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## Opseg pokrića rizika iz osiguranja pravne zaštite na području privatnog života

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### Apstrakt

Osiguranje pravne zaštite na području privatnog života ima za cilj pružiti pokriće pravnih troškova s kojima je osiguranik suočen u situacijama iz svojeg privatnog života. Kombinacijom pokrića pravnih troškova prema različitim pravnim područjima nastoji se da ukupno pruženo pokriće čim više odgovara potrebama osiguranika. Naročito je pogodno za pružanje tzv. obiteljskog pokrića pravne zaštite osiguraniku i članovima njegove obitelji. U radu se nakon uvodnih izlaganja prikazuju pojavni oblici osiguranja pravne zaštite na području života te se pobliže određuje osiguranik i suosiguranice osobe. Zatim se iznosi opseg pokrića rizika prema pojedinim pravnim područjima (naknada štete, radni odnosi, kazneno i prekršajno pravo, obiteljsko i nasljedno pravo, stvarnopravni i obvezni pravni odnosi glede pokretnina, prometna pravna zaštita). Na kraju se prikazuju pojedina isključenja iz pokrića osiguranja pravne zaštite na području privatnog života.

**Ključne riječi:** osiguranje pravne zaštite, privatni život, opseg pokrića, pravni troškovi

### 1. UVOD

Osiguranjem pravne zaštite (dalje u tekstu: OPZ) pokrivaju se pravni troškovi s kojima je suočen osiguranik prilikom ostvarivanja svojih pravnih interesa i zaštite prava. Pokriće rizika nastanka pravnih troškova u osiguranju pravne zaštite temelji se na načelu specijalnosti osiguranih rizika (*Spezialität des versicherten Risikos*) (Harbauer, 2004, 579). Osigurateljska zaštita pruža se prema pojedinim segmentima života osiguranika: sudjelovanje u prometu, obavljanje poslovne ili profesionalne djelatnosti, obavljanje djelatnosti iz obrta ili poljoprivredne djelatnosti, pravni odnosi vezani uz ne-

kretnine i dr. Naglasak je na tome kako ne postoji opće pokriće osiguranja pravne zaštite koje bi snosilo pravne troškove u svim mogućim spornim situacijama s kojima se osiguranik tijekom života može suočiti (Terbille, 2008, 1578). Razlog tome je što bi u tzv. općem pokriću pravne zaštite bilo teško sagledati/procijeniti osigurani rizik, a premija osiguranja bila bi vrlo visoka te je većina osiguranika ne bi mogla podnijeti (Hering, 2006, 21).

Ipak, u osigurateljskoj praksi, moguće je kombinacijom rizika u OPZ-u pružiti osigurateljsko pokriće koje će najviše odgovarati potrebama osiguranika. U tom smislu govorimo o postojanju više vrsta pokrića OPZ-a koje se pojavljuju ovisno o tome kako se razvijaju pojedine ljudske djelatnosti, odnosno segmenti života pojedina te posljedično postoji li za njima potreba na tržištu osiguranja (Harbauer, 2004, 580).

U praksi njemačkih osiguratelja<sup>1</sup> pravne zaštite posebno se izdvaja pokriće OPZ-a iz područja privatnog života kao posebne vrste OPZ-a. Ono pruža osigurateljsko pokriće u područjima života odnosno omogućuje osigurateljsko pokriće u pravnim situacijama do kojih može doći u svakodnevnom životu osiguranika i suosiguranice osoba (Harbauer, 2004, 766). U tom smislu OPZ na području privatnog života nastoji pojedincu i članovima njegove obitelji kao suosiguranim osobama pružiti što širu zaštitu u pokriću pravnih troškova koliko je to moguće (obzirom na rečeno ograničenje kako ne postoji opće pokriće OPZ-a), odnosno pružiti osigurateljsko pokriće pravne zaštite koja bi bila najprikladnija za većinu osiguranika u svakodnevnom životu (Hering, 2006, 24).

<sup>1</sup> U radu se analiziraju uvjeti osiguranja pravne zaštite u njemačkom pravu. Posebna pažnja posvećena je oglednim Općim uvjetima osiguranja pravne zaštite (Allgemeinen Bedingungen für die Rechtsschutzversicherung, dalje u tekstu: ARB). Navedeni uvjeti predstavljaju tzv. uvjete uzorke (Musterbedingungen) koje je predložio Njemački savez osiguratelja (Gesamtverband der Deutschen Versicherungswirtschaft – GDV), te kao takvi nisu pravno obvezujući, ali mogu poslužiti kao prijedlog pokrića osigurateljima kada donose vlastite uvjete. (Plote, 2000, 4-7)

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## 2. POJAVNI OBLICI OSIGURANJA PRAVNE ZAŠTITE NA PODRUČJU PRIVATNOG ŽIVOTA

Temeljno razlikovanje pokrića iz privatnog života odnosi se na pitanje je li osiguranik osoba koja obavlja samostalni rad, odnosno obavlja li nesamostalan rad. Razlog ovakvog razlikovanja jest različita izloženost rizicima, što ima za posljedicu i razliku u visini premije. Naime, tijekom vremena uvidjelo se da je rizik nastanka pravnih troškova iz područja privatnog života manji kod osiguranika koji obavljaju nesamostalnu djelatnost, a to znači i nižu premiju. S druge strane, rizik nastanka pravnih troškova iz područja privatnog života veći je kod osiguranika koji obavlja samostalnu djelatnost, pa je i premija viša.

Prvi pojavni oblik OPZ-a iz područja privatnog života je tzv. OPZ iz područja privatnog života za osobe koje obavljaju samostalan rad (*Privat-Rechtsschutz für Selbständige*). Radi se o OPZ-u koji se odnosi na osiguranike koji obavljaju samostalni rad, kao što su obrtnici i osobe koje obavljaju slobodna zanimanja.<sup>2</sup> Ovaj oblik OPZ-a pokriva pravne troškove iz područja privatnog života osiguranika koji obavlja samostalan rad kao i troškove iz područja privatnog života suosiguranih osoba. Ovakva vrsta pokrića pravne zaštite ne odnosi na pokriće pravnih troškova vezano za obavljanje djelatnosti iz samostalnog rada jer obavljanje profesionalnih djelatnosti ne spada u privatni život. Pored toga, toga postoji samostalno osigurateljsko pokriće pravnih troškova koji nastaju u vezi s obavljanjem profesionalne djelatnosti iz samostalnog rada tzv. OPZ za obrtnike i slobodna zanimanja (§ 24 ARB 94/2000).

Drug pojavni oblik OPZ-a iz područja privatnog života odnosi se na OPZ za osobe koje obavljaju nesamostalan rad (*Privat- und Berufsrechtsschutz für Nichtselbständige*). Ovaj pojavni oblik OPZ-a odnosi se na osiguranike koji ne obavljaju samostalni rad ili ga obavljaju, ali ukupan prihod od takvog rada ne prelazi iznos od 6.000 eura godišnje.<sup>3</sup> Ovakva vrsta pokrića pravne zaštite odnosi se na pravne troškove iz područja privatnog života osiguranika koji obavlja nesamostalan rad, ali na pravne troškove koji mogu nastati u vezi s obavljanjem djelatnosti nesamostalnog rada (zaposlenja). Upravo po pokriću pravnih troškova koji su povezani sa zaposlenjem (obavljanjem nesamostalne djelatnosti) razlikuje se od pokrića pravnih troškova iz privatnog života za osobe koje obavljaju samostalnu djelatnost gdje nisu u pokriću pravni troškovi koji nastaju obavljanjem samostalne djelatnosti.

Obzirom na opisano važno razlikovanje obavlja li osiguranik samostalnu ili nesamostalnu djelatnost,

uvjetima osiguranja predviđeno je nastanak promjena u ugovoru o OPZ iz područja privatnog života ako osiguranik promijeni pravnu narav svoje djelatnosti (ako osiguranik koji je do tada obavljao nesamostalnu djelatnost tu djelatnost prestane obavljati, sada obavlja samostalnu djelatnost, i obrnuto – ako osiguranik koji je do tada obavlja samostalnu djelatnost tu djelatnost prestane obavljati i sada obavlja nesamostalnu djelatnost). U tom slučaju dolazi do promjene, odnosno pretvorbe ugovora OPZ-a iz područja privatnog života za osiguranike koji obavljaju nesamostalnu djelatnost u ugovor OPZ-a iz područja privatnog života za osiguranike koji obavljaju samostalnu djelatnost, i obrnuto.<sup>4</sup>

Osim promjene vezano za djelatnost, do promjene ugovora o OPZ-u na području privatnog života može doći i zbog promjena u prometu iz samostalne djelatnosti iz prošle kalendarske godine. Ako osiguranik koji obavlja nesamostalnu djelatnost, dodatno obavlja i samostalnu djelatnost pri čemu ukupni promet iz obavljanja samostalnog rada prijeđe iznos od 6.000,00 EUR, tada dolazi do promjene ugovora OPZ-a iz područja privatnog života koji je namijenjen za osiguranike koji obavljaju nesamostalan rad u ugovor OPZ-a iz područja privatnog života, koji je namijenjen za osiguranike koji obavljaju samostalan rad.<sup>5</sup> Do promjene ugovora o OPZ-u će doći i ako osiguranik obavlja samo samostalnu djelatnost, ali ako promet od te djelatnosti padne ispod 6.000,00 EUR, tada po samim uvjetima osiguranja nastaje, odnosno pretvara/mijenja se dotadašnji ugovor o OPZ-u u ugovor o OPZ-u iz područja privatnog života koji je namijenjen za osiguranike koji obavljaju nesamostalnu djelatnost.

Navedene promjene u ugovoru o OPZ-u nastupaju automatski (Van Bühren, Plote, 2007, 258) odnosno samim nastupom gore spomenutih okolnosti promjena u obavljanju djelatnosti ili prometa u obavljanju djelatnosti. Osiguranik ima obvezu prijaviti osiguratelju nastanak takvih okolnosti, a sama prijava će u tom slučaju imati deklaratoran karakter.

## 3. OSOBE KOJE SU OBUHVAĆENE OSIGURATELJSKIM POKRIĆEM OPZ-A IZ PODRUČJA PRIVATNOG ŽIVOTA

### 3. 1. Osiguranik kao osoba koja obavlja samostalan rad

Kao osobe koje obavljaju samostalan rad, a imaju položaj osiguranika u OPZ-u iz područja privatnog ži-

<sup>2</sup> § 23. st. 1. ARB 94/2000

<sup>3</sup> ARB 94/2000, § 25. st. 1.

<sup>4</sup> ARB 94/2000, § 23. st. 5. i § 25. st. 5.

<sup>5</sup> Argumentum a contrario § 23. st. 1. toč. b. u vezi s st. 5. ARB 94/2000

vota dolaze u obzir obrtnici, osobe koje obavljaju slobodna zanimanja te razne ostale osobe koje obavljaju slobodnu samostalnu djelatnost, a ne spadaju u obrtnike niti u slobodna zanimanja.<sup>6</sup> U literaturi se navodi kako bi u ovu skupinu osiguranika spadale i osobe koje više ne obavljaju nikakvo zanimanje, odnosno koje su umirovljene (Harbauer, 2004, 766).

U obrt spadaju različite djelatnosti koje se odnose na trgovinu, zanatske radnje, industriju, promet, kao i različite uslužne djelatnosti. U obrt ne bi ulazile djelatnosti koje se odnose na proizvodnju sirovina i poljoprivrednih proizvoda (rudarstvo, šumarstvo, poljoprivredna) (Harbauer, 2004, 727-728). U obrtnike ne spadaju i osobe koje obavljaju slobodna zanimanja (arhitekti, odvjetnici, liječnici, stomatolozi, porezni savjetnici itd.), ali oni predstavljaju posebnu grupu osiguranika u ovoj vrsti OPZ-a.

Za određivanje pojma slobodnih zanimanja ne postoji jedan zajednički izraz već se ona određuju nabranjanjem pojedinih djelatnosti. U njemačkom pravu za određivanje pojma slobodnih zanimanja mjerodavni su porezni propisi, prema kojima u slobodna zanimanja spadaju sve djelatnosti koja se samostalno obavljaju u znanstvenom, umjetničkom, spisateljskom i nastavnom području. Također, i odvjetnici, porezni savjetnici, liječnici i ostali zdravstveni djelatnici privatne prakse predstavljaju slobodna zanimanja ukoliko nisu ovisni u obavljanju svojeg zanimanja (posla) (Van Bühren, Plote, 2007, 245). Za određivanje slobodnih zanimanja bitno je osobno obavljanje samog zanimanja, kao i činjenica da osoba nije podložna nečijim radnim nalogima.

### 3. 2. Osiguranik kao osoba koja obavlja nesamostalan rad

Osobe koje obavljaju nesamostalan rad nisu slobodne u obavljanju radnih zadataka, već su na temelju ugovornog ili drugog pravnog odnosa podložne nalogima drugih osoba u izvršavanju radnih zadataka, a zauzvrat dobivaju određenu novčanu naknadu (plaću) (Palandt, 2002, 743). Ovakvo razlikovanje između osoba koje obavljaju samostalan radi i nesamostalan rad karakteri-

<sup>6</sup> U osigurateljskom smislu bitno je da takve „ostale“ osobe obavljaju samostalno neku djelatnost kao svoje zanimanje. Samostalnost u prvom redu znači samostalno izvršavanje nekog posla u gospodarskom i organizatorskom smislu. Samostalnost u obavljanju djelatnosti postoji kada osoba koja takvu djelatnost obavlja, nema obvezu postupati po tuđim radnim uputama i naredbama i kada može samostalno određivati radno vrijeme (Van Bühren, Plote, 2007, 245-246) Prema sudskoj praksi ukoliko u sporu osiguranik tvrdi da on nije radno ovisan o svojim nalogodavcima, a kasnije se takva radna ovisnost ipak utvrdi, tada više ne postoji osigurateljska zaštita (Zemaljski sud (LG) Würzburg, Recht und Schaden, 2000, 331).

stično je prvenstveno za radno pravo. Stoga zaposlenici na temelju ugovora o radu uvijek obavljaju nesamostalan rad. Ali kriterij razlikovanja može se ustanoviti i odredbama iz drugih grana prava, posebice trgovačkog, poreznog prava ili socijalnog prava (Harbauer, 2004, 770). Tako se u praksi navodi kako nesamostalan rad postoji kada se, primjerice, osobi koja obavlja neki rad bez ugovora o radu uplaćuje porez na dohodak, kao i doprinos za socijalna osiguranja (zdravstveno, mirovinsko).<sup>7</sup> Također, i činjenica da postoji nadležnost suda za radne sporove ukazuje da jedna od stranaka u tom sporu obavlja nesamostalnu djelatnost. Nadalje, kada osiguranik povremeno obavlja neku samostalnu djelatnost, u malom opsegu s kojom nema namjeru stjecanja nekakvih stalnih prihoda ili uopće nema prihoda od takve djelatnosti (npr. hobi), onda obavljanje ovakve djelatnosti ne svrstava osiguranika u osobe koje obavljaju samostalan rad (Van Bühren, Plote, 2007, 254).

Ako osiguranik obavlja pored nesamostalne djelatnosti i samostalnu djelatnost tada će osigurateljsko pokriće OPZ-a iz područja privatnog života postojati samo u odnosu na nesamostalnu djelatnost (rad), dok će za pokriće OPZ-a u vezi sa samostalnom djelatnosti morati sklopiti poseban (dodatni) ugovor o OPZ-u koji se, primjerice odnosi na pravnu zaštitu obrtnika ili slobodnih zanimanja (Harbauer, 2004, 771).<sup>8</sup>

### 3. 3. Suosigurane osobe

U suosigurane osobe u okviru OPZ-a iz područja privatnog života spadaju bračni/izvanbračni drug osiguranika, njegova (njihova) maloljetna djeca te pod određenim pretpostavkama i punoljetna djeca (Plote, 2000, 35). Položaj suosigurane osobe ne može imati bračni/izvanbračni drug osiguranika koji obavlja samostalnu djelatnost, jer je pravilo da se pokriće osiguranika koji obavlja samostalnu djelatnost proširuje na ostale članove obitelji kao suosigurane osobe (Terbille, 2008, 1581). Ukoliko oba bračna/izvanbračna druga obavljaju nesamostalnu djelatnost moguće je prošire-

<sup>7</sup> Općinski sud (AG) München, Recht und Schaden, 1977, 134. Također i kada se zaposleniku djelomično isplaćuje plaća u obliku udjela u dobiti poduzeća smatra se rad zaposlenika s nesamostalnim radom.

<sup>8</sup> Primjerice, liječnik koji je zaposlen u bolnici pokriven je osigurateljskim pokrićem OPZ-a iz područja privatnog života u vezi s obavljanjem posla u bolnici (prava iz radnog odnosa, disciplinska odgovornost, kaznenopravna odgovornost te odgovornost za naknadu štete nesavjesnim liječenjem). Ali ako takav liječnik nakon radnog vremena u bolnici pruža privatnu liječničku praksu, tada OPZ iz područja privatnog života ne obuhvaća pravnu zaštitu liječnika za koju bi se pojavila potreba iz obavljanja privatne prakse, već bi za to trebao sklopiti ugovor o OPZ-u koji se odnosi na djelatnost slobodnih zanimanja.



nje pokrića jednog od njih kao osiguranika na drugog kao suosigurane osobe. No, nije isključeno da svatko od njih ima ugovoreno „vlastito“ pokriće OPZ-a iz područja privatnog života.

### 3. 3. 1. Bračni / izvanbračni drug osiguranika

Bračni drug ima položaj suosigurane osobe za vrijeme cijelog trajanja braka, što znači od trenutka njegova sklapanja pa do trenutka za koji se prema zakonu smatra da je došlo do prestanka braka (smrt bračnog druga koji ima položaj osiguranika, pravomoćna presuda nadležnog suda o prestanku/razvodu braka, itd) (Harbauer, 2004, 766). Ukoliko, bračni drugovi ne žive (više) zajedno, tada se položaj bračnog druga kao suosiguranika ne mijenja, odnosno i na njega se odnosi osigurateljsko pokriće, pod uvjetom da se drugi bračni drug koji ima položaj osiguranika ne protivi takvom pokriću.<sup>9</sup>

Što se tiče izvanbračnog druga osiguranika, njihov je položaj kao suosigurane osobe izrijekom priznat uvjetima osiguranja (Böhme, 2007, 383). Pretpostavka da bi izvanbračni drug imao položaj suosigurane osobe, je da on kao takav bude imenovan u polici OPZ-a. Izvanbračni drug koji je imenovan u polici osiguranja, ima položaj suosigurane osobe dok traje izvanbračna zajednica (Böhme, 2007, 383). Ovdje treba napomenuti da onaj osiguranik koji je u braku (makar živio i odvojeno od bračnog druga) može u polici osiguranja navesti izvanbračnog druga kao suosiguranu osobu, ali ne može se pojaviti kao suosiguranik u polici osiguranja izvanbračnog druga.<sup>10</sup>

### 3. 3. 2. Maloljetna djeca osiguranika

Maloljetna djeca osiguranika također spadaju u krug suosiguranih osoba u OPZ-u iz područja privatnog života. U njemačkoj literaturi se djecom podrazumijevaju bračni ili izvanbračni potomci prvog stupnja obaju bračnih drugova ili samo jednog od njih (Harbauer, 2004, 767). Položaj suosigurane osobe imalo bi samo ono dijete koje potječe od osiguranika. Stoga, ako se radi o djetetu koje potječe od bračnog/izvanbračnog druga osiguranika, a ne ujedno i od osiguranika, tada ono nema položaj suosigurane osobe. Ali, ako je dijete posvojeno ili udomljeno<sup>11</sup> u obitelji osiguranika tada

<sup>9</sup> ARB 75, § 11. st. 2. reč. 1 i ARB 94/2000, § 15. st. 2. reč. 2.

<sup>10</sup> Općinski sud (AG) Pfaffenhofen, Rech und Schaden, 2002, 20. Argumentum a contario izvanbračni drug koji ima već sklopljeno OPZ iz privatnog života, ne bi se mogao pojaviti kao suosigurana osoba u polici osiguranja OPZ-a iz privatnog života drugog izvanbračnog druga.

<sup>11</sup> Djeca koja su stalno ili određen dio vremena smještena izvan roditeljskog stana u stan udomitelja (osiguranika) o kojima se on brine i snosi troškove njihova održavanja.

ono stječe položaj suosigurane osobe. Nije potrebno u polici osiguranja posebno imenovati djecu, bračnu, izvanbračnu, posvojenu ili udomljenu, da bi se na njih proširilo osigurateljsko pokriće, već se njihov odnos spram osiguraniku dokazuje odgovarajućim javnim ispravama. Za protezanje osigurateljskog pokrića na djecu nije potrebno da djeca borave u domaćinstvu osiguranika (osim za udomljenu djecu), već osigurateljsko pokriće postoji i kada se djeca nalaze na školovanju ili studiranju izvan mjesta osiguranika (roditelja). Ukoliko je brak roditelja prestao razvodom, djeca i dalje imaju položaj suosiguranih osoba neovisno kojem su bivšem bračnom drugu (osiguraniku ili onome koji nije osiguranik) povjereni na čuvanje (Harbauer, 2004, 767).

### 3. 3. 3. Punoljetna djeca osiguranika

Osim maloljetne djece i punoljetna djeca osiguranika imaju položaj suosiguranih osoba u OPZ-u iz područja privatnog života. Pretpostavke da bi punoljetna djeca mogla s navršetkom 18-e godine života i dalje imati položaj suosigurane osobe su da djeca nisu sklopila brak i da nisu navršila 25 godinu života. Suosiguranje punoljetne djece traje za vrijeme njihova školovanja i prestaje s prvim stalnim zaposlenjem, odnosno ono se može i produžiti sve dok je punoljetno dijete na školovanju ili izobrazbi za stjecanje znanja i sposobnosti radi budućeg zaposlenja.<sup>12</sup> Punoljetna djeca imaju položaj suosigurane osobe i u sljedećim situacijama: za vrijeme rada kao načina učenja u obrazovnoj instituciji, kada se kao vojnici nalaze na odsluženju vojnog roka, kada rade kao pripravnici za vrijeme pripravničkog staža (jer taj rad nema karakter stalnog zaposlenja), ali imaju položaj i suosigurane osobe za vrijeme nezaposlenosti nakon završenog školovanja. Punoljetna djeca izgubila bi položaj suosigurane osobe ako su primjerice nakon dužeg nezavršenog školovanja započela obrazovanje u drugoj struci ili su potpuno prekinula obrazovanje (Van Bühren, Plote, 2007, 242).

## 4. OPSEG POKRIĆA OPZ-A IZ PODRUČJA PRIVATNOG ŽIVOTA

### 4.1. Pravna zaštita u pogledu zahtjeva za naknadu štete

Osigurateljska zaštita obuhvaća pokriće pravnih troškova ostvarivanja zahtjeva za naknadu štete koje je osiguranik (ili suosigurana osoba) kao oštećenik posta-

<sup>12</sup> ARB 75, § 25. st. 1. i § 26. st. 2, ARB 94/2000, § 23. st. 2., § 25. st. 2., § 26. st. 2. toč. b., § 28. st. 2. toč. c.

vio prema štetniku, a takav zahtjev proizlazi iz područja privatnog života osiguranika/suosigurane osobe (Harbauer, 2004, 778). Ako osiguranik/suosigurana osoba obavlja nesamostalan posao kao zaposlenik, tada OPZ iz područja privatnog života pokriva pravne troškove ostvarivanja zahtjeva za naknadu štete iz radnih odnosa koje osiguranik može postaviti u svojstvu zaposlenika.<sup>13</sup> Ako je osiguranik osoba koja obavlja samostalnu djelatnost, osigurateljsko pokriće postoji samo za ostvarivanje zahtjeva za naknadu štete iz područja privatnog života, a ne i iz područja obavljanja samostalne djelatnosti, jer za ovo potonje postoji posebno osigurateljsko pokriće koje se odnosi na OPZ iz obavljanja samostalnih djelatnosti.<sup>14</sup> Da bi osoba koja obavlja samostalno zanimanje bila pokrivena osigurateljskim pokrićem, kako u ostvarivanju zahtjeva za naknadu štete iz privatnog života, tako i za naknadu štete iz područja obavljanja svoje samostalne djelatnosti, trebala bi zaključiti posebno osigurateljsko pokriće. U pravilu, osigurateljsko pokriće ne obuhvaća ostvarivanje zahtjeva za naknadu štete u prometnim stvarima, tj. kada se osiguranik i suosigurana osoba nalaze u svojstvu vozača, vlasnika, posjednika ili suputnika u vozilu osiguranika. Za ovakvo pokriće moguće je sklopiti samostalni ugovor o OPZ-u u prometnim stvarima, ali je moguće izabrati i kombinaciju koja bi obuhvaćala i navedeno OPZ u prometnim stvarima s OPZ-om iz područja privatnog života predviđeno uvjetima osiguranja (*infra* 4.6.).<sup>15</sup>

Treba i ovdje naglasiti da se pravna zaštita u pogledu naknade štete odnosi samo na ostvarivanje pravnih zahtjeva za naknadu izvanugovorne štete iz delikata, a ne i na naknadu štete iz tzv. ugovorne odgovornosti za štetu. Također snose se samo pravni troškovi isticanja zahtjeva za naknadu štete, a ne u pravilu i troškovi obrane od odštetnih zahtjeva, jer se smatra da je naknada troškova obrane od odštetnih zahtjeva prvenstveno zadaća osiguranja od odgovornosti, a ne OPZ-a (Van Bühren, Plote, 2007, 27-28, Cornelius-Winkler, 2006, 28).

Pokriveno je ostvarivanje prava na naknadu štete na stvarima, osobama i imovini. Uključeno je ostvarivanje kako zahtjeva za naknadu imovinske, tako i popravljajne neimovinske štete, neovisno o tomu popravljajne štete u novčanom ili nenovčanom obliku (Harbauer, 2004, 779).

<sup>13</sup> ARB 75, § 25 st. 2. toč. a. i 26 st. 5. toč. a i ARB 94/2000, § 23. st. 3. toč. 1., § 25 st. 3. toč. 1. i § 26. st. 3. toč. 1.

<sup>14</sup> Ne postoji osigurateljska zaštita kada osiguranik biva povrijeđen u obavljanju samostalne djelatnosti, a ima samo obiteljsko osigurateljsko pokriće iz § 25. ARB 75, Viši zemaljski sud (OLG) Karlsruhe, Versicherungsrecht, god. 1991., str. 1126.

<sup>15</sup> Na primjer, pokriće iz ARB 75/94/2000, § 26.

#### 4. 2. Pravna zaštita u vezi s radnopravnim odnosima

U redovno pokriće OPZ-u iz područja privatnog života, uključeni su troškovi sporova (ostvarivanja pravnih interesa) osiguranika-zaposlenika prema poslodavcu iz ravnopravnog odnosa ili službeničko-namješteničkog odnosa (Harbauer, 2004, 779).<sup>16</sup> Ova vrsta OPZ-a pokriva troškove bilo da osiguranik ima položaj aktivne strane u postupku (tužitelj), bilo da ima položaj pasivne strane u postupku (tuženik). Pogodnost mu je što proširuje i ostvarivanje interesa iz radnopravnih odnosa članova obitelji osiguranika, ako oni imaju položaj suosigurane osobe. Pravna zaštita u vezi s radnopravnim odnosima kao dio pokrića troškova iz privatnog života osiguranika proteže se i na ostvarivanje pravnih interesa iz odnosa sličnim radnopravnim odnosima, kao što su faktički rad (rad bez valjanog ugovora o radu), volonterski rad, probni rad, privremeni pomoćni rad, kućni rad. Pokriveni su i troškovi ostvarivanja pravnih interesa koje se odnose na obveze poslodavca na plaćanje mirovinskog osiguranja. No, osigurateljsko pokriće ne obuhvaća snošenje troškova pravne zaštite radi ostvarivanja prava i obveza iz kolektivnih radnih sporova,<sup>17</sup> već se isključivo odnosi samo na individualne radne sporove (Cornelius-Winkler, 2006, 29).

Sporovi između radnih kolega (zaposlenika istog poslodavca) u vezi s obavljanjem posla ne spadaju u radnopravne sporove, jer radni kolege nisu u međusobnom radnom odnosu, ali ako u tom slučaju osiguranik-zaposlenik povrijedi radne obveze ili mu budu povrijeđena prava i iz radnog odnosa imao bi pravo na pokriće troškova pravne zaštite iz OPZ-a (Harbauer, 2004, 780).<sup>18</sup> Također, postoji čak i osigurateljsko pokriće koje snosi troškove obrane od zahtjeva za naknadu štete koje je prema zaposleniku-osiguraniku postavio poslodavac, pod uvjetom da je šteta nastala u obavljanju rada (što je inače isključeno iz standardnog pokrića u pogledu obrane od zahtjeva naknade štete, jer se smatra da takve troškove treba snositi osiguranje od odgovornosti), uključivši i štetu na motornom vozilu ili u vezi s motornim vozilom (Harbauer, 2004, 781).<sup>19</sup>

<sup>16</sup> O tome uvjeti osiguranja: ARB 75, § 25 st. 2, toč. b. i 26, st. 5, toč. c i ARB 94/2000, § 23, st. 3. toč. 2, § 25 st. 3, toč. 1 i § 26. st. 3, toč. 2.

<sup>17</sup> Na primjer, ARB 94/2000, § 3, st. 2, toč. b.

<sup>18</sup> Naprotiv, ako osiguranika povrijedi kolega na poslu tada mu predstoji zahtjev za naknadu štete, troškove čijeg ostvarivanja ulaze u osigurateljsko pokriće.

<sup>19</sup> U pravilu, za troškove pravne zaštite za kojom se javlja potreba zbog štete na vozilima ili u vezi s vozilom, mora se ugovoriti posebno osigurateljsko pokriće, te je onda kao takvo moguće kombinirati i s pokrićem OPZ-a iz područja privatnog života. No, nije potrebno ugovarati dodatno pokriće za pravnu zaštitu zbog štete na vozilima i u vezi s vozilom, ako je ta šteta

Poseban je slučaj pravne zaštite kada postoji spor između osiguranika-zaposlenika kao najmoprimca stana i poslodavca kao najmodavca istog stana. Tada, ako je u ugovor o radu unesena odredba o iznajmljivanju stana zaposleniku, smatra se da je ugovor o najmu stana sastavni dio ugovora o radu, pa bi i eventualni sporovi koji se tiču najma stana spadali u osigurateljsko pokriće pravne zaštite iz radnopravnih odnosa u OPZ-u iz područja privatnog života (Harbauer, 2004, 781). Ako se pak radi o samostalnom ugovoru o najmu, tada ne bi postojalo osigurateljsko pokriće troškova pravne zaštite u okviru ove vrste OPZ-a, već bi se morao sklopiti poseban ugovor o OPZ-u koji se odnosi na pitanje stvarnih i obveznih prava na nekretninama jer pokriće pravnih troškova u vezi nekretnina nije dio standardnog pokrića OPZ-a iz privatnog života osiguranika.<sup>20</sup>

#### 4. 3. Kazneno-, prekršajno- i disciplinsko-pravna zaštita

U pokriće OPZ-a iz područja privatnog života spadaju i troškovi pravne zaštite za kojom se javlja potreba zbog vođenja kaznenog, prekršajnog ili disciplinskog postupka protiv osiguranika ili suosigurane osobe.<sup>21</sup> Osigurateljsko pokriće postoji ako se navedeni postupci vode iz područja koje se ne odnosi na obavljanje samostalne djelatnosti, već iz područja privatnog života ili područja obavljanja nesamostalne djelatnosti (položaja zaposlenika) osiguranika/suosigurane osobe (Harbauer, 2004, 782). Ova vrsta pokriva je naročito pogodna za osiguranike koji imaju položaj zaposlenika ili službenika kada se protiv njih vode prekršajni ili disciplinski postupci zbog povrede radne dužnosti (Buschbell, Hering, 2007, 404).

#### 4. 4. Pravna zaštita u obiteljskim i nasljednopravnim stvarima

Odmah na početku valja naglasiti da u pogledu obiteljskopravnih stvari i nasljednopravnih stvari ne postoji osigurateljsko pokriće na način da se pokrivaju troškovi vođenja pravnih postupaka koji se odnose na spomenute pravne stvari, već se isključivo osigurateljska zaštita odnosi na pokriće troškova davanja (tj. dobivanja) pravnih savjeta i potrebnih pravnih obavijesti (informacija) od strane odvjetnika i javnih bilježnika osiguraniku pravne zaštite iz područja privatnog života i njegovim suosiguranim osobama (Harbauer, 2004, nastala zbog i za vrijeme obavljanja radnih zadataka osiguranika-zaposlenika.

<sup>20</sup> Na primjer, ARB 75/94/2000, § 29.

<sup>21</sup> ARB 75, § 25, st. 2, toč. c, § 26, st. 5, toč. d, ARB 94/2000 § 23 i § 25, st. 3, toč. 6, 7 i 8, te § 26, st. 3, toč. 7, 8 i 9.

630). Osigurateljska zaštita ne pokriva troškove postupka pred tijelima nadležnim za odlučivanje u obiteljskopravnim i nasljednopravnim stvarima. Ovo se tumači time da bi snošenje troškova pravnog zastupanja u navedenim postupcima i njihovog vođenja, bilo izloženo velikom subjektivnom riziku i ne bi bilo u interesu osiguratelja za održavanjem nižih iznosa premije osiguranja (Harbauer, 2004, 613).

Dakle, u obiteljskim i nasljednopravnim stvarima postoji tzv. osiguranje troškova savjetodavne pravne zaštite. Sukladno tomu i sam pojam osiguranog slučaja drukčije se tretira nego kada se radi o snošenju troškova pravne zaštite iz ostalih pravnih područja.<sup>22</sup> Ovdje se nastupom osiguranog slučaja smatra nastanak događaja<sup>23</sup> koji ima za posljedicu potrebu za određenim pravnim savjetom osiguraniku/suosiguranoj osobi (Harbauer, 2004, 633).

#### 4. 5. Pravna zaštita iz obvezno-pravnih odnosa i stvarno-pravnih odnosa u pogledu pokretnina

Osiguranje pravne zaštite iz područja privatnog života snosi i troškove pravne zaštite ostvarivanja pravnih interesa iz područja obveznopravnih odnosa i stvarnopravnih odnosa u pogledu pokretnih stvari (Cornelius-Winkler, 2006, 30).<sup>24</sup> Osigurateljsko pokriće pruža se kako u pogledu aktivne strane, tako i u pogledu pasivne strane u sudskom postupku ili u postupku izvan-sudskog rješavanja sporova. Ono što je bitno naglasiti jest da se radi o obveznopravnim i stvarnopravnim odnosima koji nastaju u području privatnog života ili u vezi s obavljanjem nesamostalne djelatnosti (Van Bühren, Plote, 2007, 34). Osigurateljsko pokriće ne nadoknađuje troškove pravne zaštite iz obveznopravnih i stvarnopravnih odnosa koji se odnose na obavljanje samostalne djelatnosti, jer za takve pravne troškove po-

<sup>22</sup> Općenito se osigurani slučaj u OPZ-u može definirati kao nastanak štetnog događaja, povreda nekog prava ili obveze, odnosno povreda propisa koje imaju za posljedicu nastanak potrebe za pravnom zaštitom osiguranika/suosigurane osobe, bilo radi ostvarivanja povrijeđenih prava i obveza, bilo radi obrane od navoda po kojima je on taj koji je prouzročio štetni događaj, povrijedio nečije pravo/obvezu ili, pak prekršio neki propis (kazneni, prekršajni, upravni i dr.).

<sup>23</sup> Radi se o događaju koji se jasno razlikuje od ostalih uobičajenih životnih događanja i kod kojega je njegov pravni značaj odmah uočljiv. Primjerice: rođenje djeteta, smrt ostavitelja, ponašanje bračnog druga osiguranika kao razlog razvod braka, ugovor o uzdržavanju, zahtjev sunasljednika za diobom nasljedstva, promjena radne sposobnosti davatelja uzdržavanja i dr. (Harbauer, 2004, 634).

<sup>24</sup> ARB 75, § 25, st. 3 i ARB 94/2000, § 23, st. 3, § 25, st. 3, 26, st. 3.



stoji samostalno osigurateljsko pokriće<sup>25</sup> (Van Bühren, Plote, 2007, 245).

Kao obveznopravni odnosi u pogledu kojih se osiguravaju troškovi pravne zaštite prije svega su obveznopravni ugovori bilo koje vrste koji nisu izrijeком isključeni iz osigurateljskog pokrića, ali i izvanugovorni odnosi poput javnog obećanja nagrade, poslovodstvo bez naloga i stjecanje bez osnove. Najčešće se radi o sporovima koji nastaju u vezi s (ne)ispunjenjem obveza, obveznopravnim osiguranjem ispunjenja tražbina, raskidom ugovora te zahtjeva za naknadu štete zbog povrede ugovora. Kao što se primjećuje, nije izrijeком navedeno pokriće troškova u pogledu zahtjeva za naknadu štete iz izvanugovornih obveznih odnosa, iz razloga što za troškove takvih sporova postoji posebno pokriće (o kojem je u radu bilo ranije riječi).

Pored obveznopravnih odnosa osiguravaju se troškovi pravne zaštite osiguranika u sporovima iz stvarnopravnih odnosa na pokretnim stvarima (također neovisno o tome ima li položaj aktivne ili pasivne strane u postupku). Riječ je o vlasničkopравnim zahtjevima, zahtjevima posjedovne zaštite, zahtjevima iz prava služnosti i založnopravnim zahtjevima (Van Bühren, Plote, 2007, 35). U pogledu pokrića troškova pravne zaštite iz stvarnopravnih odnosa glede nekretnina, potrebno je ugovoriti samostalno osigurateljsko pokriće<sup>26</sup> te u pravilu ono nije dio standardnog pokrića iz OPZ-a u privatnom životu. Međutim, ako se radi o sporu koji se vodi u pogledu ugovora čija je tražbina osigurana hipotekom na nekretnini, tada ipak postoji osigurateljsko pokriće, ali samo djelomično, tj. ono se odnosi samo na pravne troškove koji nastaju u vezi s ostvarivanjem pravnih interesa iz ugovora, a ne i u vezi s ostvarivanjem ili obranom od hipotekarnog zahtjeva (Harbauer, 2004, 784).

Nadalje, što se tiče nekretnina u pokriće OPZ iz područja privatnog života spada i ostvarivanje pravnih interesa iz ugovora (dakle iz obveznopravnih odnosa) koji se odnose na otuđenje i stjecanje nekretnina, poput kupoprodajnih ili darovnih ugovora. Vezano za ugovorne odnose koji se tiču upotrebe i iskorištavanja nekretnina (najam, zakup i sl.) postoji posebno osigurateljsko pokriće koje nije dio pokrića OPZ-a iz područja privatnog života.<sup>27</sup> No, u literaturi se navodi da bi se kod ugovora o iznajmljivanju nekretnina trebalo uzeti u obzir svrha

<sup>25</sup> Osiguranje pravne zaštite iz samostalnih djelatnosti odnosi se na tzv. profesionalni rizik (berufliche Rechtskostenrisiko) pravnih troškova kojima je izložen ugovaratelj osiguranje/osiguranik prilikom obavljanja određenog zanimanja, odnosno djelatnosti (obrta, slobodnog ili samostalnog zanimanja i sl.) (Harbauer, 2004, 727).

<sup>26</sup> ARB 75/94/2000, § 29.

<sup>27</sup> ARB 75/94/2000, § 29.

i trajanje takvog ugovora, pa bi primjerice kratkotrajno iznajmljivanje soba, apartmana, kuća za odmor, zemljišta za kampiranje i sl., dakle kada ne postoji namjera dužeg upotrebljavanja nekretnina u svrhu stanovanja, već u svrhu turističkog odmora (izleta) spadalo u pokriće OPZ-a koje se odnosi na područje privatnog života, a ne u pokriće OPZ-a u pogledu nekretnina (Van Bühren, Plote, 2007, 35).

#### 4. 6. Kombinacija OPZ-a iz područja privatnog života s OPZ-om u prometnim stvarima

Osiguranjem pravne zaštite u prometnim stvarima pokriveni su pravni troškovi ostvarivanja prava ili obranu svojeg prava koji mogu nastati kao posljedica raznih situacija vezanih uz promet i motorno vozilo (Lui, 1990, 55-56). Takvim pokrićem pravne zaštite osigurani su vlasnik vozila, ali i bilo koje druge osobe koje po raznim osnovama koriste, odnosno upotrebljavaju vozilo (zaposlenici, članovi obitelji, zakupci, najmoprimci), od eventualnih pravnih troškova vezanih uz promet i upotrebu motornog vozila. Osigurateljska pravna zaštita u prometnim stvarima proteže se na:<sup>28</sup> a) područje naknade štete iz prometnih delikata, b) područje obveznopravnih ugovora i stvarnopravnih odnosa u pogledu motornih vozila,<sup>29</sup> c) područje prometnih kaznenih djela i prekršaja, d) područje upravnog prava koji se odnosi na pitanje vozila i vozačkih dozvola te e) područje poreznopravnih i drugih javnopravno-financijskih pitanja u pogledu motornih vozila. Osigurateljsko pokriće troškova pravne zaštite može postojati samostalno, a u promatranim uvjetima osiguranja moguće je isto kombinirati sa pokrićem OPZ-a iz područja privatnog života, čime se osigurateljskom zaštitom nastoji dodatno udovoljiti pojedinim individualnim potrebama osiguranika.

Kombinaciju osiguranja pravne zaštite iz područja privatnog života i osiguranja pravne zaštite iz područja je potrebno ugovoriti kao dodatno pokriće. U tom slučaju postoji osigurateljsko pokriće u pogledu osoba osiguranika i njegovog bračnog/izvanbračnog druga kao suosigurane osobe koje imaju položaj vozača, suputnika u vozilu, vlasnika, posjednika, stjecatelja ili otuđivatelja vozila, kao i svih drugih osoba, koje se s dopuštanjem osiguranika ili suosigurane osobe nalaze u vozilu bilo u položaju vozača ili suputnika<sup>30</sup>, te maloljetne i punoljetne djece. Međutim, osigurateljsko pokriće pravnih

<sup>28</sup> ARB 75/94/2000, § 26, te u ARB 94/2000, § 28.

<sup>29</sup> Kada osiguranik, primjerice, ima položaj vlasnika, imatelja, zakupnika, leasing primatelja, te kupca motornog vozila (ARAG Allgemeine Bedingungen für die Rechtsschutzversicherung ARB 2019, § 21 st. 1 i § 23 st. 1).

<sup>30</sup> ARB 75, § 26, st. 3 i ARB 94/2000, § 26, st. 2, toč. c.

troškova u prometnim stvarima ne postoji u slučaju ako je maloljetno dijete osiguranika upravljalo motornim vozilom, kao ni u slučaju kada je punoljetno dijete kao suosigurana osoba u položaju vlasnika, imatelja, posjednika, zakupnika ili leasingprimatelja te vozača motornog vozila.<sup>31</sup> Osigurateljsko pokriva se ne odnosi na motorna vozila po vodi i u zraku,<sup>32</sup> već samo na cestovna – kopnena motorna vozila i njihova priključna vozila.<sup>33</sup> Kad se radi o kombinaciji pokriva OPZ-a iz privatnog života osiguranika koji obavlja samostalnu djelatnost i OPZ-a iz područja prometa takvo je pokriva prvenstveno je namijenjen za mala poduzeća, odnosno manje poduzetnike i obrtnike (Harbauer, 2004, 960).

## 5. POJEDINA ISKLJUČENJA IZ POKRIĆA OPZ-a NA PODRUČJU PRIVATNOG ŽIVOTA

Isključenja osigurateljskog pokriva u OPZ-u iz područja privatnog života se razlikuju ovisno uvjetima osiguranja. Prema tzv. oglednim uvjetima osiguranja o kojima je ovdje riječ, isključenja se odnose na područje prometa (izuzev kada postoji kombinacija OPZ-a iz područja privatnog života s OPZ-om iz područja prometa) te na područje osiguranja troškova pravne zaštite u vezi s nekretninama (Harbauer, 2004, 785). Ipak, pojedini uvjeti osiguranja iz OPZ-u na području privatnog života ne isključuju troškove pravne zaštite u vezi nekretnina.<sup>34</sup>

U području prometa postoji isključenje iz OPZ-a kada osiguranik ili članovi njegove obitelji kao suosigurane osobe, kao sudionici prometa budu pogođeni osiguranim slučajem (povreda propisa o sigurnosti prometa i propisa o vozačkoj dozvoli, nastanak štetnog događaja, povreda prava i obveza u pogledu obveznih odnosa na motornim vozilima), a nalaze se u svojstvu vlasnika, posjednika te zakupca (leasingprimatelja) vozila, kao i vozača u vozilu koje se kreće po zemlji, vodi ili zraku, kao i u pogledu uporabe priključnih vozila<sup>35</sup>. No, nisu isključeni iz pokriva troškovi pravne zaštite kada se osiguranik/suosigurana osoba nalazi u položaju suputnika u vozilu ili upotrebljavaju vozilo koje se

ne kreće snagom vlastita motora (Harbauer, 2004, 960). Također, nisu isključeni iz pokriva troškovi ostvarivanja zahtjeva za naknadu štete koja je nastala na ostalim stvarima osiguranika/suosigurane osobe koje su se nalazile u motornom vozilu, pod uvjetom da takve stvari nisu pripadak motornog vozila te da se ne radi o stvarima (teretu) koje se prevoze u vezi s obavljanjem posla, odnosno čiji prijevoz predstavlja obavljanje radnih zadataka.

Kao drugo isključenje pokriva u OPZ-u iz područja privatnog života navode se pravni troškovi koji nastaju u vezi s najamnim i zakupnim odnosima,<sup>36</sup> te stvarno-pravnim odnosima glede zemljišta, zgrada i dijelova zgrada.<sup>37</sup> Ovo iz razloga što postoji samostalno osigurateljsko pokriva za pravne troškove koji nastaju u vezi s ovakvim pravnim odnosima glede nekretnina.<sup>38</sup> Pored troškova koji se odnose na zaštitu (ostvarivanje) stvarnih prava i prava iz ugovora o najmu i zakupu glede nekretnina, ali i na obranu od tih zahtjeva, u isključenje iz osigurateljskog pokriva spadaju i troškovi ostvarivanja prava na naknadu štete zbog oštećenja nekretnine, jer se smatra da se u tom slučaju radi o pravu na naknadu štete koje proizlazi iz stvarnog prava na nekretnini.<sup>39</sup> Dakle, ne postoji osigurateljsko pokriva kao što ono inače postoji u pogledu troškova ostvarivanja zahtjeva za naknadu štete kada se radi o oštećenju pokretne stvari ili pak o štetama (imovinskim ili neimovinskim) na osobi.

## 6. ZAKLJUČAK

Osiguranje pravne zaštite na području privatnog života usmjereno je na potrebe pojedinog osiguranika za pokrivenjem pravnih troškova s kojima može biti suočen u svakodnevnom životu. Ono predstavlja obiteljsko pokriva pravne zaštite jer se pored osiguranika osigurateljsko pokriva proteže i na članove njegove (uže) obitelji (bračni/izvanbračni drug i djeca, uključivši i punoljetnu djecu na školovanju) kao suosigurane osobe kojima se pokriva pravi troškovi kada nastupi osigurani slučaj. Opseg pokriva obuhvaća više pravnih područja koja su karakteristična za svakodnevni život

<sup>31</sup> ARB 94/2000, § 26, st. 2, toč. b.

<sup>32</sup> ARB 94/2000, § 26, st. 4. Ipak u novijim uvjetima osiguranja osigurateljsko pokriva pravnih troškova u prometu odnosi se i na vozila koja se kreću zrakom i vodom (ARAG ARB 2019, § 21, st. 1 i § 23, st. 1).

<sup>33</sup> Ovdje spadaju i suvremena sredstva e-mobilnosti: električni bicikli, e-skuteri, električni romobili i seagway (ARAG ARB 2019, § 21, st. 1).

<sup>34</sup> Na primjer, ARAG ARB 2019, § 26, st. 1c i § 28, st. 1c.

<sup>35</sup> ARB 75/94/2000, § 25, st. 4, ARB 94/2000, § 23, st. 4 ARB 94/2000.

<sup>36</sup> U pogledu obveznopravnih odnosa glede nekretnina, naglasak je na tzv. pravne odnose uporabe i korištenja nekretnina (Nutzungsverhältnissen), što znači da pravni troškovi koji mogu nastati u vezi s obveznopravnim odnosima koji se odnose na otuđenje ili stjecanje nekretnina nisu izrijekom isključeni iz pokriva OPZ-a iz područja privatnog života, a o čemu je već ranije bilo riječi.

<sup>37</sup> ARB 75, § 25, st. 4, toč. b i c.

<sup>38</sup> ARB 75/94/2000, § 29.

<sup>39</sup> BGH (Njemački Savezni Vrhovni sud), Neue Juristische Wochenschrift, 1992, 1511.



osiguranika, odnosno u kojima se osiguranik (ili članovi njegove obitelji) mogu pojaviti kao stranka. Radi se o pravnoj zaštiti u pogledu zahtjeva za naknadu štete, pravna zaštita iz radnopravnih odnosa, pravna zaštita iz kaznenog, prekršajnog i disciplinskog prava, pravna zaštita u obiteljskim i nasljednim stvarima, pravna zaštita iz stvarnih i obveznih odnosa u pogledu nekretnina. Navedena pravna područja predstavljaju jezgru pokrića OPZ-a iz područja privatnog života. Opseg pokrića može proširiti dodatnim ugovaranjem pokrića pravne zaštite iz ostalih pravnih područja kao što je to, primjerice, kombinirano pokriće pravne zaštite u prometnim stvarima i upotrebi vozila. Time se opseg pokrića OPZ-a na području privatnog života maksimalno prilagođava specifičnim potrebama pojedinog osiguranika i njegove obitelji. Izvan pokrića OPZ-a na području privatnog života ostaju pravna područja koja se tiču stvarnopravnih i obveznopravnih odnosa glede nekretnina te pravna područja koja se odnose na obavljanje poslovne, obrtničke i profesionalne djelatnosti osiguranika. Za pravna područja koja nisu obuhvaćena pokrićem OPZ-a na području privatnog života moguće je ugovoriti samostalno pokriće pravne zaštite koje nije dio pokrića privatnog života.

Uvjetima osiguranja predviđena su ograničenja pokrića iz OPZ-a na području privatnog života. Ograničenja pokrića ovise o vrstama pravnih odnosa u kojima se javlja potreba za pružanjem pravne zaštite. U obiteljskim i nasljednim stvarima pokriće pravnih troškova odnosi se samo na jednu vrstu pravne zaštite, i to na tzv. savjetodavnu pravnu zaštitu. Dakle, pokrićem nisu obuhvaćeni pravni troškovi koju mogu nastati u vezi s zastupanjem u raznim pravnim postupcima u obiteljskim i nasljednim stvarima. S druge strane, u pravnim odnosima iz naknade štete pokriveni su troškovi kako savjetodavne pravne zaštite tako i troškovi zastupanja u pravnim (sudskim) postupcima radi naknade štete

ali samo ako osiguranik (ili član njegove obitelji/suosigurana osoba) ima položaj oštećenika koji postavlja zahtjev za naknadom štete (tzv. aktivna strana u postupku pravne zaštite). U ostalim pravnim područjima iz područja privatnog života osiguratelj pravne zaštite ima obvezu plaćanja bilo koje vrste pravnih troškova s kojima je suočen osiguranik (ili suosigurana osoba), a sukladno uvjetima osiguranja.

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# The insurance coverage of the legal protection insurance in the field of private life

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## Abstract

The legal protection insurance in the field of private life aims to provide coverage for legal costs that the insured is faced with in situations from their private life. By combining the coverage of the legal expenses according to different legal areas, it is attempted that the legal expenses insurance coverage meets the needs of the insured. It is particularly suitable for providing the so-called family coverage of legal protection for the insured and his family members. After introduction, the paper deals with the forms of legal protection insurance in the field of private life and defines the insured and the co-insured persons in more detail. Also, the insurance risk coverage according to individual legal areas is presented (damage compensation, labour relations, criminal and misdemeanour law, family and inheritance law, property and obligation law regarding movables, traffic legal protection). At the end, the individual exclusions from legal protection insurance coverage in the field of private life are presented.

**Key words:** legal protection insurance, private life, insurance coverage, legal costs

## 1. INTRODUCTION

*Legal protection insurance* (LPI) or *legal expences insurance* (LEI, hereinafter referred to as LPI as the chosen term) covers the legal costs that the insured is faced with when pursuing their legal interests and protecting their rights. The coverage of the risk of legal expenses in the insurance of legal protection is based on the principle of the specialty of insured risks (*Spezialität des versicherten Risikos*) (Harbauer, 2004, 579).

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Insurance coverage is provided according to individual segments of the insured's life: participation in traffic, business or professional activity, traffic or agricultural activity, legal relations related to real estate, etc. The emphasis is on the fact that there is no general legal protection insurance coverage that would borne legal costs in all possible disputed situations that the insured may face during their life (Terbille, 2008, 1578). The reason for this is that in the so-called with the general legal protection coverage, it was difficult to see/assess the insured risk, and the insurance premium would be very high and most of the insureds would not be able to bear it (Hering, 2006, 21).

However, in insurance practice, it is possible to provide insurance coverage that will best suit the needs of the insured by combining risks in LPI. In this sense, we are talking about the existence of several types of LPI coverage that appear depending on how individual human activities develop, that is, segments of the lives of individuals, and consequently whether there is a need for them on the insurance market (Harbauer, 2004, 580).

In the practice of German legal protection insurers<sup>1</sup>, LPI coverage from the area of private life is especially distinguished as a special type of LPI. It provides insurance coverage in areas of life, that is, it enables insurance coverage in legal situations that may occur in the everyday life of the insured and co-insured persons (Harbauer, 2004, 766). In this sense, LPI in the area of private life strives to provide the individual and his

<sup>1</sup> The paper analyses the conditions for ensuring legal protection in German law. Special attention is paid to the exemplary General Conditions for the provision of legal protection (Allgemeinen Bedingungen für die Rechtsschutzversicherung, hereinafter: ARB). The stated conditions represent the so-called sample conditions (Musterbedingungen) proposed by the German Association of Insurers (Gesamtverband der Deutschen Versicherungswirtschaft - GDV), and as such are not legally binding, but can serve as a proposal for coverage to insurers when they come up with their own conditions. (Plote, 2000, 4-7).

family members as co-insured persons with the widest possible protection in covering legal costs as much as possible (taking into account the aforementioned limitation that there is no general LPI coverage), i.e. to provide insurance coverage of legal protection which would be the most appropriate for the majority of policyholders in everyday life (Hering, 2006, 24).

## 2. THE FORMS OF EXISTENCE OF THE LPI IN THE AREA (FIELD) OF PRIVATE LIFE

The fundamental distinction of the coverage from private life refers to the question of whether the insured person is a self-employed person or a non-self-employed person. The reason for this distinction is the different exposure to risks, which also results in a difference in the amount of the premium. Namely, over time it has become clear that the risk of legal expenses arising from the area of private life is lower for insured persons who perform non-independent activities, and this means a lower premium. On the other hand, the risk of incurring legal costs in the area of private life is higher for insured persons who are self-employed, so the premium is also higher.

The first appearing form of LPI in the area of private life is the so-called *Private life insurance for self-employed persons* (*Privat-Rechtsschutz für Selbständige*). It is about the LPI, which refers to insured persons who perform independent work, such as craftsmen and people who perform free trades<sup>2</sup>. This form of LPI covers legal costs from the private life of the self-employed insured as well as costs from the private life of co-insured persons. This type of legal protection coverage does not apply to the coverage of legal expenses related to the performance of self-employed activities, because the performance of professional activities does not belong to private life. In addition, there is independent insurance coverage for legal expenses arising in connection with the performance of professional activities from self-employment, the so-called LPI for craftsmen and freelancers (§ 24 ARB 94/2000).

Another form of LPI in the field of private life refers to LPI for persons who do not work independently (*Privat- und Berufsrechtsschutz für Nichtselbständige*). This form of LPI refers to insured persons who do not perform independent work or do so, but the total income from such work does not exceed the amount of €6,000 per year<sup>3</sup>. This type of legal protection cover

applies to legal expenses from the private life of the insured person who performs self-employed work, but also to legal expenses that may arise in connection with the performance of self-employed work (self-employment). The coverage of legal expenses related to employment (performing non-self-employed activities) differs from the coverage of legal expenses from private life for persons who are self-employed, where legal expenses arising from self-employed activities are not covered.

Considering the described important distinction between whether the insured person performs an independent or non-independent activity, the insurance conditions foresee the occurrence of changes in the LPI contract from the area of private life if the insured person changes the legal nature of his activity (if the insured person who until then performed a non-independent activity ceases to perform that activity, now performs an independent activity, and vice versa - if the insured, who until then was performing an independent activity, stops performing that activity and now performs a non-independent activity). In this case, there is a change, that is, the conversion of the LPI contract from the area of private life for insured persons who perform non-self-employed activity into the LPI contract from the area of private life for insured persons who perform independent activity, and vice versa.<sup>4</sup>

In addition to a change related to the activity, a change in the LPI contract in the area of private life may also occur due to changes in turnover from self-employed activities from the previous calendar year. If the insured who performs a non-self-employed activity, additionally performs an independent activity, whereby the total turnover from performing independent work exceeds the amount of €6,000.00 - then there is a change from the LPI contract from the area of private life, which is intended for insured persons who perform non-independent activities, to the LPI contract from the area of private life, which is intended for insured persons who perform independent work<sup>5</sup>. A change in the insurance contract will also occur if the insured only performs an independent activity, but if the turnover from that activity falls below €6,000.00, then according to the insurance conditions itself, the previous insurance contract is created, i.e. converted/changed into a contract on LPI from the field of private life, which is intended for insured persons who perform non-self-employed activities.

The aforementioned changes in the LPI contract occur automatically (Van Bühren, Plote, 2007, 258),

<sup>4</sup> § 23. st. 5. i § 25. st. 5. ARB 94/2000.

<sup>5</sup> Argumentum a contrario § 23, paragraph 1, item b, in connection with paragraph 5. of ARB 94/2000.

<sup>2</sup> § 23. st. 1. ARB 94/2000.

<sup>3</sup> § 25. st. 1. ARB 94/2000.



that is, by the occurrence of the above-mentioned circumstances of changes in the performance of activities or turnover in the performance of activities. The insured has the obligation to report the occurrence of such circumstances to the insurer, and the report itself will have a declaratory character in that case.

### 3. PERSONS COVERED BY LPI INSURANCE COVERAGE IN THE AREA OF PRIVATE LIFE

#### 3.1. The insured as a self-employed person

Persons who are self-employed and have the position of insured in the LPI from the field of private life include craftsmen, persons who perform freelance professions and various other persons who perform freelance independent activities, and do not belong to craftsmen or freelance professions<sup>6</sup>. It is stated in the literature that this group of insured persons would also include persons who are no longer engaged in any occupation, i.e. who are retired (Harbauer, 2004, 766).

Crafts include various activities related to trade, craftsmen's shops, industry, transport, as well as various service activities. Crafts would not include activities related to the production of raw materials and agricultural products (mining, forestry, agriculture) (Harbauer, 2004, 727-728). Craftsmen do not include people who perform freelance professions (architects, lawyers, doctors, dentists, tax advisors, etc.), but they represent a special group of insured persons in this type of LPI.

There is no single common expression for defining the concept of free professions, but they are defined by listing individual activities. In German law, tax regulations are relevant for determining the concept of freelance professions, according to which freelance professions include all activities performed independently in the scientific, artistic, writing and teaching fields. Also, lawyers, tax advisors, doctors and other healthcare professionals in private practice represent independent professions if they are not

<sup>6</sup> In terms of insurance, it is important that such "other" persons perform some activity independently as their occupation. Independence primarily means independent execution of a job in economic and organisational terms. Independence in the performance of an activity exists when the person who performs such activity is not obliged to act according to other people's work instructions and orders and when they can independently determine the working hours (Van Bühren, Plote, 2007, p. 245-246) According to judicial practice, if in a dispute the insured claims if they are not dependent on their employers for work, and later such work dependence is nevertheless established, then there is no longer insurance protection (Land Court (LG) Würzburg, Recht und Schaden, god. 2000., str. 331).

dependent in the performance of their profession (work) (Van Bühren, Plote, 2007, 245). Personal performance of the occupation itself is essential for determining free occupations, as well as the fact that the person is not subject to someone else's work orders.

#### 3.2. The insured as a person who performs non-independent work

Persons who perform non-independent work are not free to perform work tasks, but on the basis of a contractual or other legal relationship are subject to the orders of other persons in the performance of work tasks, and in return they receive a certain monetary compensation (salary) (Palandt, 2002, 743). This distinction between self-employed and non-self-employed persons is primarily characteristic of labour law. Therefore, employees based on employment contracts always perform non-independent work. But the criterion of distinction can also be established by provisions from other branches of law, especially commercial, tax law or social law (Harbauer, 2004, 770). Thus, in practice, it is stated that non-independent work exists when, for example, a person who performs some work without an employment contract is paid income tax, as well as contributions for social insurance (health insurance, old age pension insurance)<sup>7</sup>. Also, the fact that the court has jurisdiction over labour disputes indicates that one of the parties in that dispute is performing a non-independent activity. Furthermore, when the insured occasionally performs some independent activity, on a small scale with which they have no intention of gaining any permanent income or no income at all from such activity (e.g. a hobby), then performing such activity does not classify the insured as self-employed (Van Bühren, Plote, 2007, 254).

If the insured performs independent activity in addition to non-independent activity, then the insurance coverage of LPI from the area of private life will exist only in relation to non-independent activity (work), while for LPI coverage in connection with independent activity, they will have to conclude a separate (additional) contract on LPI, which, for example, refers to the legal protection of craftsmen or freelancers (Harbauer, 2004, 771).<sup>8</sup>

<sup>7</sup> Municipal court (AG) München, Recht und Schaden, year 1977, page 134. Also, when the employee is partially paid a salary in the form of a share in the company's profit, the employee's work is considered non-independent work.

<sup>8</sup> For example, a doctor employed in a hospital is covered by LPI insurance coverage in the area of private life in connection with the performance of work in the hospital (rights from the employment relationship, disciplinary liability, criminal liability

### 3.3. Co-insured persons

Co-insured persons under LPI from the area of private life include the spouse/common-law partner of the insured, his/her (their) minor children and under certain assumptions also adult children (Plote, 2000, 35). The position of co-insured person cannot be held by the spouse/common-law partner of the self-employed insured person, because the rule is that the coverage of the self-employed insured person is extended to other family members as co-insured persons (Terbille, 2008, 1581). If both spouses/common-law partners perform non-independent activities, it is possible to extend the coverage of one of them as an insured person to the other as a co-insured person. However, it is not excluded that each of them has contracted their "own" LPI coverage in the area of private life.

#### 3.3.1. Spouse/common-law partner of the insured

The spouse has the position of a co-insured person during the entire duration of the marriage, which means from the moment of its conclusion until the moment when, according to the law, the marriage is considered to have ended (death of the spouse who has the position of insured, final judgment of the competent court on termination of marriage/divorce, etc.) (Harbauer, 2004, 766). If the spouses no longer live together, then the position of the spouse as a co-insured does not change, i.e. the insurance coverage applies to them as well, provided that the other spouse who has the position of the insured does not object to such coverage.<sup>9</sup>

As for the non-marital partner of the insured, their position as co-insured is expressly recognised by the insurance conditions (Böhme, 2007, 383). The assumption that the common-law partner would have the position of a co-insured person is that he is named as such in the LPI policy. The common-law partner named in the insurance policy has the position of a co-insured person while the common-law union lasts (Böhme, 2007, 383). It should be noted here that the insured person who is married (even if they lived separately from his spouse) can list their common-law partner as a co-insured person in the insurance policy,

and liability for damages caused by negligent treatment). But if such a doctor provides private medical practice after working hours in the hospital, then the LPI from the field of private life does not include the legal protection of the doctor for which the need would arise from performing private practice, but for this he should conclude an LPI contract that refers to the activity of freelancers.

<sup>9</sup> § 11, paragraph 2, sentence. 1. ARB 75 and § 15, paragraph 2, sentence. 2. ARB 94/2000.

but cannot appear as a co-insured in the insurance policy of the co-habitant.<sup>10</sup>

#### 3.3.2. Minor children of the insured

Minor children of insured persons also belong to the circle of co-insured persons in the LPI from the area of private life. In German literature, children are understood as the legitimate (born within the marriage) or illegitimate descendants (born out of wedlock) of the first degree of both spouses or only one of them (Harbauer, 2004, 767). The position of co-insured person would be held only by the child who comes from the insured. Therefore, if it is a child who originates from the spouse/common-law partner of the insured, and not from the insured, then he or she does not have the status of a co-insured person. But, if the child is adopted or fostered in the insured's family<sup>11</sup>, then they acquire the position of a co-insured person. It is not necessary to specifically name children, either legitimate or illegitimate, fostered or adopted, in the insurance policy, in order to extend the insurance coverage to them, but their relationship to the insured is proved by appropriate public documents. In order to extend insurance coverage to children, it is not necessary for the children to reside in the insured's household (except for foster children), but insurance coverage also exists when the children are attending school or studying outside of the insured's (parents') location. If the parents' marriage ended in divorce, the children still have the position of co-insured persons, regardless of which former spouse (insured or non-insured) they were entrusted with custody (Harbauer, 2004, 767).

#### 3.3.3. Adult children of the insured

In addition to minor children, adult children of the insured have the position of co-insured persons in the LPI from the area of private life. The assumptions that adult children could continue to have the position of co-insured person upon reaching the age of 18 are that the children are not married and that they have not reached the age of 25. Co-insurance for adult children

<sup>10</sup> Municipal court (AG) Pfaffenhofen, Rech und Schaden, year 2002, page 20. *Argumentum a contario* a common-law partner who has already concluded LPI from private life, could not appear as a co-insured person in the LPI insurance policy from the private life of another common-law partner.

<sup>11</sup> Children who are permanently or for a certain part of the time placed outside the parents' apartment in the apartment of the foster parent (insured), who takes care of them and bears the costs of their maintenance.

lasts during their schooling and ends with the first permanent employment, that is, it can be extended as long as the adult child is in school or training to acquire knowledge and skills for future employment<sup>12</sup>. Adult children also have the position of co-insured person in the following situations: during work as a way of learning in an educational institution, when they are serving military service as soldiers, when they work as interns during their internship (because this work does not have the character of permanent employment), but they have position and co-insured persons during unemployment after completing education. Adult children would lose their position as a co-insured person if, for example, after a long period of incomplete schooling, they started education in another profession or completely stopped their education (Van Bühren, Plote, 2007, 242).

#### 4. THE SCOPE OF LPI COVERAGE IN THE AREA OF PRIVATE LIFE

##### 4.1. Legal protection regarding claims for damages

Insurance protection includes the coverage of legal costs of claims for compensation that the insured (or co-insured person) made as the injured party against the injured party, and such a claim arises from the private life of the insured/co-insured person (Harbauer, 2004, 778). If the insured/co-insured person performs non-independent work as an employee, then LPI from the area of private life covers the legal costs of pursuing a claim for compensation for damages from employment relationships that the insured can file as an employee<sup>13</sup>. If the insured person is a self-employed person, insurance coverage exists only for claims for damages from private life, and not from the area of self-employment, because for the latter there is a special insurance coverage that refers to LPI from self-employment<sup>14</sup>. In order for a self-employed person to be covered by insurance coverage, both in the realisation of claims for compensation for damages from their private life, and for compensation for damages from the area of their independent activity, they should conclude

<sup>12</sup> § 25 paragraph 1 and § 26 paragraph 2, ARB 75, § 23 paragraph 2, § 25 paragraph 2, § 26 paragraph 2 point b, § 28. paragraph 2, point c ARB 94/2000.

<sup>13</sup> § 25 paragraph 2 point a and 26 paragraph 5 point a ARB 75 and § 23 paragraph 3 point 1, § 25 paragraph 3 point 1 and § 26 paragraph 3, item 1. ARB 94/2000.

<sup>14</sup> There is no insurance protection when the insured is injured while performing an independent activity, and he only has family insurance coverage from § 25. ARB 75, Higher Land Court (OLG) Karlsruhe, Versicherungsrecht, 1991, 1126.

a special insurance coverage. As a rule, the insurance coverage does not cover claims for compensation in traffic matters, i.e. when the insured and the co-insured are in the capacity of driver, owner, possessor or passenger in the insured's vehicle. For this kind of coverage, it is possible to conclude an independent contract on LPI in traffic matters, but it is also possible to choose a combination that would also include the mentioned LPI in traffic matters with LPI from the area of private life provided for in the insurance conditions (*infra* 4.6.).<sup>15</sup>

Here, it should also be emphasised that legal protection in terms of compensation for damages refers only to the realisation of legal claims for compensation for non-contractual damages from torts, and not for compensation for damages from the so-called contractual liability for damage. Also, only the legal costs of asserting claims for compensation are borne, and not, as a rule, the costs of defence against compensation claims, because it is considered that compensation for the costs of defence against compensation claims is primarily the task of liability insurance, not LPI (Van Bühren, Plote, 2007, 27-28, Cornelius-Winkler, 2006, 28).

Exercising the right to compensation for damage to things, persons and property is covered. The realisation of both claims for property compensation and the repair of non-property damage is included, regardless of whether the non-property damage is repaired in monetary or non-monetary form (Harbauer, 2004, 779).

##### 4.2. Legal protection in relation to labour relations

In the regular coverage of LPI in the area of private life, the costs of disputes (realisation of legal interests) of the insured-employee against the employer from an equal relationship or an official-employee relationship are included (Harbauer, 2004, 779)<sup>16</sup>. This type of LPI covers costs whether the insured has the position of an active party in the proceedings (plaintiff) or passive party in the proceedings (defendant). Its advantage is that it also extends the realisation of interests from employment relations of the insured's family members, if they have the position of a co-insured person. Legal protection in connection with labour relations as part of the coverage of costs from the insured's private life also extends to the realisation of legal interests from

<sup>15</sup> For example coverage from § 26 ARB 75/94/2000.

<sup>16</sup> About this insurance conditions: § 25 paragraph 2 point b and 26 paragraph 5 point c ARB 75 and § 23 paragraph 3 point 2, § 25 paragraph 3 point 1 and § 26, paragraph 3, point 2. ARB 94/2000.



relations similar to labour relations, such as de facto work (work without a valid employment contract), volunteer work, trial work, temporary help work, housework. The costs of realising legal interests related to the employer's obligations to pay pension insurance are also covered. However, the insurance coverage does not cover the costs of legal protection for the realisation of rights and obligations from collective labour disputes<sup>17</sup>, but exclusively refers only to individual labour disputes (Cornelius-Winkler, 2006, 29).

Disputes between work colleagues (employees of the same employer) in connection with the performance of work do not fall under labour law disputes, because work colleagues are not in a mutual employment relationship, but if in this case the insured-employee violates work obligations or their rights are violated and they had from the employment relationship would have the right to cover the costs of legal protection from LPI (Harbauer, 2004, 780)<sup>18</sup>. Also, there is even insurance coverage that covers the costs of defence against a claim for compensation made by the employer against the employee-insured, provided that the damage occurred in the performance of work (which is otherwise excluded from the standard coverage in terms of defence against claims for compensation, because such costs are considered to be covered by liability insurance), including damage to or in connection with a motor vehicle (Harbauer, 2004, 781).<sup>19</sup>

There is a special case of legal protection when there is a dispute between the insured-employee as the tenant of the apartment and the employer as the lessor of the same apartment. Then, if a provision on renting an apartment to an employee is included in the employment contract, it is considered that the apartment rental agreement is an integral part of the employment contract, so any disputes concerning the apartment rental would fall under the insurance coverage of legal protection from labour law relations in LPI - in the area of private life (Harbauer, 2004, 781). If it is an independent rental agreement, then there would be no insurance coverage of legal protection costs within this type of LPI, but a separate contract on

<sup>17</sup> For example § 3, paragraph 2, point b ARB 94/2000.

<sup>18</sup> On the contrary, if the insured is injured by a colleague at work, then they have a claim for compensation, the costs of which are included in the insurance coverage.

<sup>19</sup> As a rule, for the costs of legal protection for which the need arises due to damage to vehicles or in connection with the vehicle, special insurance coverage must be contracted, and then as such it is possible to combine it with LPI coverage from the area of private life. However, it is not necessary to contract additional coverage for legal protection due to damage to vehicles and in connection with the vehicle, if this damage occurred due to and during the performance of work tasks of the insured-employee.

LPI would have to be concluded that refers to the issue of real and mandatory rights on real estate because the coverage of legal costs related to real estate is not part of the standard LPI coverage from the insured's private life.<sup>20</sup>

#### 4.3. Criminal law, misdemeanour law and disciplinary law protection

LPI coverage in the area of private life also includes the costs of legal protection for which the need arises due to conducting criminal, misdemeanour or disciplinary proceedings against the insured or a co-insured person<sup>21</sup>. Insurance coverage exists if the mentioned procedures are conducted in an area that does not refer to independent activity, but from the area of private life or the area of non-independent activity (employee position) of the insured/co-insured person (Harbauer, 2004, 782). This type of coverage is particularly suitable for insured persons who have the position of employees or officials when misdemeanour or disciplinary proceedings are conducted against them due to violation of work duties (Buschbell, Hering, 2007, 404).

#### 4.4. Legal protection in family and inheritance matters

Right at the beginning, it should be emphasised that with regard to family law matters and inheritance law matters, there is no insurance coverage in such a way as to cover the costs of conducting legal proceedings related to the aforementioned legal matters, but insurance protection exclusively refers to the coverage of the costs of giving (i.e. obtaining) legal advice and necessary legal notices (information) by lawyers and notaries public to the insured of legal protection in the area of private life and his co-insured persons (Harbauer, 2004, 630). The insurance coverage does not cover the costs of the procedure before the authorities responsible for deciding on family law and inheritance law matters. This is interpreted as bearing the costs of legal representation in the mentioned procedures and their management, would be exposed to a great subjective risk and would not be in the interest of the insurer to maintain lower insurance premium amounts (Harbauer, 2004, 613).

Therefore, in family and inheritance matters there is a so-called insurance of the costs of advisory legal

<sup>20</sup> For example § 29 ARB 75/94/2000.

<sup>21</sup> § 25 paragraph 2 point c, § 26 paragraph 5 point d ARB 75, § 23 and § 25 paragraph 3 points 6, 7 and 8, and § 26 paragraph 3, item 7, 8 and 9 of ARB 94/2000.

protection. Accordingly, the very concept of an insured case is treated differently than when it comes to bearing the costs of legal protection from other legal areas<sup>22</sup>. Here, the occurrence of an insured event is considered the occurrence of an event<sup>23</sup> that results in the need for specific legal advice to the insured/co-insured person (Harbauer, 2004, 633).

#### 4.5. Legal protection from obligations under legal obligations and real legal obligations regarding movable property

Ensuring legal protection in the area of private life also bears the costs of legal protection of the realisation of legal interests in the area of legal obligations and real legal relations with regard to movable property (Cornelius-Winkler, 2006, 30)<sup>24</sup>. Insurance coverage is provided both for the active party and for the passive party in court proceedings or out-of-court dispute resolution proceedings. What is important to emphasise is that it is a matter of mandatory legal and real legal relations that arise in the field of private life or in connection with the performance of non-independent activities (Van Bühren, Plote, 2007, 34). Insurance coverage does not compensate the costs of legal protection from obligations and real legal relationships related to the performance of independent activity, because there is independent insurance coverage for such legal costs (Van Bühren, Plote, 2007, 245)<sup>25</sup>.

Obligatory legal relations in respect of which the costs of legal protection are insured are primarily

<sup>22</sup> In general, an insured event in LPI can be defined as the occurrence of a harmful event, violation of a right or obligation, i.e. violation of regulations that result in the need for legal protection of the insured/co-insured person, either for the purpose of realising the violated rights and obligations, or for the purpose of defending against allegations that he is the one who caused a harmful event, violated someone's right/obligation, or violated some regulation (criminal, misdemeanour, administrative, etc.).

<sup>23</sup> It is an event that is clearly different from other common life events and where its legal significance is immediately apparent. For example: the birth of a child, the death of the testator, the behaviour of the insured's spouse as the reason for the divorce, maintenance agreement, request of the co-heirs for the division of the inheritance, change in the working capacity of the maintenance provider, etc. (Harbauer, 2004, 634).

<sup>24</sup> § 25, paragraph 3, ARB 75 and § 23, paragraph 3, § 25, paragraph 3, 26, paragraph 3.

<sup>25</sup> Insurance of legal protection from self-employed activities refers to the so-called professional risk (berufliche Rechtskostenrisiko) of legal costs to which the insurance contractor/insured is exposed when performing a certain profession or activity (trade, freelance or self-employed, etc.) (Harbauer, 2004, 727).

binding legal contracts of any kind that are not expressly excluded from insurance coverage, but also non-contractual relations such as public promise of reward, management without warrant and acquisition without basis. Most often, these are disputes that arise in connection with (non)fulfillment of obligations, compulsory legal insurance for the fulfillment of claims, termination of contracts and requests for compensation for damages due to breach of contract. As noted, there is no explicit coverage of costs in respect of claims for damages from non-contractual obligations, for the reason that there is a special cover for the costs of such disputes (which was discussed earlier in the paper).

In addition to mandatory legal relations, the costs of legal protection of the insured in disputes arising from real legal relations on movable property are provided (also regardless of whether he is an active or passive party in the proceedings). These are ownership claims, tenure protection claims, easement claims and lien claims (Van Bühren, Plote, 2007, 35). Regarding the coverage of the costs of legal protection from real legal relations regarding real estate, it is necessary to contract an independent insurance coverage<sup>26</sup> and, as a rule, it is not part of the standard coverage from LPI in private life. However, if it is a dispute regarding a contract whose claim is secured by a mortgage on real estate, then there is still insurance coverage, but only partially, i.e. it only refers to legal costs arising in connection with the realisation of legal interests from the contract, and not in connection with the realisation or defence of a mortgage claim (Harbauer, 2004, 784).

Furthermore, as far as real estate is concerned, the coverage of LPI from the area of private life also includes the realisation of legal interests from contracts (thus from legal obligations) related to the alienation and acquisition of real estate, such as purchase or gift contracts. Regarding contractual relations concerning the use and exploitation of real estate (rent, lease, etc.), there is a special insurance coverage that is not part of the LPI coverage in the area of private life<sup>27</sup>. However, the literature states that the purpose and duration of such a contract should be taken into account in real estate rental contracts, so for example short-term rental of rooms, apartments, vacation homes, camping land, etc., when there is no intention of a longer the use of real estate for the purpose of residence, but for the purpose of a tourist vacation (excursion), was included in the LPI coverage, which refers to the area of private life, and not in the LPI coverage regarding real estate (Van Bühren, Plote, 2007, 35).

<sup>26</sup> § 29 ARB 75/04/2000.

<sup>27</sup> § 29 ARB 75/04/2000.

#### 4.6. Combination of LPI from the field of private life with LPI in traffic matters

Providing legal protection in traffic matters covers the legal costs of exercising rights or defending one's right that may arise as a result of various situations related to traffic and motor vehicles (Lui, 1990, 55-56). Such legal protection coverage insures the owner of the vehicle, as well as any other person who uses the vehicle for various reasons (employees, family members, lessees, renters), from possible legal costs related to traffic and use of the motor vehicle. Insurance legal protection in traffic matters extends to<sup>28</sup>: a) the area of compensation for damages from traffic offences, b) the area of binding legal contracts and real legal relationships with regard to motor vehicles<sup>29</sup>, c) the area of traffic crimes and misdemeanours, d) the area of administrative law that refers to the issue of vehicles and driver's licences and e) the area of tax law and other public legal and financial issues regarding motor vehicles. Insurance coverage of legal protection costs can exist independently, and in the observed insurance conditions it is possible to combine the same with LPI coverage from the area of private life, whereby the insurance coverage tries to additionally meet the individual needs of the insured.

The combination of legal protection insurance in the area of private life and legal protection insurance in the area must be contracted as additional coverage. In this case, there is insurance coverage for the insured and his spouse/common-law partner as co-insured persons who have the position of driver, passenger in the vehicle, owner, possessor, acquirer or alienator of the vehicle, as well as all other persons who, with the permission of the insured or the co-insured persons in the vehicle, either in the position of driver or passenger<sup>30</sup>, as well as minors and adult children. However, insurance coverage for legal expenses in traffic matters does not exist in the event that a minor child of the insured was driving a motor vehicle, as well as in the event that an adult child as a co-insured person is in the position of owner, possessor, leasing receiver, lessee or driver of a motor vehicle<sup>31</sup>. The insurance coverage does not apply

<sup>28</sup> § 26 ARB 75/94/2000 and in § 28. ARB 94/2000.

<sup>29</sup> When the insured, for example, has the position of owner, possessor, lessee, leasing receiver and purchaser of a motor vehicle (§ 21 para. 1 and § 23 para. 1 ARAG Allgemeine Bedingungen für die Rechtsschutzversicherung ARB 2019).

<sup>30</sup> § 26. paragraph 3. ARB 75 and § 26. paragraph 2. item c. ARB 94/2000.

<sup>31</sup> § 26 paragraph 2 point b. ARB 94/2000.

to motor vehicles on water and in the air<sup>32</sup>, but only to road-land motor vehicles and their trailers<sup>33</sup>. When it comes to a combination of LPI coverage from the private life of the insured who performs an independent activity and LPI from the field of traffic, such coverage is primarily intended for small businesses, that is, smaller entrepreneurs and craftsmen (Harbauer, 2004, 960).

#### 5. CERTAIN EXCLUSIONS FROM LPI COVERAGE IN THE AREA OF PRIVATE LIFE

Exclusions from insurance coverage in LPI from the area of private life differ depending on the insurance conditions. According to the so-called in the example insurance conditions discussed here, the exclusions refer to the area of traffic (except when there is a combination of LPI from the area of private life with LPI from the area of traffic) and to the area of insurance for the costs of legal protection in connection with real estate (Harbauer, 2004), 785). However, certain insurance conditions from LPI in the area of private life do not exclude the costs of legal protection in relation to real estate.<sup>34</sup>

In the field of traffic, there is an exclusion from LPI when the insured or members of his family as co-insured persons, as participants in traffic, are affected by an insured event (violation of traffic safety regulations and driver's licence regulations, the occurrence of a harmful event, violation of rights and obligations regarding mandatory relationships on motor vehicles), and are in the capacity of owner, possessor and lessee (leasing receiver) of a vehicle, as well as a driver in a vehicle that moves on land, water or air, as well as with regard to the use of trailers<sup>35</sup>. However, the costs of legal protection are not excluded from coverage when the insured/co-insured person is in the position of a passenger in the vehicle or uses a vehicle that does not move under its own engine power (Harbauer, 2004, 960). Also, the costs of making a request for compensation for damage caused to other things of the insured/co-insured person that were in the motor

<sup>32</sup> § 26, paragraph 4, ARB 94/2000. However, in recent insurance conditions, insurance coverage of legal costs in traffic also applies to vehicles that move by air and water (§ 21 para. 1 and § 23 para. 1 ARAG ARB 2019)

<sup>33</sup> This also includes modern means of e-mobility: electric bicycles, e-scooters, electric motorcycles and seagway (§ 21 paragraph 1. ARAG ARB 2019).

<sup>34</sup> For example § 26 paragraph 1c and § 28 paragraph 1c, ARAG ARB 2019.

<sup>35</sup> § 25 paragraph 4. ARB 75/94/2000, § 23 paragraph 4. ARB 94/2000.



vehicle are not excluded from the coverage, provided that such things do not belong to the motor vehicle and that they are not things (cargo) that are transported in connection with the performance of work, i.e. the transportation of which represents the performance of work tasks.

As another exclusion of coverage in the LPI from the area of private life, legal costs arising in connection with rental and lease relationships<sup>36</sup>, as well as real legal relationships regarding land, buildings and parts of buildings are stated<sup>37</sup>. This is because there is independent insurance coverage for legal costs arising in connection with such legal relations regarding real estate<sup>38</sup>. In addition to the costs related to the protection (realisation) of real rights and rights from rental and lease agreements regarding real estate, but also to the defence against these claims, the exclusion from insurance coverage also includes the costs of realising the right to compensation for damages due to damage to the real estate, because considers that in this case it is about the right to compensation for damages arising from the real right to the real estate<sup>39</sup>. Therefore, there is no insurance coverage as it normally exists with regard to the costs of realising a claim for damages when it comes to damage to movable property or damages (property or non-property) to a person.

## 6. CONCLUSION

Legal protection insurance in the field of private life is focused on the needs of the individual insured to cover the legal costs that they may face in their everyday life. It represents family legal protection coverage because, in addition to the insured, the insurance coverage also extends to members of their (immediate) family (spouse/common-law partner and children, including adult children in school) as co-insured persons whose legal costs are covered when the insured event occurs. The scope of coverage includes several legal areas that are characteristic of the insured's everyday life, i.e. in which the insured (or members of their family)

<sup>36</sup> In terms of legal obligations regarding real estate, the emphasis is on the so-called legal relations of use and use of real estate (Nutzungsverhältnissen), which means that legal costs that may arise in connection with legal obligations related to the alienation or acquisition of real estate are not expressly excluded from LPI coverage in the area of private life, which was already discussed earlier words.

<sup>37</sup> §25. paragraph 4, points b and c. ARB 75.

<sup>38</sup> § 29 ARB 75/94/2000.

<sup>39</sup> BGH (German Federal Supreme Court), Neue Juristische Wochenschrift, 1992, 1511.

may appear as a party. It is about legal protection regarding claims for damages, legal protection from labour relations, legal protection from criminal, misdemeanour and disciplinary law, legal protection in family and inheritance matters, legal protection from real and mandatory relations with regard to real estate. The aforementioned legal areas represent the core of LPI coverage in the area of private life. The scope of coverage can be expanded by additional contracting of legal protection coverage from other legal areas, such as, for example, combined legal protection coverage in traffic matters and vehicle use. In this way, the scope of LPI coverage in the area of private life is maximally adapted to the specific needs of the individual insured and his family. Outside the coverage of LPI in the field of private life, there are legal areas that concern real and mandatory legal relations regarding real estate and legal areas that refer to the performance of business, craft and professional activities of the insured. For legal areas that are not covered by LPI coverage in the area of private life, it is possible to contract independent legal protection coverage that is not part of private life coverage.

The insurance conditions provide for coverage limitations from the LPI in the area of private life. Coverage limits depend on the types of legal relationships in which the need to provide legal protection arises. In family and inheritance matters, the coverage of legal costs refers to only one type of legal protection, namely the so-called advisory legal protection. Therefore, legal expenses that may arise in connection with representation in various legal proceedings in family and inheritance matters are not covered by the coverage. On the other hand, in legal relations from damages, the costs of both advisory legal protection and the costs of representation in legal (court) proceedings for damages are covered, but only if the insured (or a member of his family/co-insured person) has the position of the injured party who submits a request for compensation for damages (the so-called active party in the legal protection procedure). In other legal areas from the area of private life, the legal protection insurer has the obligation to pay any type of legal costs faced by the insured (or co-insured person), in accordance with the insurance conditions.

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