveno osiguranje u funkciji doprinosa razvoju održivog sistema zdravstvene zaštite u Republici Srbiji“, *Tokovi osiguranja,* No. 1/2024.
- Petrović Tomić, N., Glintić, M., "The Hybridization of the Regulatory Framework of Insurance Contract Law: Elements of a New Setting", *Annals of the Faculty of Law,* No. 2/2024.
- Radović-Stojanović, J., *Kriminal i ekonomija Srbije,* University of Criminal Investigation and Police Studies, Belgrade, 2021.
- Radović-Stojanović, J., *Osnovi ekonomije,* University of Criminal Investigation and Police Studies, Belgrade, 2024.
- Simonović, D., *Krivična dela u srpskoj legislativi,* Službeni glasnik, Belgrade, 2010.
- Soković, I., „Značaj osiguranja i perspektive razvoja u Srbiji“, *Tokovi osiguranja,* No. 2/2024.
- Stojanović, Z., *Krivično pravo – Opšti deo,* Pravna knjiga, Belgrade, 2019.
- Stojanović, Z., *Komentar Krivičnog zakonika, Tenth supplemented edition,* Službeni glasnik, Belgrade, 2020.
- Stojanović, Z., *Krivično pravo – Posebni deo,* University of Novi Sad Faculty of Law, Novi Sad, 2022.

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