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Međunarodni institut za unifikaciju privatnog prava i ugovorno pravo reosiguranja

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Apstrakt

U okviru Međunarodnog instituta za unifikaciju privatnog prava (UNIDROIT) postojala je još od tridesetih godina dvadesetog veka ideja o radu na instrumentu ugovornog prava reosiguranja. Ipak, konačno ostvarenje ovog projekta desilo se tek 2019. godine objavljivanjem Načela za ugovorno pravo reosiguranja i to u saradnji sa Projektnom grupom. Ovaj harmonizacioni poduhvat poseban je na više načina s obzirom na to da je pored primene specifičnog metoda stvaranja prava preko stavova pravne teorije, došlo i do inovatnog pristupa u upotrebi uspešnog propisa „mekog prava" – Principa UNIDROIT za međunarodne trgovinske ugovore kao *lex generalis* u odnosu na novi usvojeni propis za oblast reosiguranja. Autor analizira odnos dva pomenuta akta uopšteno, ali i s obzirom na krizu uzrokovanu pandemijom virusa Kovid-19. Takođe, analizira doprinos Načela za ugovorno pravo reosiguranja pravnoj sigurnosti i karakterističnu ulogu koju Međunarodni institut za unifikaciju privatnog prava ima u procesima harmonizacije prava, te uže u procesu harmonizacije ugovornog prava reosiguranja.

Ključne reči: Međunarodni institut za unifikaciju privatnog prava, reosiguranje, Principi ugovornog prava reosiguranja, harmonizacija prava, Principi UNIDROIT za međunarodne trgovinske ugovore

1. UVOD

Međunarodni institut za unifikaciju privatnog prava (*The International Institute for the Unification of Private Law*, dalje: UNIDROIT) je nezavisna međuvladina organizacija i agencija za formulisanje osnovana 1926. godine sa sedištem u Rimu. Svrha UNIDROIT je proučavanje potreba i metoda za modernizaciju, harmonizaciju i koordinaciju privatnog, a posebno trgovinskog prava između država i grupa država i formulisanje jedinstvenih pravnih instrumenata, principa i pravila za postizanje tih ciljeva.

Države stiču članstvo u UNIDROIT pristupanjem Statutu ove organizacije, a trenutno taj status ima 65 država koje predstavljaju niz različitih pravnih, ekonomskih, kulturnih i političkih sistema sa pet kontinenata (Republika Srbija je članica od 2002. godine). Poslednje članice su 2023. godine postale Singapur i Mongolija. UNIDROIT ima troslojnu strukturu, koju čine Sekretarijat, Upravni savet i Generalna skupština, a zvanični jezici su engleski, francuski, nemački, italijanski i španski (UNIDROIT, n/a/a).

U okviru UNIDROIT je tokom godina pripremljeno preko sedamdeset studija i nacrta. Mnogi od njih su rezultirali međunarodnim instrumentima, uključujući međunarodne konvencije, modele zakona, principe i vodiče. Rad UNIDROIT je takođe poslužio kao osnova za niz međunarodnih instrumenata usvojenih pod okriljem drugih međunarodnih organizacija, od kojih je nekoliko već na snazi.

Ipak, među najznačajnijim dostignućima ove organizacije autor ističe Principe UNIDROIT za međunarodne trgovinske ugovore (UNIDROIT, 2016 dalje u tekstu: Principi UNIDROIT) i posmatra njihov uticaj, te podršku samog UNIDROIT radu Projektne grupe za Načela ugovornog prava reosiguranja (PRICL Project Group, 2019, dalje u tekstu: Projektna grupa za NUPR) koji je 2019. godine rezultirao objavljivanjem Načela ugovornog prava reosiguranja (PRICL Project Group, 2019, dalje u tekstu: NUPR).

2. MEĐUNARODNI INSTITUT ZA UNIFIKACIJU PRIVATNOG PRAVA U SVOJSTVU AGENCIJE ZA FORMULISANJE

Međunarodni institut za unifikaciju privatnog prava kao međunarodna organizacija učestvuje u stvaranju velikog broja propisa. U tom smislu deluje kao tzv.

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agencija za formulisanje, odnosno ostvaruje poseban doprinos približavanju pojedinih pravnih sistema kroz angažovanje na legislativnim projektima koji su namenjeni međunarodnoj poslovnoj zajednici (Mijatović, 2018a). Naime, u uslovima intenzivnog procesa globalizacije i internacionalizacije sve je veća potreba za stvaranjem pravila koja će imati kohezivni efekat. Legislativni impulsi za stvaranje jednoobraznih propisa baziraju se na potrebi za smanjenjem uticaja državnih granica na obavljanje poslovnih transakcija.

Ipak, s obzirom na to da je opšteprihvaćeno mišljenje da je međunarodnom pravnom sistemu slaba tačka pitanje sprovođenja propisa, odnosno njihove prinudnosti (Guzman, Meyer, 2010, 183), te da na međunarodnom nivou nije jednostavno postići konsenzus povodom nekog pravnog pitanja, u okviru mogućnosti i ograničavajućeg raspona nadležnosti međunarodnih organizacija, sve više se radi na formulisanju i plasiranju akata koji imaju samo karakter preporuka, ne i mogućnost da budu formalno-pravno sankcionisana u slučaju nesaglasnog ponašanja adresata. U takvim okolnostima, agencije za formulisanje koriste razne pravne instrumente na raspolaganju – od onih tradicionalnih, izvora najviše pravne snage (pre svega međunarodnih konvencija), preko alternativnih, nesankcionisanih izvora niže pravne snage (na primer, načela, vodiči). Instrumenti koje izrađuje UNIDROIT, u skladu sa svojom međuvladinom strukturom, zaista često poprime oblik međunarodnih konvencija, osmišljenih da se automatski primenjuju u pravu jedne države nakon ratifikacije. Međutim, alternativni oblici harmonizacije prava postali su sve popularniji u oblastima u kojima se ne smatra da je obavezujući instrument od suštinskog značaja. Takve alternative mogu uključivati modele zakona koje države mogu uzeti u obzir prilikom izrade domaćeg zakonodavstva ili opšte principe za koje sudije, arbitri i ugovorne strane mogu slobodno odlučiti da li će ih koristiti. Tamo gde se smatra da neko pitanje nije „sazrelo" za uređenje jedinstvenim pravilima, alternativa se sastoji u korišćenju pravnih vodiča i sličnih instrumenata „mekog prava" (na primer, o novim poslovnim tehnikama ili vrstama transakcija). Uopšteno govoreći, rešenja najviše pravne snage su potrebna tamo gde obim predloženih pravila prevazilazi čisto ugovorne odnose i gde su u pitanju interesi trećih strana ili javni interesi (UNIDROIT, n/a/b).

Dakle, u svojstvu agencije za formulisanje UNIDROIT određujemo kao organizaciju koja stvara usaglašavajuću prekograničnu normativu, gde se izrazom „formulisanje" apostrofira značaj procesa formulacije pravnih akata. Termin, istina, upućuje na samo jedan aspekt aktivnosti organizacije, ali prikladno pokriva funkciju UNIDROIT i sve veći broj drugih međunarodnih subjektata koji stvaraju pravo (Mijatović, 2018a, 170). Pojedini teoretičari pod ovim pojmom podrazumevaju svaku organizaciju (nacionalnu, regionalnu ili međunarodnu) kojoj je delegirana ili je bar uključena u oblikovanje međunarodne trgovinske politike i transakcija (Mistelis, 2001, 3), bez obizira na to kojim pravnim aktima se koriste. U vezi sa navedenim, teoretičari primećuju proces umnožavanja „proizvođača" prava, izvora prava i privatizacije pravnih režima (Vogenauer, 2006, 879).

Štaviše, sve veća uloga agencija za formulisanje može se smatrati odgovorom na složenost predmeta predviđenih za međunarodnu regulaciju i na potrebu da se osigura normativna fleksibilnost koja se retko postiže kroz konzervativne legislativne procese (Mijatović, 2018a, 171). Koliki je uticaj pravila koja se stvaraju u okviru ovih organizacija pokazuju i teorijske klasifikacije koje govore o nacionalnom pravu, međunarodnom pravu i pravu agencija za formulisanje kao indidvidualnim kategorijama pravnih izvora, ključnih za pravnu (r)evoluciju 20. i 21. veka (Mistelis, 2001, 1). Proces privatne unifikacije međunarodnog prava od profesionalnih nevladinih organizacija već se prepoznaje kao dominantan (Vukadinović, 2012, 347). Ističemo, takođe, da se autonomna međunarodna kodifikacija prava, čiji su glavni protagonisti agencije za formulisanje i razne ekspertske grupe, sprovodi na osnovu autonomije volje zainteresovanih subjekata da bi se postigla veća jednoobraznost relevantnih pravila, bez formalne unifikacije državnog prava (Mijatović, 2018a, 172).

2. 1. O pristupu harmonizaciji prava preko stavova pravne teorije

Pristup harmonizaciji prava preko stavova pravne teorije zastupljen je u radu agencija za formulisanje i raznih studijskih grupa. Najbolje se poima ukoliko se posmatra u korelaciji sa klasičnim harmonizacionim metodama. Tradicionalni vid harmonizacije prava podrazumeva da se pravni instrumenti usvajaju od strane nadležnih (državnih) organa i nakon čega se na osnovu centralistički shvaćenog autoriteta i hijerarhije „nalaže" adresatima da se ponašaju u skladu sa novousvojenim pravilima ili im preti primena predviđenih sankcija. Metoda se odnosi, na primer, na donošenje zakona na nacionalnom nivou, usvajanje i posledice usvajanja uredbi i direktiva kao sekundarnih izvora prava na nivou Evropske unije, te na usvajanje i ratifikovanje međunarodnih konvencija na međunarodnom nivou koji jednom potvrđeni postaju deo unutrašnjeg nacionalnog poretka, tj. deo pozitivnog prava.

Sa druge strane, postoji i alternativni, akademski, necentralistički metod harmonizacije prava koji je

posebno korišćen u okviru međunarodnih organizacija poput UNIDROIT (Mijatović, 2018b), ili u okviru raznih grupacija koje su posebno aktivne u okviru harmonizacionih projekata na nivou Evropske unije. Primenom legislativnog metoda najistaknutiji stručnjaci iz pojedinih oblasti prava neopterećeni političkim diktatom odnosno agendama zemalja iz kojih dolaze, rade na formulisanju propisa koji će imati efekat usklađivanja pojedinih pravnih oblasti. Takođe je od značaja napomenuti da metod harmonizacije propisa preko stavova pravne teorije, pre svega, podrazumeva upotrebu uporedno-pravnog metoda uz pokušaje njegovih predstavnika da pronađu najbolje pravno rešenje za neko pitanje, a koje može poticati iz kako evrokontinetalnog sistema, tako i iz anglosaksonog sistema i njihovih podgrupa. Na taj način, jednom objavljeni tekstovi instrumenata zasnivaju perspektivu svoje primene na osnovu snage argumenata koja je izražena u kreativnim i najmodernijim pravnim rešenjima za datu oblast (a ne samo onima koji se baziraju na kriterijumu postizanja kompromisa među državama), kao i na autoritetu koji uživaju njihovi stvaraoci. S obzirom na to da „poreklo" propisa ne proističe iz osnova koju imaju npr. parlamenti, već da proističu iz delatnosti istaknutih predstavnika pravne nauke i pravnika praktičara, ovi propisi ne mogu biti ni tradicionalno zaštićeni sistemom prinude i sankcije, već se samo preporučuju, odnosno opcioni su prirode i spadaju u sistem mekih pravnih izvora. Iako su samo opcioni instrumenti, ostvaruju izuzetne rezultate u praksi. U pogledu aktivnosti UNIDROIT, ali i generalno posmatrajući vrednosti harmonizujućih efekata mekih propisa, Principi UNIDROIT za međunarodne trgovinske ugovore se pokazuju jednim od najreprezentativnijih primera, o čemu će biti više reči u daljem izlaganju.

3. PRINCIPI UNIDROIT ZA MEĐUNARODNE TRGOVINSKE UGOVORE

UNIDROIT je tokom postojanja koje je dugo skoro jedan ceo vek ostvario izuzetne rezultate u više oblasti na primer, međunarodne prodaje i zastupanja, poslova franšizinga, lizinga, špedicije, bankarskih poslova, obezbeđenja potraživanja itd.[1] Neki od poslednjih i aktuelnih projekata na harmonizaciji prava u UNIDROIT su na primer: Nacrt UNIDROIT principa za digitalnu imovinu i privatno pravo iz 2023. godine (UNIDROIT, 2023a) i Model zakon o faktoringu (UNIDROIT, 2023b) koji su takođe objavljeni 2023. godine, dok je u toku rad na Projektu UNIDROIT za međunarodne investicione ugovore (UNIDROIT, n/a/c).

Ipak, donošenjem Principa UNIDROIT-a za međunarodne trgovinske ugovore UNIDROIT je ostvario najveći doprinos procesu harmonizacije cele oblasti trgovinskog prava. Štaviše, ovim aktom stvorena je nelegislativna kodifikacija opšteg dela prava međunarodnih trgovinskih ugovora, te se ovaj instrument određuje kao najznačajniji akt mekog prava u opštem ugovornom pravu (Bonell, 2018, 15) i kao determinišući faktor novog sistema *lex mercatoria*.

Principi UNIDROIT objavljeni su 1994. godine, te su dopunjavani i menjani 2004. i 2010. godine, dok je poslednje i aktuelno izdanje ono iz 2016. godine. Principi UNIDROIT mogu se primenjivati u svim državama sveta, na sve vrste trgovinskih ugovora (pa tako i na ugovore o osiguranju i reosiguranju) i koriste opšte termine poverioca i dužnika. Od značaja je primetiti da se ovim propisom uređuju i neka od pitanja koja su uobičajeno rezervisana za imperativne norme. Takav je slučaj sa institutom zastarelosti, što može biti od posebnog značaja u oblasti reosiguranja jer se, kako je na to već ukazivano u teoriji (Jovanović, 2022), ne mogu primenjivati analogno pravila koja važe za ugovore o osiguranju. Upravo u vezi sa Principima UNIDROIT realizovana je i aktivnost UNIDROIT u oblasti ugovornog prava reosiguranja koja je analizirana u nastavku rada.

4. NAČELA UGOVORNOG PRAVA REOSIGURANJA

4. 1. Legislativni pristup (ne)uređenju materije ugovornog prava reosiguranja

Posao reosiguranja najčešće ima međunarodni karakter, a cilj reosiguranja je da apsorbuje posebno teške udarce u imovini primarnog osiguravača kao što su velike pojedinačne štete ili akumulacija velikog broja šteta usled jednog osiguranog događaja ili u datoj računovodstvenoj godini (Stettler, Eugster, Kuhn, 2005, 22). Pa ipak, ugovorno pravo reosiguranja tipično podleže minimalnom regulatornom okviru, odnosno tek je „ovlaš" regulisano (Mendelowitz, Merkin, 2023, 165). Naime, primenom komparativnog metoda uviđa se da se zakonom generalno ne reguliše ugovor o reosiguranju, ili se to čini na deklarativan i uopšten način, bez detaljnije razrade materijalno-pravnih odredbi (Jovanović,

[1] Neki od propisa koje u ovom smislu navodimo su: Konvencija o zastupanju u međunarodnoj prodaji robe iz 1983. godine, Konvencija o međunarodnom finansijskom lizingu iz 1988. godine, Konvencija o međunarodnom faktoringu i Konvencija o međunarodnom finansijskom lizingu iz 1988. godine, Vodič za sastavljanje ugovora o međunarodnom franšizingu iz 1998. godine, Model zakon o lizingu iz 2008. godine itd.

2007, 24). Odnosno, kako se uočava, pojedini sistemi ne predviđaju suštinski koherentan i sveobuhvatan korpus zakonske ili sudske prakse o ugovorima o reosiguranju. Sve što obezbeđuju je skup pravila o opštem ugovornom pravu, te se ne predviđa standardno pravilo na osnovu kojeg bi se određena formulacija u ugovoru o reosiguranju mogla tumačiti (Beleška o Načelima ugovornog prava reosiguranja i Kovid-19 zdravstvenoj krizi, 2023, 7). Zbog svega navedenog se s opravdanjem govori o stanju zakonske neregulisanosti ugovora o reosiguranju (Jovanović, 2021, 38).

Pomenuto izostajanje ili tek površno uređivanje ove materije proizilazi iz posebnih karakteristika delatnosti reosiguranja, a pre svega činjenice da ugovor o reosiguranju sklapaju stručnjaci, odnosno zastupnici pravnih lica koja imaju dostatna profesionalna znanja, te iskustvo koje nije potrebno uobličavati, pa ni ograničavati zakonskim propisima. Ukratko, ugovor o reosiguranju se shvata kao komercijalna transakcija između sofisticiranih kompanija vođena kapitalom i krajnjom dobrom verom. Ugovori o reosiguranju smatraju se dogovorima zasnovanim na časti i odnosu poverenja (Johnson, 2023). Stoga je u ovoj oblasti autonomija volje ugovornih strana, kao osnovno načelo ugovornog prava, izražena u potpunosti. Princip dobre vere u svom punom obimu je vodeći princip reosiguranja.

Nadalje, ugovorne strane u ovom odnosu s obzirom na njihove pomenute kvalifikacije nije moguće, niti potrebno posmatrati u svojstvu potrošača kojima se, svakako, duguje i dodeljuje posebna zakonska zaštita. Dakle, nepoimanje ugovarača reosiguranja kao strana kojima je potrebna vrsta zaštite koja se pruža potrošačima još je jedan razlog zašto je ova oblast ugovora tek marginalno ili nikako uređena.

Ipak, događaji od velikog globalnog značaja po privredne tokove, pa i tokove reosiguranja, poput finansijske krize 2007. godine, ali i skorije krize izazvane pandemijom virusa Kovid-19 uslovile su promenu u legislativnom pristupu i perspektivi u odnosu na ovu oblast. Inicijativa za određenijim regulatornim pristupom proistekla je iz delimične prevaziđenosti i preispitivanja tradicionalnog suzdržanog uređivanja ove oblasti i iz potrebe da se uspostavi jasna terminologija i standardizacija izraza i značenja pravnih instituta. Kao moguće i u tom momentu izvodljivo rešenje viđeno je formulisanje Načela ugovornog prava reosiguranja.

4. 2. Rad na donošenju Načela ugovornog prava reosiguranja

Nakon izbijanja Svetske finansijske krize 2007. godine i donošenja Direktive o solventnosti II 2009. godine, došlo je do većeg interesovanja za ekonomsku vrednost reosiguravajuće zaštite i pravnu sigurnost zbog porasta sporova između osiguravača i reosiguravača u okolnostima izmenjenih tržišnih uslova i sve većeg broja propisa (Bork, Wandt, 2019, 78 prema Jovanović, Uzelac, 2021, 39). Prevashodno, veći broj sporova doveo je do želje za većom izvesnošću u pravnom tumačenju ugovora o reosiguranju. Formulacije ugovora o reosiguranju nisu regulisane nikakvim sveobuhvatnim propisima, zbog prethodno navedenih karakteristika ali i zbog transnacionalne prirode većine poslova reosiguranja. Pored toga, ugovori o reosiguranju su se istorijski tumačili primenom samo opštih principa ugovornog prava i principa dobre vere sa velikim naglaskom na praksi i običajima stranaka. Ovo je dovelo do značajne neizvesnosti u vezi sa sporovima oko reosiguranja. Upravo zbog međunarodnog karaktera reosiguranja, ima smisla i preporuke za uređenje ovog pitanja započeti sa nadnacionalnog nivoa, u ovom slučaju aktivnostima Projektne grupe za NUPR i UNIDROIT. Štaviše, u okviru UNIDROIT ideja o radu na ugovornom pravu reosiguranja postojala je od tridesetih godina dvadesetog veka, ali nije realizovana usled izbijanja Drugog svetskog rata.

Projektna grupa za Načela ugovornog prava reosiguranja osnovana je 2016. godine kao nadnacionalna, akademska skupina sa agendom harmonizacije prava putem pravne teorije u ugovornoj oblasti reosiguranja. Predstavlja zajednički poduhvat Univerziteta u Cirihu, Univerziteta Frankfurta na Majni i Univerziteta u Beču, čiji su glavni koordinatori redom: profesor Helmut Hajs, profesor Martin Šauer i profesor Manfred Vandt. Rad Projektne grupe za NUPR finansiran je od strane Švajcarske nacionalne naučne fondacije, Nemačke istraživačke fondacije i Austrijskog naučnog fonda (Mrkšić, Mijatović, 2021, 365). Projekat NUPR imao je za cilj da industriji reosiguranja obezbedi jedinstvena pravila mekog prava koja regulišu ugovorno pravo u ovoj delatnosti, a koja strane mogu izabrati kao merodavno. Kako su predstavnici Projektne grupe za NUPR istakli, ideje koje su u osnovi NUPR-a mogu se uporediti sa načelima izmena i dopuna koje u SAD izdaje Američki pravni institut. Naime, ovi instumenti služe pojašnjavanju i pojednostavljenju primene prava, boljem prilagođavanju prava društvenim potrebama i podsticanju daljeg naučnog rada u oblasti prava (Heiss, 2020).

Ključni partner Projektne grupe za NUPR u izradi ovog propisa „mekog prava" bio je UNIDROIT koji je uključio NUPR u svoj program rada u periodu 2017-2019. godine (isto se desilo i u periodu 2019-2022. godine nakon objavljivanja ovog propisa). Naime, s obzirom na to da NUPR pretpostavlja postojanje i korišćenje seta pravila opšteg dela ugovornog prava, ume-

sto da se pristupa njihovoj izradi i formulisanju, NUPR u ovom pogledu upućuje na primenu Principa UNIDROIT tako da ova dva propisa moraju shvatati kao jedinstven set pravila kojim se reguliše ugovorno pravo reosiguranja. Time je saradnja UNIDROIT i Projektne grupe za NUPR sa „redovne" saradnje u vidu davanja doprinosa pri formulisanju predmetnih pravila, prešla na jedinstveni slučaj promovisanja zajedničke, paketne primene dva propisa „mekog prava" (Mrkšić, Mijatović, 2021, 366).

NUPR su objavljeni kao privatna kodifikacija u vidu izmena i dopuna ugovornog prava reosiguranja 2019. godine. Imaju za cilj da unesu sigurnost u ugovore o reosiguranju poboljšanjem formulacija i razvojem široko prihvaćenih pravila tumačenja (Witthoff, 2020, 57; Cerini, 2020). NUPR je razvijen s ciljem snabdevanja tržišta reosiguranja transnacionalnim uniformnim pravilima „mekog prava." Perspektiva njihove primene vidi se u postizanju veće transparentnosti i izvesnosti u sektoru koji je pre svega određen individualnim ugovorima i koji je poznat po manjku pravne „opipljivosti" (*The Faculty of Law at Johann Wolfgang Goethe-University*). Posebno se preporučuje primena ovog instrumenta u pogledu režima pravnih lekova koji su na raspolaganju za kršenje ugovora i pitanje (ne)otkrivanja podataka (Kuitunen, 2020, 45).

NUPR sadrži pet poglavlja. U prvom poglavlju se nalaze generalne odredbe. U drugom poglavlju regulišu se obaveze ugovornih strana (reosiguravača i reosiguranika). Sledeće poglavlje bavi se pravima ugovornih strana. U četvrtom poglavlju uređuje se alokacija šteta, a u petom akumulacija šteta. Takođe, u okviru NUPR posvećena je pažnja i definisanju problematičnih termina poput „slučaja", s obzirom na to da postoje značajna razmimoilaženja u tumačenju ovih pojmova od jednog zakonodavstva do drugog i kao i među teoretičarima prava (Mrkšić, Mijatović, 2023, 74).

NUPR će se primeniti u slučaju da se ugovorne strane odluče da odredbe ovog instrumenta inkorporišu u sam ugovor o reosiguranju ili ukoliko se ugovornom klauzulom pozovu na NUPR kao merodavni set pravila. Na ovaj način se manifestuje funkcija NUPR kao opcionog instrumenta.

Drugo izdanje ovog instrumenta očekuje se u 2024. godini i Projektna grupa za NUPR sarađuje po ustaljem obrascu sa UNIDROIT u naporu da se ostvari ovaj cilj.

4. 3. Odnos Principa UNIDROIT za međunarodne trgovinske ugovore i Načela ugovornog prava reosiguranja

Početna radna koncepcija Projektne grupe za NUPR i UNIDROIT bila je zasnovana na činjenici da će pravila specifična za reosiguranje moći da pruže pravnu sigurnost samo ako se zasnivaju na jedinstvenom skupu opštih pravila ugovora. Takvo opšte ugovorno pravo je prema zajedničkom mišljenju postavljeno u Principima UNIDROIT. Tako je ovaj propis na veoma originalan način poslužio kao legislativni uzor za NUPR, kako u materijalnom smislu, tako i u formalnom i metodološkom pogledu. U kontekstu analize koju autor sprovodi, najvažnije je to što su stvaraoci NUPR-a uvažili postojanje i prednosti Principa UNIDROIT, te u pogledu pravila opšteg dela ugovornog prava upućuju na njihovu primenu u svojstvu *lex generalis*. Stoga ova dva instrumenta mekog prava čine jedinstven skup (mekih) pravila kojima se reguliše ugovorno pravo reosiguranja. Konkretnije, u skladu sa članom 1.1.2 NUPR-a, pitanja koja nisu rešena NUPR-om će se rešavati u skladu sa Principima UNIDROIT (Mrkšić, Mijatović, 2023). Tako, izbor stranaka u korist NUPR-a će, u isto vreme, predstavljati izbor u korist Principa UNIDROIT. Dok se NUPR bavi specifičnim pitanjima ugovornog prava za reosiguranje, Principi UNIDROIT regulišu opšta pitanja ugovornog prava, kao što su zaključenje i tumačenje ugovora. Autori NUPR-a se nadaju da će kombinovanje izbora u korist Principa UNIDROIT i NUPR-a kao prava primenjivog na ugovor o reosiguranju postati atraktivna opcija (PRICL, Introduction, Uniform rules of general contract law, 6-7).

Odnos ova dva instrumenta i saradnja Projektne grupe za NUPR i UNIDROIT su došli do posebnog izražaja tokom i nakon krize izazvane pandemijom virusa Kovid-19. Naime, procenjeni gubici među velikim kompanijama za osiguranje i reosiguranje koji su u vezi sa pandemijom su dostigli oko 37 milijardi dolara samo do juna 2021. godine (Steve Evans Ltd. 2021). Mentalitet rukovanja koji se tradicionalno vezuje za reosiguranje pokazao se manjkavim u kontekstu povećanog broja sporova. Kako se na primer ističe, slučajevi arbitraža u oblasti reosiguranja u Norveškoj nisu česta pojava, pa ipak u 2022. godini pokrenuta su dva slučaja. Oba su se ticala mogućnosti ispunjenja ugovornih obaveza u pogledu okolnosti vezanih za virus, u slučajevima kada se ugovorom strane čak inicijalno nisu ni pozivale na primenu NUPR-a kao merodavnog prava. Ipak, NUPR je svoju upotrebnu funkciju pokazao kao vrednosni orijentir i izraz običaja ugovornog prava reosiguranja kada se postavilo pitanje slažu li se odredbe norveškog (i engleskog) prava sa međunarodnim običajima u ovoj oblasti. Došlo se do zaključka da u posmatranim aspektima norveška rešenja jesu u skladu sa međunarodnim običajima ugovornog prava reosiguranja koji su iskazani u NUPR-u (Meidell, 2022).

Nadalje, Sekreterijat UNIDROIT je u julu 2020. godine izdao Belešku o Principima UNIDROIT i zdrav-

stvenoj krizi Kovid-19 (UNIDROIT, 2020). U februaru 2023. godine, a po ugledu na ovaj model UNIDROIT je zajednički sa Projektnom grupom za NUPR izdao Belešku o NUPR i zdravstvenoj krizi Kovid-19 (UNIDROIT, 2023c). Autori ovog dokumenta su se fokusirali na to da razmatre potencijalni odgovor na COVID-19 krizu u vezi sa ugovorima koji su regulisani NUPR-om. Stoga je ova analiza, prvo ukazala na značaj odredbi Principa UNIDROIT o promenjenim okolnostima i višoj sili u kontekstu reosiguranja. Prema stavovima izraženim u navedenim instrumentima, odredbe Principa UNIDROIT koje se tiču promenjenih okolnosti i više sile pokazuju se izuzetno upotrebljivim u navedenim okolnostima. Štaviše, primena ovih članova dokazala je prethodan opis prema kome se radi o zlatnom regulatornom standardu koji rezonuje i sa rešenjima u pravnim sistemima civilnog prava i prava *common law*.

5. ZAKLJUČAK

Međunarodni institut za unifikaciju privatnog prava ostvario je tokom svog uskoro stogodišnjeg delovanja u svojstvu agencije za formulisanje rezulate od izuzetnog značaja za usklađivanje raznih oblasti prava. Takođe, rad ove organizacije korišćen je kao platforma za brojne projekte u kojima su stavovi pravne teorije bili glavni harmonizacioni metoda i projekte u saradnji sa drugim organizacijama i studijskim grupama. Tokom rada u heterogenim oblastima u okviru ove organizacije korišćeni su pravni instrumenti različitih vidova, od klasičnih međunarodnih konvencija, jednoobraznih zakona, preko model zakona i principa, odnosno načela. Najpoznatiji propis ove organizacije su Principi UNIDROIT za međunarodne trgovinske ugovore čije je poslednje izdanje postalo dostupno javnostu 2016. godine. Upravo u vezi sa ovim opcionim propisom mekog prava uspostavljena je saradnja sa Projektnom grupom za NUPR koja je 2019. godine iznedrila Načela ugovornog prava reosiguranja. Time je konačno realizovana zamisao koja je postojala u UNIDROIT još 30-ih godina dvadesetog veka da se ostvari doprinos harmonizaciji ugovornog prava osiguranja. Naime, pokušala se nadomestiti praznina u (ne)uređenosti ugovornog prava reosiguranja ili pak pružanje sredstva za tumačenje i nadogradnju postojećeg skromnog regulatornog okvira kakav je tradicionalno i zbog specifičnosti reosiguranja bio onaj koji se tiče ove oblasti.

Stvaraoci NUPR-a uvažili su postojanje i prednosti Principa UNIDROIT, te u pogledu pravila opšteg dela ugovornog prava upućuju na njihovu primenu u svojstvu *lex generalis*. Stoga ova dva instrumenta mekog prava čine jedinstven skup (mekih) pravila kojima se reguliše ugovorno pravo reosiguranja. Takođe, rad na NUPR-u se ne smatra završenim, već se do kraja 2024. godine očekuje drugo izdanje ovog instrumenta.

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Abstract

Within the International Institute for the Unification of Private Law (UNIDROIT), the idea of working on an instrument of reinsurance contract law existed since the 30's in the twentieth century. However, the final realization of this project happened only in 2019 with the publication of the Principles of Reinsurance Contract Law and in cooperation with the so-called PRICL Project Group. This harmonization endeavor is special in many ways, considering that in addition to the application of a specific bottom-up method of law creation, there was also an innovative approach in the use of a successful soft law regulation - the UNIDROIT Principles for International Commercial Contracts as *lex generalis* in relation to the new adopted regulation for the field of reinsurance. The author analyzes the relationship between the two mentioned acts in general, but also regarding the crisis caused by the COVID-19 virus pandemic. The paper also analyzes the contribution of the Principles of Reinsurance Contract Law to legal certainty and the characteristic role that the International Institute for the Unification of Private Law plays in the process of legal harmonization, and more specifically in the process of reinsurance contract law harmonization.

Key words: International Institute for Private Law unification, reinsurance, Principles of Reinsurance Contract Law, harmonization of law, UNIDROIT Principles for International Commercial Contracts

1. INTRODUCTION

The International Institute for the Unification of Private Law (hereinafter: UNIDROIT) is an independent intergovernmental organization and formulating agency founded in 1926 with headquarters in Rome. The purpose of UNIDROIT is to study the needs and methods for modernization, harmonization and coordination of private, and especially commercial law between states and groups of states and to formulate unique legal instruments, principles and rules to achieve these goals.

Countries gain membership in UNIDROIT by acceding to the Statute of this organization, and currently 65 countries have that status, representing a number of different legal, economic, cultural and political systems from five continents (the Republic of Serbia has been a member since 2002). Singapore and Mongolia became the last members in 2023. UNIDROIT has a three-tiered structure, consisting of the Secretariat, the Governing Council and the General Assembly, and the official languages are English, French, German, Italian and Spanish (UNIDROIT, n/a/a).

Over seventy studies and drafts have been prepared within UNIDROIT over the years. Many of these have resulted in international instruments, including international conventions, model laws, principles and guidelines. The work of UNIDROIT has also served as the basis for a number of international instruments adopted under the auspices of other international organizations, several of which are already in force.

However, among the most significant achievements of this organization, the author highlights the UNIDROIT Principles for International Commercial Contracts (UNIDROIT, 2016 hereinafter: UNIDROIT Principles) and observes their impact, as well as UNIDROIT's own support for the work of the Project Group for the Principles of Reinsurance Contract Law (hereinafter: PRICL Project Group) which in 2019 resulted in the publication of the Principles of Reinsurance Contract Law (hereinafter: PRICL).

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2. INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW AS FORMULATING AGENCY

The International Institute for the Unification of Private Law as an international organization participates in the creation of many regulations. In that sense, it acts as a so-called formulating agency, i.e. it makes a special contribution to the convergence of certain legal systems through engagement in legislative projects intended for the international business community (Mijatović, 2018a). Namely, in the conditions of the intensive process of globalization and internationalization, there is an increasing need to create rules that will have a cohesive effect. Legislative impulses to create uniform regulations are based on the need to reduce the influence of state borders on the performance of business transactions.

However, considering that the generally accepted opinion is that the weak point of the international legal system is the issue of implementing regulations, i.e. their enforcement (Guzman, Meyer, 2010, 183), and that at the international level it is not easy to reach a consensus on a legal issue, within the limiting range of competence of international organizations, more and more work is being done on the formulation and placement of acts that have only the character of recommendations, not the possibility of being formally and legally sanctioned in case of non-compliant behavior of the addressees. In such circumstances, formulating agencies use various legal instruments at their disposal - from those traditional, sources of the highest legal force (primarily international conventions), through alternative, non-sanctioned sources of lower legal force (for example, principles, guides). The instruments drawn up by UNIDROIT, in accordance with its intergovernmental structure, indeed often take the form of international conventions, designed to be automatically applied in the law of a state upon ratification. However, alternative forms of legal harmonization have become increasingly popular in areas where a binding instrument is not considered essential. Such alternatives may include model laws that states can consider when drafting domestic legislation or general principles that judges, arbitrators and contracting parties are free to decide whether to use. Where an issue is considered not "ripe" for regulation by uniform rules, the alternative is to use legal guides and similar instruments of "soft law" (for example, on new business techniques or types of transactions). In general, solutions of the highest legal force are required where the scope of the proposed rules goes beyond purely contractual relations and where the interests of third parties or public interests are at stake (UNIDROIT, n/a/b).

Therefore, in the capacity of the formulating agency, we define UNIDROIT as an organization that creates harmonized cross-border norms, where the term "formulation" apostrophizes the importance of the process of formulation of legal acts. The term, in truth, refers to only one aspect of the organization's activities, but it aptly covers the function of UNIDROIT and the growing number of other international entities that create law (Mijatović, 2018a, 170). Some theoreticians mean by this term any organization (national, regional or international) to which it is delegated or at least is involved in shaping international trade policy and transactions (Mistelis, 2001, 3), regardless of which legal acts are used. In connection with the above, theorists note the process of multiplication of "producers" of law, sources of law and privatization of legal regimes (Wogenauer, 2006, 879).

Moreover, the increasing role of formulating agencies can be considered a response to the complexity of the subjects envisaged for international regulation and to the need to ensure normative flexibility that is rarely achieved through conservative legislative processes (Mijatović, 2018a, 171). The influence of the rules created within these organizations is shown by the theoretical classifications that speak of national law, international law and the law of formulating agencies as individual categories of legal sources, key to the legal (r)evolution of the 20th and 21st centuries (Mistelis, 2001, 1). The process of private unification of international law by professional non-governmental organizations is already recognized as dominant (Vukadinović, 2012, 347). We also emphasize that the autonomous international codification of law, whose main protagonists are formulating agencies and various expert groups, is implemented based on the autonomy of the will of interested subjects in order to achieve greater uniformity of relevant rules, without formal unification of state law (Mijatović, 2018a, 172).

2. 1. On the approach to the harmonization of law through the positions of legal theory

The approach to the harmonization of law through the positions of legal theory is represented in the work of formulating agencies and various study groups. It is best understood if viewed in correlation with classical harmonization methods. The traditional form of legal harmonization implies that legal instruments are adopted by the competent (state) bodies, after which,

on the basis of a centrally understood authority and hierarchy, the addressees are "ordered" to behave in accordance with the newly adopted rules, or they are threatened with the application of the foreseen sanctions. The method refers, for example, to the adoption of laws at the national level, the adoption and consequences of the adoption of regulations and directives as secondary sources of law at the level of the European Union, and the adoption and ratification of international conventions at the international level, which once confirmed become part of the internal national order, i.e. . part of positive law.

On the other hand, there is also an alternative, academic, non-centralist method of harmonizing law that has been especially used within international organizations such as UNIDROIT (Mijatović, 2018b), or within various groups that are particularly active within harmonization projects at the level of the European Union. By applying the legislative method, the most prominent experts from certain areas of law, unencumbered by political dictates or agendas of the countries they come from, work on formulating regulations that will have the effect of harmonizing certain legal areas. It is also important to note that the method of harmonizing regulations through the positions of legal theory, first of all, implies the use of the comparative-legal method with the attempts of its representatives to find the best legal solution for an issue, which can come from both the civil law system and the common law system and their subgroups. In this way, the texts of the instruments, once published, base the perspective of their application on the strength of the arguments expressed in the creative and most modern legal solutions for the given area (and not only those based on the criterion of reaching a compromise between states), as well as on the authority they enjoy their creators. Given that the "origin" of the regulations does not stem from the basis of e.g. parliaments, but stemming from the activities of prominent representatives of legal science and legal practitioners, these regulations cannot be traditionally protected by the system of coercion and sanctions, but are only recommended, that is, they are optional in nature and belong to the system of soft legal sources. Although they are only optional instruments, they achieve exceptional results in practice. In terms of UNIDROIT's activities, but also generally observing the values of the harmonizing effects of soft regulations, the UNIDROIT Principles for International Commercial Contracts prove to be one of the most representative examples, which will be discussed further in the following presentation.

3. UNIDROIT PRINCIPLES FOR INTERNATIONAL TRADE CONTRACTS

UNIDROIT has achieved exceptional results in a number of areas, for example, international sales and representation, franchising, leasing, factoring, banking, etc.[1] Some of the latest and current law harmonization projects in UNIDROIT are for example: Draft UNIDROIT principles on digital assets and private law from 2023 (UNIDROIT, 2023a) and Model Law on Factoring (UNIDROIT, 2023b) which were also published in 2023, while work is underway on the UNIDROIT Project for International Investment Agreements (UNIDROIT, n/a/c).

Nevertheless, by adopting the UNIDROIT Principles for International Commercial Contracts, UNIDROIT made the greatest contribution to the process of harmonization of the entire field of trade law. Moreover, this act created a non-legislative codification of the general part of the law of international trade contracts, and this instrument is determined as the most significant act of soft law in general contract law (Bonell, 2018, 15) and as a determining factor of the new *lex mercatoria* system.

The UNIDROIT Principles were published in 1994, and were supplemented and changed in 2004 and 2010, while the last and current edition is the one from 2016. UNIDROIT principles can be applied in all countries of the world, to all types of commercial contracts (including insurance and reinsurance contracts) and use the general terms creditor and debtor. It is important to note that this regulation regulates some of the issues that are usually reserved for imperative norms. Such is the case with the statute of limitations, which can be of particular importance in the field of reinsurance because, as it was already pointed out in theory (Jovanović, 2022), the rules applicable to insurance contracts cannot be applied analogously. Precisely in connection with the UNIDROIT Principles, the activity of UNIDROIT in the field of reinsurance

[1] Some of the regulations that we mention in this sense are: Convention on Agency in the International Sale of Goods from 1983, Convention on International Financial Leasing from 1988, Convention on International Factoring and Convention on International Financial Leasing from 1988, The UNIDROIT Guide to International Franchise Arrangements form 1998, the Model Law on Leasing from 2008, etc.

contract law was realized, and as such is analyzed in the continuation of the paper.

4. PRINCIPLES OF REINSURANCE CONTRACT LAW

4. 1. Legislative approach to the (non)regulation of the matter of reinsurance contract law

The business of reinsurance usually has an international character, and the goal of reinsurance is to absorb particularly heavy blows to the assets of the primary insurer, such as large individual claims or the accumulation of a large number of claims due to one insured event or in a given accounting year (Stettler, Eugster, Kuhn, 2005, 22). And yet, the contractual law of reinsurance is typically subject to a minimal regulatory framework, i.e. it is only "slightly" regulated (Mendelowitz, Merkin, 2023, 165). Namely, by applying the comparative method, it can be seen that the law generally does not regulate the reinsurance contract, or it is done in a declarative and general way, without a more detailed elaboration of the substantive legal provisions (Jovanović, 2007, 24). That is, as observed, certain systems do not provide for an essentially coherent and comprehensive body of legal or judicial practice on reinsurance contracts. All they provide is a set of general contract law rules, and no standard rule is provided by which certain wording in a reinsurance contract could be interpreted (Note on Principles of Reinsurance Contract Law and the Covid-19 Health Crisis, 2023, 7). Due to all of the above, it is justified to talk about the legal non-regulation of reinsurance contracts (Jovanović, 2021, 38).

The mentioned absence or only a superficial arrangement of this matter arises from the special characteristics of the reinsurance, and above all the fact that the reinsurance contract is concluded by experts, that is, representatives of legal entities who have sufficient professional knowledge and experience that does not need to be shaped or limited by legal regulations. In short, a reinsurance contract is understood as a commercial transaction between sophisticated companies driven by capital and utmost good faith. Reinsurance contracts are considered to be agreements based on honor and a relationship of trust (Johnson, 2023). Therefore, in this area, the autonomy of the contractual will of the parties, as a basic principle of contract law, is fully expressed. The principle of good faith in its fullest extent is the guiding principle of reinsurance.

Furthermore, given their aforementioned qualifications, the contractual parties in this relationship cannot, nor should, be viewed as consumers, who are certainly owed and granted special legal protection. Thus, the failure to perceive reinsurance contractors as parties in need of the type of protection afforded to consumers is another reason why this area of contracts is only marginally or not at all regulated.

Nevertheless, events of great global economic and reinsurance importance, such as the financial crisis in 2007, but also the recent crisis caused by the Covid-19 pandemic inflicted a change in the legislative approach and perspective in relation to this area. The initiative for a more specific regulatory approach resulted from the partial overcoming and reconsideration of the traditional restrained regulation of this area and from the need to establish a clear terminology and standardization of expressions and meanings of legal institutes. The formulation of the Principles of Reinsurance Contract Law was seen as a possible and feasible solution at that moment.

4. 2. Work on the adoption of the Principles of Reinsurance Contract Law

After the outbreak of the World Financial Crisis in 2007 and the adoption of the Solvency II Directive in 2009, there was a greater interest in the economic value of reinsurance protection and legal certainty due to the increase in disputes between insurers and reinsurers in the circumstances of changed market conditions and an increasing number of regulations (Bork, Wandt, 2019, 78 according to Jovanović, Uzelac, 2021, 39). Above all, the greater number of disputes has led to a desire for greater certainty in the legal interpretation of reinsurance contracts. Formulations of reinsurance contracts are not regulated by any comprehensive regulations, due to the aforementioned characteristics but also due to the transnational nature of most reinsurance operations. In addition, reinsurance contracts have historically been interpreted using only general principles of contract law and principles of good faith with a heavy emphasis on the practices and customs of the parties. This has led to significant uncertainty regarding reinsurance disputes. Precisely because of the international character of reinsurance, it makes sense to start the recommendations for regulating this issue at the supranational level, in this case with the activities of the PRICL Project Group and UNIDROIT. Moreover, within UNIDROIT, the idea of working on reinsurance contract law existed from the thirties of the twentieth century, but was not realized due to the outbreak of the Second World War.

The Project Group for Principles of Reinsurance Contract Law was founded in 2016 as a supranational, academic group with the agenda of legal harmonization through legal theory in the contractual area of reinsurance. It represents a joint venture of the University of Zurich, the University of Frankfurt am Main and the University of Vienna, whose main coordinators are respectively: Professor Helmut Heiss, Professor Martin Schauer and Professor Manfred Wandt. The work of the PRICL Project Group was financed by the Swiss National Science Foundation, the German Research Foundation and the Austrian Science Fund (Mrkšić, Mijatović, 2021, 365). The PRICL project aimed to provide the reinsurance industry with uniform soft law rules that govern contract law in this industry, which parties can choose as applicable. As the representatives of the PRICL Project Group pointed out, the ideas underlying the PRICL can be compared with the principles of restatements issued in the USA by the American Law Institute. Namely, these instruments serve to clarify and simplify the application of law, to better adapt law to social needs, and to encourage further scientific work in the field of law (Heiss, 2020).

The key partner of the PRICL Project Group in the development of this "soft law" regulation was UNIDROIT, which included PRICL in its work program in the period 2017-2019 (the same thing happened in the period 2019-2022 after the publication of this regulation). Namely, given that the PRICL assumes the existence and use of a set of rules of the general part of contract law, instead of approaching their development and formulation, the PRICL in this regard refers to the application of the UNIDROIT Principles so that these two regulations must be understood as a single set of rules that regulates the contractual right of reinsurance. Thus, the cooperation between UNIDROIT and the PRICL Project Group changed from "regular" cooperation in the form of giving contributions to the formulation of the rules in question, to a unique case of promoting the joint, package application of two "soft law" regulations (Mrkšić, Mijatović, 2021, 366).

PRICL was published as a private codification in the form of amendments to the contractual law of reinsurance in 2019. They aim to bring certainty to reinsurance contracts by improving wording and developing widely accepted rules of interpretation (Witthoff, 2020, 57; Cerini, 2020). PRICL was developed with the aim of supplying the reinsurance market with transnational uniform "soft law" rules. The perspective of their application is seen in achieving greater transparency and certainty in a sector that is primarily determined by individual contracts and which is known for its lack of legal "tangibility" (The Faculty of Law at Johann Wolfgang Goethe-University). The application of this instrument is particularly recommended with regard to the regime of legal remedies available for breach of contract and the issue of (non)disclosure of data (Kuitunen, 2020, 45).

PRICL consists of five chapters. The first chapter contains general provisions. The second chapter regulates the obligations of the contracting parties. The next chapter deals with the rights of the contracting parties. In the fourth chapter, the allocation of damages is regulated, and in the fifth, the accumulation of damages. Also, within the PRICL, attention was paid to defining problematic terms such as "case", given that there are significant differences in the interpretation of these terms from one legislation to another and also among legal theorists (Mrkšić, Mijatović, 2023, 74).

The PRICL will be applied in the event that the contracting parties decide to incorporate the provisions of this instrument into the reinsurance contract itself or if the contractual clause refers to the PRICL as the governing set of rules. In this way, the function of PRICL as an optional instrument is manifested.

The second edition of this instrument is expected in 2024, and the PRICL Project Group is cooperating with UNIDROIT in an ongoing manner in an effort to achieve this goal.

4. 3. Relation of the UNIDROIT Principles of International Commercial Law and Principles of Reinsurance Contract Law

The initial working concept of the PRICL Project Group and UNIDROIT was based on the fact that rules specific to reinsurance will only be able to provide legal certainty if they are based on a single set of general contract rules. Such general contract law is, according to common opinion, set out in the UNIDROIT Principles. Thus, in a very original way, this regulation served as a legislative model for PRICL, both in the material sense, as well as in the formal and methodological aspect. In the context of the analysis carried out by the author, the most important thing is that the creators of NUPR recognized the existence and advantages of the UNIDROIT Principles, and with regard to the rules of the general part of contract law, they refer to their application in the capacity of *lex generalis*. Therefore, these two soft law instruments form a unique set of (soft) rules that regulate the contractual law of reinsurance. More specifically, in accordance with Article 1.1.2 of the PRICL, issues not resolved by the PRICL will be resolved in accordance with the UNIDROIT Principles (Mrkšić, Mijatović, 2023). Thus, the choice of parties in favor of PRICL will, at the same

time, represent a choice in favor of the UNIDROIT Principles. While the PRICL deals with specific issues of contract law for reinsurance, the UNIDROIT Principles govern general issues of contract law, such as the conclusion and interpretation of contracts. The authors of PRICL hope that combining the election in favor of the UNIDROIT Principles and PRICL as the law applicable to the reinsurance contract will become an attractive option (PRICL, Introduction, Uniform rules of general contract law, 6-7).

The relationship between these two instruments and the cooperation of the PRICL Project Group and UNIDROIT came to a special effect during and after the crisis caused by the Covid-19 virus pandemic. Namely, the estimated losses among major insurance and reinsurance companies related to the pandemic reached about 37 billion dollars already by June 2021 (Steve Evans Ltd. 2021). The handshake mentality traditionally associated with reinsurance has proven to be flawed in the context of an increased number of disputes. As it is pointed out, for example, arbitration cases in the field of reinsurance in Norway are not a frequent occurrence, and yet in 2022, two cases were initiated. Both concerned the possibility of fulfilling contractual obligations regarding circumstances related to the virus, in cases where the parties did not even initially refer to the application of the PRICL as the governing law. Nevertheless, the PRICL showed its useful function as a value landmark and an expression of the customs of reinsurance contractual law when the question was raised whether the provisions of Norwegian (and English) law agree with international customs in this area. It was concluded that in the observed aspects, the Norwegian solutions are in accordance with the international customs of reinsurance contractual law, which are expressed in the PRICL (Meidell, 2022).

Furthermore, in July 2020, the UNIDROIT Secretariat issued a Note on the UNIDROIT Principles and the Covid-19 health crisis (UNIDROIT, 2020). In February 2023, based on this model, UNIDROIT jointly with the PRICL Project Group issued a Note on PRICL and the Covid-19 health crisis (UNIDROIT, 2023c). The authors of this document focused on considering the potential response to the COVID-19 crisis in relation to contracts governed by the PRICL. Therefore, this analysis first pointed out the importance of the provisions of the UNIDROIT Principles on hardship and force majeure in the context of reinsurance. According to the views expressed in the mentioned instruments, the provisions of the UNIDROIT Principles concerning hardship and force majeure prove to be extremely useful in the mentioned circumstances. Moreover, the application of these articles proved the previous description according to which it is a golden regulatory standard that resonates with solutions in the legal systems of both civil law and common law.

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