

## RISK MANAGEMENT IN INSURANCE VS DISCRIMINATION\*\*\*

### Summary

*Risk management in insurance companies is a very important component of corporate governance. Based on a timely, accurate and adequate assessment of risks, it's possible to take the necessary measures to reduce them or eliminate the possibility of their realization, with the aim of preventing the solvency of the insurance company and its efficient operation. A reasonable risk assessment, taking into account all relevant criteria, is an important requirement from the Solvency II Directive, with which it's necessary to further harmonize regulations at the national level. Risk management involves identification, assessment, proposing measures to reduce and eliminate risks and reporting to competent authorities on the measures taken. When assessing risk reduction measures in insurance/reinsurance companies, not only internal acts and regulations from the field of insurance, but also general acts that aren't from that area should be taken into account. A special problem in the field of insurance is the application of discriminatory criteria with reference to statistical data when determining the conditions or insurance premium rates. However, such behaviour is a violation of the prohibition of discrimination, which is stipulated in both international and national regulations.*

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*In this paper, we first point out the importance of the risk management function and the compliance of national regulations in that part with the Solvency II Directive, and then we analyze cases of discrimination in the field of insurance in order to provide recommendations for possibly overcoming such situations at the level of insurance/reinsurance companies, bearing in mind that exclusion of a certain group from insurance solely on the basis of its personal characteristics is an act contrary to the Constitution and the Law on Prohibition of Discrimination.*

**Key words:** *risk management, insurance companies, risk assessment, prohibition of discrimination.*

### 1. Introduction

Under risk, the authors consider a future and uncertain event, the realization of which may result in damage or benefit.<sup>1</sup> According to the authors, the regularity of risk occurrence in time and space can be determined by statistical calculation. Based on this, it's possible to plan the amount of funds sufficient to cover the insurer's obligations if a certain risk is realized.<sup>2</sup> A special problem related to risks is their multiplication, and not only in terms of increasing the number, ie. the emergence of new risks, but also an increase in the size of the risk.<sup>3</sup> Therefore, it's first of all necessary to identify and assess the risk. The effectiveness of that activity depends primarily on the quality of the collected information. After that, it's necessary to select and apply a method of optimal risk management, in order to reduce it to an acceptable level. It is this element that is considered the most important and, as already stated, it depends on the adequacy of the risk assessment, including its causes and scope.<sup>4</sup>

Risk management is part of the corporate governance model, which includes the actuarial function and the functions of internal audit and business compliance in the framework of insurance companies. The existence of an effective model of corporate management contributes to increasing the value and improving the work of insurance companies. All components of

<sup>1</sup> P. Šulejić, *Pravo osiguranja*, Belgrade 2005, 83, stated according to V. Čolović, „Kontrola rizika i osiguranje“, *Godišnjak Fakulteta pravnih nauka* 2/2012, 125, <https://doi-srpska.nub.rs/index.php/gfnpn/article/view/424/378>, 13. 8. 2023.

<sup>2</sup> V. Čolović, 125.

<sup>3</sup> *Ibid.*, 128.

<sup>4</sup> *Ibid.*

the above model should be established as independent functions.<sup>5</sup> However, this doesn't mean that several of the above-mentioned functions can't be performed by one person or organizational unit. Even the Solvency II Directive foresees the possibility that in small or less complex insurance companies one person or organizational unit performs more than one function, with the exception of internal audit, which must be entrusted to an independent organizational unit or person within the insurance company.<sup>6</sup>

However, when assessing risk, one should take into account not only financial indicators, but also relevant national regulations, which don't have to be from the field of insurance. When it comes to the field of insurance, there have been cases of discrimination in the world. Nevertheless, in some circumstances, consideration of certain properties of potential insurers is essential to reduce the solvency risk of insurance companies, such as for example old age or illness in the field of life insurance, while in some situations such an approach is unjustified. In practice, there have been cases of unfounded discrimination in the field of insurance on various grounds. In the USA, this was done on the basis of race, while in Romania and the Republic of Serbia, unfounded discrimination against the elderly was recorded. Therefore, any risk assessment at the level of the insurance company should be justified, but also documented in accordance with the relevant national regulations.

In the paper, we first point out the requirements of the Solvency II Directive with regard to risk management at the level of insurance companies, and then the provisions of national regulations in that area, which have been largely harmonized with them so far, and then we look at the cases of discriminatory conditions established in practice insurance companies, which couldn't be taken into account as a risk for the business of a certain insurance company, taking into account the nature and type of insurance. This is precisely why it's necessary to find a balance between adequate and efficient risk management and compliance with anti-discrimination regulations at the internal level.

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<sup>5</sup> The Solvency II Directive (Directive 2009/138/EC of the European Parliament and of the Council on taking-up and pursuit of the business of Insurance and Reinsurance) within the preamble, item 30, separately mentions the function of risk management as a component of the management system, compliance monitoring function, internal audit function and actuarial function. See also: J. Šuput, V. Janjić, „Funkcija interne revizije i usklađenost poslovanja u društvima za osiguranje/reosiguranje“, in: *Naknada štete i osiguranje – Savremeni izazovi* (eds. Z. Petrović, N. Mrvić Petrović), Association of Tort Law, Institute of Comparative Law and Judicial Academy, Belgrade 2016, 409-423.

<sup>6</sup> Item 32 of the preamble of the Solvency II Directive.

## **2. Solvency II Directive and harmonization of national regulations in the field of risk management**

One of the significant requirements of the Solvency II Directive is intensive risk management and orientation towards the concept of value-based management, with the aim of increasing the value of the insurance company in the long term. In addition, the role of the supervisory authority is also important, which if the insurance company doesn't carry out an adequate risk assessment or doesn't apply adequate measures, and there is a large exposure to risk, may require an increase in capital.<sup>7</sup> The principle of economic risk enshrined in the Directive encourages insurers to adequately measure and manage risks.<sup>8</sup>

According to the requirements of the Solvency II Directive, insurance/reinsurance companies should take care of special capital for solvency, which is determined by applying a standard formula or an internal model, so that it covers all the risks in the insurance/reinsurance company's business that can be quantified, as well as an assessment of the possibility of submitting all events in one year that are realized once in 200 years. The aforementioned Directive also establishes the principle of prudent investment, which means careful and timely risk assessment. In accordance with it, it's necessary to carry out a risk and solvency assessment on a regular basis in order to assess the total necessary solvency and the fulfilment of conditions related to the adequacy of capital and technical reserves, as well as deviations of the company's risk profile from the required capital for solvency. According to the requirements of the Directive, supervision should be based on the assessment of the risks to which the company is exposed or may be exposed in business, through indirect and direct control and the imposition of supervision measures.<sup>9</sup>

When it comes to risk assessment in order to protect the solvency of insurance companies, according to the Solvency II Directive, insurance/reinsurance companies should invest their assets in accordance with the

<sup>7</sup> I. Tošić, „Usklađivanje prava osiguranja Republike Srbije sa Direktivom Solventnost II“, in: *65 godina od Rimskih ugovora: Evropska unija i perspektive evropskih integracija Srbije*. (eds. J. Čeranić Perišić, V. Đurić, A. Višekruna), Institute of Comparative Law, Belgrade 2022, 158.

<sup>8</sup> I. Tošić, „Uticaj Direktive Solventnost II na sektor osiguranja u Evropi“, *Godišnjak Fakulteta pravnih nauka* 7/2017, 303, DOI: 10.7251/GFP1707301T.

<sup>9</sup> National Bank of Serbia, *Strategy for the Implementation of Solvency II in the Republic of Serbia*, May 2021, [https://www.nbs.rs/export/sites/NBS\\_site/documents/osiguranje/strategija\\_solventnost\\_II.pdf](https://www.nbs.rs/export/sites/NBS_site/documents/osiguranje/strategija_solventnost_II.pdf), 13. 8. 2023.

principle of a reasonable person, i.e. exclusively in assets and instruments whose risks the insurance company can an adequate way to determine, measure and monitor and which they can manage, over which they can exercise adequate supervision and timely and accurately report to them.<sup>10</sup>

Assets that cover the minimum necessary capital, as well as the required solvent capital, should be invested in a way that enables the safety, quality, liquidity and profitability of the entire portfolio. In addition, assets to cover technical reserves are also invested in a manner that is appropriate to the nature and duration of insurance and reinsurance obligations, and in the best interest of all policyholders, bearing in mind the goal in accordance with the insurance policy.<sup>11</sup>

When it comes to risk management in the Republic of Serbia, phased alignment of insurance regulations with the provisions of the Solvency II Directive is in progress, according to which it's necessary to fulfil both quantitative requirements, as well as qualitative and transparency requirements. Quantitative ones include the harmonization of standards of assessing assets and liabilities on market basis, and qualitative requirements concerning the suitability of persons who manage the company or who perform management functions in the company, independent assessment of risk and solvency, as well as the way of performing supervision, while insisting on compliance with the principles proportionality, that is, meeting the requirements in accordance with the size and organizational structure of the company, as well as the scope of activities and types of insurance that the company provides. In addition, they include the establishment of key functions in society, which also include the establishment of risk management functions.

National regulations in the field of insurance should be harmonized additionally with the Solvency II Directive, which implies the area related to the improvement of prudential supervision. The new approach implies changes in the way of quantifying the level of risk to which insurance companies are exposed in their operations, which will also be reflected in the change in the way of managing those risks. The goal of this approach is to enable the long-term stability of the insurance sector and protect users of insurance services.<sup>12</sup>

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<sup>10</sup> Article 132, items 1 and 2 of the Solvency II Directive.

<sup>11</sup> *Ibid.*, paragraph 2.

<sup>12</sup> National Bank of Serbia, *Sector for Supervision of Insurance Activities, Report for the first quarter of 2023*, 15, [https://www.nbs.rs/export/sites/NBS\\_site/documents/osiguranje/izvestaji/izv\\_I\\_2023.pdf](https://www.nbs.rs/export/sites/NBS_site/documents/osiguranje/izvestaji/izv_I_2023.pdf), 13. 8. 2023.

The main goal of insurance and reinsurance regulations that are enacted both at the international and national level should be the protection of policyholders and insurance beneficiaries, which means any natural or legal person who has a certain right based on an insurance contract. Although financial stability is also very important, as well as market stability and their supervision, they shouldn't be opposed to the basic goal.<sup>13</sup>

### ***2.1 Risk management in the national regulations of the Republic of Serbia***

The Decision on the management system in the in the insurance/reinsurance company regulates more closely the qualitative requirements prescribed by the Solvency II Directive, which concern the management system, i.e. the corporate governance model.<sup>14</sup> According to the aforementioned decision, each insurance/reinsurance company has the obligation to ensure a clear division of functions that are components of corporate governance and to prevent intees from performing them. Persons who are responsible within the organization for taking risks or managing them can't simultaneously perform tasks of supervision, i.e. risk control.<sup>15</sup> When assessing the risk, all risks to which the company is exposed or may be exposed in business should be taken into account, including: insurance risk, market risk, risk of non-fulfillment of obligations of the other contracting party, liquidity risk, operational risk, legal risk, but also other risks that have been identified as significant at the level of the insurance/reinsurance company.

There's no single risk classification in the literature. It applies depending on the insurer. Therefore, according to the authors, it is important for the management structures of the insurance company to take into account measures that would reduce the probability of losses when assessing risk.<sup>16</sup> The main goal of the insurer when managing liquidity risk is to permanently maintain a degree of exposure to new risk that doesn't endanger the business.

<sup>13</sup> Item 16 of the Solvency II Directive.

<sup>14</sup> Odluka o sistemu upravljanja u društvima za osiguranje/reosiguranje (Decision of the management system in insurance/reinsurance companies), *Official Gazette of the Republic of Serbia*, no. 51/2015, 29/2018, 84/202 i 94/2022.

<sup>15</sup> Introductory provisions, item 1 of the Decision on the management system in insurance and reinsurance companies.

<sup>16</sup> M. Sokić, „Unapređenje upravljanja rizicima u osiguravajućoj kompaniji“, *Tokovi osiguranja* 4/2016, 45.

Therefore, a more active approach and preventive identification, measurement, assessment and control of liquidity risk is necessary.<sup>17</sup>

The obligation of the insurance company is to establish a comprehensive and efficient risk management system, which includes all business activities of the company. In addition, the company is obliged to establish adequate policy procedures and risk management strategies and ensure their implementation.<sup>18</sup> In accordance with that, the company's supervisory board should adopt a risk management strategy, as part of the company's business strategy, which clearly defines risk management, the company's readiness to take risks and risk management policies. It should contain a description of the risks to which the company is exposed or to which it may be exposed, acceptable limits of risk exposure with an assessment of the company's ability to bear the risk, goals and principles of risk management policies, a description of the risk reporting system and their interdependence, the internal organization of risk management with a description of the obligations and responsibilities of employees and other persons, the connection between the assessment of the total required solvency and the company's risk profil.

Supervisory boards in the company should continuously review (at least once a year) the risk management strategy, as well as its compliance with the company's risk profile, other elements of the company's business strategy and other relevant parameters. These parameters should also include other regulations of importance in the field of insurance.<sup>19</sup>

In terms of risk management, national regulations are already largely aligned with the Solvency II Directive. According to the Decision on risk management, the insurance company is obliged to perform its own risk and solvency assessment (Own Risk and Solvency Assessment), which is an integral part of the business strategy and which is taken into account when making strategic decisions and when managing the company's capital adequacy. Accordingly, at the company level, it's necessary to establish adequate processes (through regulations or written procedures) regarding the methods of identification, assessment, measurement and monitoring of the risks to which the company is exposed or may be exposed, as well as for determining the total necessary solvency. Accordingly, the insurance company should ensure the inclusion of the results of its own risk and solvency assessment in the process of decision-making and planning of the company's business activities. The risk and solvency assessment procedure must be documented

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<sup>17</sup> *Ibid.*, 52.

<sup>18</sup> Item 13 of the Decision.

<sup>19</sup> Item 14 of the Directive Solvency II.

in the form of a report containing qualitative and quantitative assessment results with conclusions and a description of the applied methods and assumptions.<sup>20</sup>

The authors rightly point out the importance of exchanging financial information, information on business compliance with internal and external rules, as well as with events on the insurance market. It's this information that's important for risk management and making relevant decision at the insurance/reinsurance company level. Therefore, the information must be reliable and delivered to the relevant users in a timely manner.<sup>21</sup>

## ***2.2. Significant changes to regulations from 2022***

During 2022, the provisions of the Decision on Risk Management, which are related to the management process itself, were changed. Namely, sometimes the risk assessment at the level of the insurance company can affect the change of insurance conditions and the tariff of compulsory insurance premiums. Therefore, according to the latest amendment, it's necessary for the insurance/reinsurance company to regulate the process of changing the general and special insurance conditions and the tariff of compulsory insurance premiums with internal acts, which should specifically include the decision-making process on changing the conditions and tariff, as well as the definition of all factors which are taken into account before making that decision, the way (methodology) in which the analysis of the justification of the planned change in tariff conditions is carried out, the way in which the compliance of the planned change in conditions and the tariff with the relevant regulations is checked, internal acts of the insurance/reinsurance company, rules on risk management, rules of the insurance and actuarial profession, good business practice and business ethics. In addition, each insurance company needs to make its own analysis of the reasoned opinion of the authorized actuary on the sufficiency of the insurance premium for the permanent settlement of all obligations from the compulsory insurance contract as well as other relevant elements before the planned changes, as well as to analyze the justification of the planned tariff changes. Before making changes, it's

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<sup>20</sup> The actuarial function is also connected with risk management, and the obligation of the insurance company is to establish it, bearing in mind that it should contribute to the effective implementation of risk management, especially when it comes to the calculation of the required solvency margin and its own assessment of risk and solvency. This obligation is provided by item 31 of the Decision on risk management.

<sup>21</sup> M. Sokić, 44.



necessary to obtain a reasoned opinion from the organizational unit whose scope is the control of compliance of the company's operations of the compliance of the change in conditions and tariffs with the relevant regulations and internal acts of the company.<sup>22</sup> Consistent implementation of the above-mentioned procedures can prevent the possibility of acting contrary to regulations from other areas. Bearing in mind the specificity of risks in the field of insurance, it happened that when determining the conditions of insurance and other relevant elements, regulations on the prohibition of discrimination were often unjustifiably violated. However, the application of the new rules is limited exclusively to compulsory insurance, while the establishment and application of similar ones to voluntary insurance depends solely on the interest and conscience of the management and employees of insurance companies.

### **3. Insurance risk assessment and discrimination**

Sometimes the application of certain criteria in some cases in order to reduce the risk for the insurance company's business is justified, while in other situations it can be an example of a violation of regulations on the prohibition of discrimination. However, even when it's justified, it must not be based exclusively on statistical estimates. Although insurers in connection with objections that they discriminate against insured persons in the course of business generally refer to the observed statistical correlations between the probability of occurrence of the insured risk and a certain actuarial factor that was used during the qualification of the insured, the authors justifiably believe that this type of discrimination is against moral and legal principles.<sup>23</sup>

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<sup>22</sup> Bearing in mind that the National Bank of Serbia is the supervisor of the insurance sector in the Republic of Serbia, in 2017 it conducted the second stress test of the insurance sector in Serbia, in order to continuously monitor the exposure of individual insurance/reinsurance companies to risks. In this way, financial conditions are projected in the event of the realization of extremely harmful events, which arise as a result of one of more risk factors, and therefore the probability of such events is low, while such events are still possible. The results of the test carried out at that time showed that the insurance sector would remain stable and highly capitalized even after the realization of large, unlikely costs, and the adequacy of the capital wouldn't be endangered by it. <https://www.nbs.rs/sr/scripts/showcontent/index.html?id=11854&konverzija=yes>, 13. 8. 2023.

<sup>23</sup> M. Glantić, „Klasifikacija rizika kao osnov diskriminacije u pravu osiguranja“, in: *Zbornik radova sa međunarodne naučne konferencije Zaštita ljudskih prava i sloboda u svetlu međunarodnih i nacionalnih standarda* (ed. D. Mirović), Kosovska

When determining insurance rates in the United States of America, a case of using discriminatory guidelines was recorded when determining insurance rates. There have been recorded examples of the conclusion of restrictive contracts in which insurance premiums are based on race, as well as situations of using postal codes and credit scores when determining the price of auto insurance. According to research results, a form of discrimination based on risk profile was often used in insurance, which means separating people into high and low risk categories in order to determine high and low risk in order to determine premiums and encourage customers to reduce their risky behaviour. However, insurance policies must not unfairly discriminate against a particular race, people of a particular national origin, gender or gender or religion. Thus, as an example of discrimination in the United States of America, redlining is cited, when the Federal Government began to insure mortgages on houses and when the Government agency classified settlements in the country according to the perceived level of risk, based on the following factors: age and condition of the house, access to transportation, community amenities, proximity to undesirable properties (eg. Polluting industries), employment status of the population, and economic class and ethnic and racial status of the population. Settlements were color-coded on maps according to risk. Communities with a predominantly ethnic and racial minority population were colored red, i.e. marked with a red line. Those areas were considered high risk. In the United States, even the Federal Housing Administration's 1938 Insurance Manual explicitly emphasized the racial component of these maps. It was even stated in a separate section that if there is an effort to maintain housing stability, it's necessary that they mostly have the same social and racial groups, and that their change, i.e. violation of that homogeneity contributed to instability and decline in property values.<sup>24</sup>

Unjustified age discrimination is often present in insurance. Such cases were recorded in Romania and the Republic of Serbia.

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Mitrovica 2022, 543. About discrimination in the field of insurance see also: M. Glinčić, „Opravdanost primene polno neutralnih premija osiguranja”, in: *Pravo u funkciji razvoja društva, zbornik radova sa međunarodne naučne konferencije* (ed. D. Mirović), Faculty of Law, University of Priština with temporary headquarters in Kosovska Mitrovica, 383-408.

<sup>24</sup> Discrimination in Insurance Underwriting Guidelines, Race-based premiums, algorithms, and other practices target protected classes by Daniel Thomas Mollenkamp, updated August 30, 2022, <https://www.investopedia.com/insurance-underwriting-guidelines-discrimination-5203311>, 13. 8. 2023.

In Romania, an 80-year-old person who was heavily involved in sports, more precisely hiking, was looking for travel insurance offers and came to the conclusion that all insurance companies impose an age limit up to which an insurance contract can be concluded, regardless of the health condition of the applicant. The applicant stated in his application submitted to the national anti-discrimination body that he took medical tests every year, the results of which were within normal limits. However, despite this, insurance companies generally allowed the conclusion of insurance contracts exclusively for persons under 65 years of age, two insurance companies set the maximum age limit for travel insurance at 85 years, while two companies set the maximum age limit at 70 years. According to the opinion of the competent authority to which the petition was submitted, such an act was discriminatory, because no additional risk assessment was performed.<sup>25</sup>

Certainly with age, the risk of occurrence of certain events such as illness, accident or emergency medical assistance is high, but in order to assess the occurrence of such circumstances, a more detailed analysis by the insurer is necessary even though the company whose conduct was the subject of the complaint considered its conduct to be legitimate because its goal was to keep the degree of risk specific to that product at a reasonable level. Insurance companies justified their actions with the view that additional medical examinations of potential policyholders would represent additional costs for the insurance company, and that providing evidence of health status with a medical certificate would represent additional costs for potential policyholders. Despite this, the competent authority for the prevention of discrimination has taken the position that a certain group of potential policyholders can't be excluded from insurance based on their age without considering additional criteria, such as an analysis of the client's state of health, proof of state of health with a medical certificate or requesting additional guarantees of premium. Risk analysis should be based on an informational database that should be accurate and regularly updated, and all insurance companies should apply the same approach to risk assessment.<sup>26</sup>

By taking into account all relevant parameters when making a decision on insurance conditions, the possibility of a situation like the one that happened in the Republic of Serbia in 2021, which led to the submission of a complaint to the Commissioner for the Protection of Equality, is reduced. Namely, it was about the complaint of the Association of Citizens against the

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<sup>25</sup> Consiliul Național Pentru Combaterea Discriminării, Decision no. 470, 30. 6. 2020. <https://www.cncd.ro/wp-content/uploads/2021/01/Hotarare-470-2020-1.pdf>, 13. 8. 2023.

<sup>26</sup> *Ibid.*

insurance company due to age discrimination in the field of providing travel health insurance services, because the specific insurance company didn't provide travel insurance services to people over 83 years old. As a reason for such action of the insurance company in the complaint statement, it was stated that when preparing the conditions for insuring people during travel and stay abroad, professional services assessed that people over 83 years of age represent a high risk for which there isn't possibility of determining the appropriate price – insurance premiums that would enable long-term business in that type of insurance and the timely fulfilment of assumed obligations for all other insured persons, as well as that based on the risk assessment, the company itself estimated that there is an extremely high risk of death for persons older than the specified age. Despite this, the Commissioner determined that the insurance company is authorized to determine the insurance conditions by which it regulates its business, but that the acts of the insurance company must be harmonized with the Constitution and legal requirements, both those in the field of insurance and other regulations adopted at the national level, including regulations prohibiting discrimination. Namely, according to article 6 of the Law on the Prohibition of Discrimination, it's considered a situation where an individual of a group of persons are placed in a disadvantageous position due to their personal characteristics compared to an individual or group in the same or a similar situation, who don't have that personal characteristic.<sup>27</sup>

The Law on Prohibition of Discrimination stipulates that discrimination on the basis of age is prohibited, as well as that the elderly have the right to dignified living conditions without discrimination, and especially to equal access and protection from neglect in the use of health and other public services. Different treatment on the basis of age isn't discrimination if it's objectively and reasonably justified by a legitimate goal, and in particular by a legitimately established employment policy, the goals of the labor market, additional education and training, professional development, as well as

<sup>27</sup> Opinion of the Commissioner for the Protection of Equality on a complaint due to discrimination in the field of service provisions based on personal characteristics: age, no. 07-00-575/2021-02 from 22. 2. 2022, <https://ravnopravnost.gov.rs/rs/741-21-prituzba-zbog-diskriminacije-u-oblasti-pruzanja-usluga-na-osnovu-licnog-svojsstva-starosno-doba/>, 13. 8. 2023. The Law on the Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, no. 22/2009, 2/2021. According to Article 21, paragraph 3 of the Constitution of the Republic of Serbia, any discrimination, direct or indirect, on any basis, especially on the basis of race, gender, nationality, social origin, birth, religion, political or other belief, property status, culture, language, age and mental or physical disability is prohibited.

if the means of achieving that goal are appropriate and necessary, such as are setting special conditions for employment, performance of work and additional education, i.e. professional training and improvement, including conditions regarding earnings and termination of employment, for youth, the elderly and persons who have an obligation to provide support or care, and with the aim of encouraging their inclusion in the labor market or ensuring their protection, determining the minimum conditions in terms of age, work experience or years of service for access to employment or providing certain advantages in connection with employment, determining the maximum the age limit for filling positions, which is based on requirements related to additional education, i.e. professional training and development for a specific position or on the need for a reasonable length of service before fulfilling the conditions for exercising the right to a pension.<sup>28</sup> However, in the specific case, it wasn't about the existence of a reasonably justified legitimate goal.<sup>29</sup>

In the decision regarding the complaint, the Commissioner was of the opinion that it's indisputable that insurance companies have a legitimate aim to prescribe the terms of insurance contracts in accordance with the Insurance Act and the Obligation Act and to identify, assess and measure the risks to which the insurance company is exposed in its business, as well as that it's legitimate for an insurance company to strive for profit aging and risk protection. However, setting an upper age limit as a condition for providing a service cannot be considered an appropriate and necessary way to achieve that goal.<sup>30</sup>

Therefore, the risk assessment, but also the obligation of the insurance company to fulfil its obligations by responsible risk assumption, can affect the insurance conditions, but they must not exclude the provision of insurance services to a certain group of persons according to some of their characteristics, because such behaviour constitutes discrimination. In the specific case, it was about the provision of a service that is normally offered to an unlimited number of persons and which is designed to satisfy a certain interest of a larger number of entities. Therefore, it should be possible for all persons to conclude a contract on personal insurance during travel and stay abroad without discrimination. Instead, insurance companies have other methods that could achieve a balance between the assessed risk and the possibility of marketing travel life insurance to people over 83 years of age, such

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<sup>28</sup> Article 23, paragraph 1-3 of the Law on Prohibition of Discrimination.

<sup>29</sup> Opinion of the Commissioner for the Protection of Equality on a complaint due to discrimination in the field of service provisions based on personal characteristics: age.

<sup>30</sup> *Ibid.*

as: the client's health certificate or cases covered by travel health insurance and similarly.<sup>31</sup>

There are also authors who believe that private insurance companies shouldn't apply anti-discrimination norms, given that they belong to the private sector, and that anti-discrimination rules apply mainly to the government sector, and that therefore the need to protect the company's portfolio should also be taken into account, insurance, as well as the need for income. Despite this, they believe that insurance companies are so large in terms of their political, economic and legal influence that the same reasoning that could be applied to the relationship between citizens and government is relevant to the relationship between citizens and insurance companies. Insurance companies are often protected from competition, especially from abroad thanks to government measures.<sup>32</sup>

#### **4. Conclusion**

Risk management in insurance/reinsurance companies is a very important component of corporate governance together with the actuarial function, as well as the function of internal audit and business compliance. All the mentioned functions must be independent at the level of the insurance company. However, in the case of small insurance companies, everything can be carried out by one person or organizational unit, except for the internal audit function, which must be independent. The risk management process is a demanding process. It must include a large number of persons with adequate qualifications and experience, and authorized actuaries play a very important role in their assessment. Timely exchange of information between different organizational units at the insurance/reinsurance company level is of key importance for adopting an adequate risk management strategy and taking adequate measures to reduce the possibility of their realization. However, that information must be not only timely, but also reliable. That is why it's of particular importance that all employees within their powers contribute to reduced risks.

Bearing in mind that they are profit organizations, insurance companies, in addition to risk reduction, strive to make a profit. Those two goals are interconnected, because if certain risks are realized, insurance companies will also have certain financial consequences, which in certain cases can

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<sup>31</sup> *Ibid.*

<sup>32</sup> R. Avraham, "Discrimination and Insurance", *Law and Econ Research Paper* E574/2018, 23, 24.

be extremely large. In terms of risk management, the national legislation is largely aligned with the Solvency II Directive, which defines this area in great detail.

However, in the history of insurance, cases of discrimination of certain groups based on their personal characteristics have been recorded, with the justification that the reason for such action is to reduce the possibility of the occurrence of estimated risks for insurance companies. Although in some situations it's necessary to take into account some personal characteristics such as e.g. illness or old age, certain groups can't be denied the possibility of concluding an insurance contract. Cases of discrimination were recorded both in the United States of America and in Romania and the Republic of Serbia. In the first case, it was about discrimination based on ethnic or racial affiliation, while in the other two cases, it was about discrimination based on age. Namely, they were denied the opportunity to conclude a travel insurance contract with certain insurance companies. National bodies that deal with protection against discrimination gave an opinion on the justification of such a procedure. Although the insurance companies whose action was the subject of a complaint that was considered by the competent authorities advocated the position that such behaviour was justified due to the reduction of the estimated business risks, the competent institutions took the position that a certain group based on personal characteristics (in this particular case, age) can't deny the possibility of concluding an insurance contract without analysing some other circumstances (taking health status into account). Therefore, it should be borne in mind that although the risk analysis is primarily based on statistical and financial assessments, it's also necessary to take into account the relevant regulations at the national level that aren't in the field of insurance. In addition, we believe that all opinions and reports on the basis of which risks are identified and assessed and on the basis of which measures are proposed to reduce them should be documented at the internal level. Likewise, we believe that it would be very useful if in all cases where the conditions and tariffs of insurance premiums are determined, and not only when it comes to compulsory insurance, all opinions and reports at the level of the insurance company related to risk management are also documented, and which may be reflected in the conditions or insurance premium tariff. In addition, it would be necessary to include all competent organizational units and employees in the decision-making process regarding insurance conditions, and that such a decision before adoption must also be submitted to approval to the organizational unit responsible for monitoring business compliance.

This is the only way to overcome potential problems that may arise in practice, as was the case with insurance companies in Romania and the Republic of Serbia, for which a complaint was filed with the Commissioner for the Protection of Equality in 2021. Bearing in mind that the above isn't provided for by the relevant regulations in all cases, but only when it comes to compulsory insurance, for now such action depends solely on the conscience of the management and employees of insurance companies.

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### **UPRAVLJANJE RIZICIMA U OSIGURANJU I ZABRANA DISKRIMINACIJE**

#### *Apstrakt*

Upravljanje rizicima u osiguravajućim društvima je veoma važna komponenta korporativnog upravljanja. Na osnovu blagovremene, tačne i adekvatne procene rizika, moguće je preduzeti neophodne mere za njihovo smanjenje ili otklanjanje mogućnosti realizacije, a u cilju održavanja solventosti osiguravajućeg društva i njegovog efikasnog poslovanja. Razumna procena rizika uzimajući u obzir sve relevantne kriterijume predstavlja važan zahtev iz Direktive Solventnost II, a sa kojom je neophodno dodatno uskladiti propise na nacionalnom nivou. Upravljanje rizicima podrazumeva identifikaciju, procenu, predlaganje mera za smanjenje i otklanjanje rizika i izveštavanje nadležnih organa o preduzetim merama. Prilikom procene mera za smanjenje rizika u društvima za osiguranje/reosiguranje trebalo bi uzeti u obzir ne samo interne akte i propise iz oblasti osiguranja, već i opšte akte koji nisu iz te oblasti. Poseban problem u oblasti osiguranja predstavlja primena diskriminatorских kriterijuma uz pozivanje na statističke podatke prilikom određivanja uslova ili tarife premije osiguranja. Međutim, takvo postupanje predstavlja kršenje zabrane diskriminacije koja je predviđena kako međunarodnim, tako i nacionalnim propisima.

U radu najpre ukazujemo na značaj funkcije upravljanja rizicima i usklađenost nacionalnih propisa u tom delu sa Direktivom Solventnost II, a zatim analiziramo slučajeve diskriminacije u



oblasti osiguranja u cilju davanja preporuka za eventualno prevazilaženje takvih situacija na nivou društava za osiguranje/reosiguranje imajući u vidu da isključenje određene grupe iz osiguranja isključivo na osnovu njenog ličnog svojstva predstavlja postupanje suprotno Ustavu i Zakonu o zabrani diskriminacije.

**Ključne reči:** upravljanje rizikom, osiguravajuća društva, procena rizika, zabrana diskriminacije.