

6. ZAKLJUČAK

Analizirani događaji pokazuju da nijedna pravna oblast nije zaštićena od zloupotreba u političke svrhe. U tom smislu, i pravnici koji se bave pravom osiguranja mogu da dođu u situaciju da moraju da se odupru političkoj zloupotrebi. Sa druge strane, ovo što je opisano ukazuje da je i danas zadatak nemačkog sektora osiguranja i nemačkog prava osiguranja da rasvetle postupke za vreme nacionalsocijalizma. Osiguravajuća društva su na to bila primorana usled uticaja spolja, kao

što su to bile preteće zbirne tužbe oštećenih jevrejske vere. Ali osim toga, verovatno su i preduzeća svesna da je upravo u privrednoj oblasti poput sektora osiguranja, koji u velikoj meri zavisi od poverenja, a da je u interesu aktuelnih odnosa sa korisnicima neophodno da se priznaju i tamne strane u vlastitoj istoriji. U svemu tome je pozitivno što velika većina u Nemačkoj bavljenje neprijatnim periodima iz vlastite prošlosti ne gleda kao „prljanje vlastitog gnezda”, već kao neophodan mada i bolan proces, koji predstavlja i odraz sopstvene intelektualne čestitosti.

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Coming to terms with the past: Still a task for the German insurance industry and the German insurance law in the 21st century

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SUMMARY

The article shows that even in the 21st century it is still the task of the German insurance industry and German insurance law to come to terms with their own past during National Socialism. The focus here is particularly on cases in which German insurance companies have enriched themselves with Jewish customers because they have not fulfilled their contractual obligations towards them. On the latter issue an agreement was concluded providing for compensation payments in 2002, when the German insurance companies were faced with class actions of former customers in the USA.

The focus of the work is the misuse of insurance law for discrimination and expropriation of members of the Jewish faith. This subject is examined here on the basis of the insurance law treatment of the *Reichspogromnacht* in 1938. It is shown that on the one hand there was an abuse of the law through the setting of norms which were in contrary to the basic principles of a state governed by law (*Rechtsstaat*). E.g. these norms regulated that the insurance claims of members of the Jewish faith from this event were seized by the state.

However, there was also a manipulation of the law by an interpretation of legal provisions which was not

done *lege artis*, but in order to achieve results which were in line with official politics.

On the one hand, the question arose whether – in cases in which a so-called civil commotion insurance (which covers the damages of riots) had not been conclusively concluded – the insurance companies were obliged to cover damages from the *Reichspogromnacht* since the General Conditions of Insurance excluded a liability in case of riots. However, this argumentation was politically undesirable, since according to the official doctrine no riot or other massive disturbances of public order could happen in the National Socialist state. Therefore, it was argued that the indemnification of the members of the Jews faith by insurance payments constituted a “violation of morality” because, according to this “argumentation”, the destruction during the *Pogromnacht* had the “character of a punishment sanctioned by the state”. In the conclusion it is stated that the described events demonstrate that no legal area is protected from being abused for political purposes. In addition, it is pointed out that the German companies are aware in the meantime that it is necessary not to deny the dark side of their own history. The positive thing about this is that the overwhelming majority in Germany nowadays does not consider dealing with the unpleasant sides of its own past as a “defilement of one’s own nest”, but as a

necessary, albeit painful, process that also reflects one's own intellectual honesty.

Key words: facing with past, night of Pogrom ("cristal night") and insurance, insurance law in Third Reich, discrimination of the jewish in insurance law

LITERATURA (REFERENCES)

Böhle, I. (2003). *Juden können nicht Mitglieder der Kasse sein*. Hamburg: Landeszentrale für politische Bildung. Dostupno na: <http://www.hamburg.de/contentblob/72136/691c775783581dca49272752f60cb7ec/data/ingo-boehle-juden-koennen-nicht-mitglieder-der-kasse-sein-versicherungswirtschaft-und-die-juedischen-versicherten-im-nationalsozialismus-am-beispiel-hamburgs-lzpb-hamburg-2003.pdf>, 10. 6. 2018.

Feldmann, G., D. (2001a). *Die Allianz und die deutsche Versicherungswirtschaft 1933-1945*. München: C.H. Beck.

Feldmann, G. D. (2001b). Zur Geschichte der Allianz in der Zeit des Nationalsozialismus, Referat. Dostupno na: [https://](https://www.allianz.com/.../saobj_221411_allianz_zusammenfassung_feldman_d.doc)

www.allianz.com/.../saobj_221411_allianz_zusammenfassung_feldman_d.doc, 11. 6. 2018.

Feldmann, G. D. (Fall 2002). The German Insurance Business in National Socialist Germany, *GHI Bulletin*, No. 31, 19–33. Dostupno na: https://www.ghi-dc.org/fileadmin/user_upload/GHI_Washington/Publications/Bulletin31/19.pdf, 10. 6. 2018.

Manes, A. (1922). *Versicherungswesen, Zweiter Band: Besondere Versicherungslehre*. Wiesbaden: Springer Fachmedien.

Perels, J. (2009). Mito prevladavanju prošlosti, *Hereticus, Časopis za preispitivanje prošlosti*, VII(1-2), 11–18.

Rüthers, B. (2008). Die unbegrenzte Auslegung. Zum Wandel der Privatrechtsordnung im Nationalsozialismus, *Zeitschrift für öffentliches Recht*, 63(3), 491–493.

Schumacher, O. (11. April 1997). "Braune Schatten. Nach den Schweizer Banken verklagen Überlebende des Holocaust nun auch Europas große Versicherungen", *Die Zeit*. Dostupno na: https://www.zeit.de/1997/16/Braune_Schatten, 11. 6. 2018.