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Obezbeđenje garancije putovanja u slučaju insolventnosti ugovorom o osiguranju

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Apstrakt

Razvoj masovnog turizma je uticao na privredni razvoj regiona i država i predstavlja važan izvor prihoda za pojedince, lokalnu zajednicu i države. U cilju zaštite putnika uvedena je obaveza za organizatore putovanja da obezbede garanciju putovanja za slučaj insolventnosti i za naknadu štete. U radu se razmatraju određena pitanja od značaja za obezbeđenje garancije putovanja od insolventnosti ugovorom o osiguranju u srpskom pravu sa osvrtom na uporedno pravo. Prikazano je stanje na tržištu u pogledu ponude osiguranja garancije putovanja, sa posebnim osvrtom na dešavanja pre krize izazvane pandemijom Kovid-19, u vreme njenog trajanja i danas. Autor u radu ukazuje na uočene nepravilnosti u sadržaju uslova osiguranja, posebno u pogledu isključenja iz pokrića. Nadalje se razmatra dovoljnost sume osiguranja garancije putovanja i pitanja od značaja za likvidaciju šteta. Na kraju rada se govori o osiguranju od otkaza putovanja i njegovoj zastupljenosti. Autor daje predloge za izmene određenih praksi i pravila koja su u primeni.

Ključne reči: garancija putovanja, insolventnost, osiguranje garancije putovanja, osiguranje od otkaza putovanja

1. UVOD

Sa ciljem efikasnije i jedinstvenije zaštite prava putnika, koji su najčešće potrošači, doprinosa pravilnom funkcionisanju jedinstvenog tržišta i postizanja višeg nivoa pravne sigurnosti, Evropska unija je usvojila Direktivu (EU) 2015/2302 o putovanjima u paket-aranžmanima i povezanim putnim aranžmanima. (dalje u tekstu: Direktiva 2015/2302) kojom je stavljena van snage prethodna Direktiva 90/314/EEZ. Ovom direktivom je modernizovan pravni okvir imajući u vidu tržišna kretanja i tehnološki razvoj. Ova direktiva, koja je direktiva maksimalne harmonizacije, je primenjena u srpskom pravu u statusnom delu u Zakonu o turizmu (dalje u tekstu: ZOT, 2019), a u ugovornom delu u Zakonu o zaštiti potrošača (dalje u tekstu: ZZP, 2021). Odredbama ove direktive se zahteva da organizatori putovanja obezbede garanciju putovanja za slučaj insolventnosti i za naknadu štete. Ista obaveza je propisana i u srpskom pravu (ZOT, 2019, čl. 57–61; ZZP, 2021, čl. 118).

Odredbama ZZP je propisano da je organizator dužan da ima garanciju putovanja usled insolventnosti, kojom se posebno obezbeđuju troškovi nužnog smeštaja, ishrane i povratka putnika sa putovanja u mesto polaska u Republici Srbiji i inostranstvu, kao i sva potraživanja putnika, a u skladu sa zakonom kojim se uređuje turizam. Pored ove garancije organizator je dužan da ima i garanciju putovanja radi naknade štete takođe u skladu sa zakonom kojim se uređuje turizam (ZZP, 2021, čl. 118, st. 1). Uslov za izdavanje licence turističkoj agenciji je da ima propisanu garanciju putovanja usled insolventnosti i garanciju putovanja radi naknade štete (ZOT, 2019, čl. 57). Pravilnikom koji je doneo nadležni ministar su propisani vrsta, visina i uslovi garancije putovanja (Pravilnik, 2023, čl. 1).

U većini zemalja je propisano da se garancija putovanja u slučaju insolventnosti može obezbediti ugovorom o osiguranju, bankarskom garancijom (na prvi poziv) ili novčanim depozitom. U Republici Srpskoj je propisano da organizator putovanja može da bira između ova tri načina obezbeđenja garancije putovanja (Zakon o turizmu, 2011, čl. 31).

U pojedinim zemljama, kojih je jako malo, a među njima je Belgija, garancija putovanja se može obezbediti jedino ugovorom o osiguranju (Schulte-Nölke, Meyer, 2008, 334). U najvećem broju zemalja organizator putovanja ima pravo izbora između bankarske garancije i ugovora o osiguranju. To je slučaj, na primer, u Ne-

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mačkoj, Španiji, Hrvatskoj, Crnoj Gori, kao i u srpskom pravu (Ivančević, 2017, 220).

U praksi se pretežno ova garancija putovanja obezbeđuje ugovorom o osiguranju. Manji broj organizatora putovanja se opredeljuje za bankarsku garanciju jer je ona po pravilu znatno skuplja od premije osiguranja.

Osiguranja koja se nude turističkim agencijama, kao što su garancije putovanja radi naknade štete i za slučaj insolventnosti, kao i putna osiguranja koja se nude putnicima, nisu obavezna osiguranja tako da osiguravači mogu da odbiju da ih zaključe. Osiguravači moraju da budu dobri poznavaoci regulative koja uređuje poslovanje turističkih agencija, kako bi pravilno procenili rizik i odlučili da li će ih i pod kojim uslovima prihvatiti u osiguranje (Marin, 2019, 153). Kako osiguranje garancije putovanja ne spada u obavezna osiguranja to osiguravači nisu u obavezi da imaju u svojoj ponudi ovo osiguranje.

2. PONUDA OSIGURANJA GARANCIJE PUTOVANJA NA TRŽIŠTU

Na evropskom tržištu mali broj društava za osiguranje nudi osiguranje garancije putovanja za slučaj insolventnosti. Osiguravači su na srpskom tržištu na isti način postupali i danas i u prethodnom periodu. Svojevremeno je Komisija za zaštitu konkurencije (dalje u tekstu: Komisija), izvršila istraživanje i utvrdila da je, od ukupno dvanaest društava za osiguranje koliko je poslovalo na tržištu, u periodu od 2017. do 2018. samo pet društava za osiguranje koja su se bavila neživotnim vrstama osiguranja radilo ovu vrstu osiguranja. To su bili *Milenijum osiguranje*, *DDOR osiguranje*, *Dunav osiguranje*, *Uniqa osiguranje* i *Wiener osiguranje*. U 2019. godini im se pridružio *Triglav*, a u 2020. godini *Sava osiguranje*, dok je *Wiener osiguranje* prestalo da radi ovu vrstu osiguranja zbog nemogućnosti da obezbedi odgovarajuće reosiguranje (Izveštaj Komisije, 2020, 17).

U toku 2018. je u iznosu od sedam miliona dinara obeštećeno oko šesto putnika *Jazz Travela*, dok je sa više od osam miliona dinara isplaćeno sedamsto oštećenih putnika *Milenijuma* iz Paraćina. Krajem juna 2018. godine ostvaren je jedan veliki štetni događaj kada je agencija *SAB travel* otkazala 2.249 aranžmana, čime je oštećeno oko šest hiljada putnika. Odštetni zahtev je iznosio oko 600.000 evra, što je oko 30% poslovnih prihoda *SAB travel* agencije iz 2017. godine. Iznos odštetnog zahteva višestruko je premašio ne samo iznos ostvarene premije za društvo *DDOR*, nego i ukupno ostvarenu premiju svih društava za osiguranje (Izveštaj Komisije, 2020, 14).

Osiguravači su na osnovu iskustva sa štetama u prethodnoj godini povećali premije osiguranja, što je dočekano sa negodovanjem od strane oraganizatora putovanja. Ukupno ostvarena premija po ovoj vrsti osiguranja u 2019. godini, povećana je 3,5 puta u odnosu na 2018. godinu. Prema tada važećem Pravilniku iz 2019. godine, agencije su svrstavane u četiri kategorije prema broju putnika. Najniži iznos sume osiguranja je bio 200.000 evra, a najviši 400.000 evra, dok su se cene premije osiguranja kretale od 3.000 do 12.000 evra. Sredinom 2019. godine je došlo do zamene određenog broja ugovora koji su bili zaključeni sa *Triglav osiguranjem*, ugovorom sa *Milenijum osiguranjem*. Organizatori su od početka februara 2020. prelazili kod *Milenijuma* zbog niže premije osiguranja (Izveštaj Komisije, 2020, 17).

2. 1. Kriza izazvana pandemijom Kovid 19

Kao posledica vanrednog stanja javnog zdravlja od međunarodnog značaja zbog bolesti Kovid-19 i proglašene pandememije ove bolesti od strane Svetske zdravstvene organizacije 2020. godine, uvedene su nacionalne zabrane putovanja i ograničenja na granicama. Putovanja u Evropi i drugim delovima sveta su bila gotovo u potpunosti obustavljena. To je imalo značajne posledice na posao prevoznika, organizatora turističkih putovanja i druge pružaoce usluga u turizmu. Došlo je do nemogućnosti realizacije planiranih uplaćenih putovanja i masovnog otkazivanja putovanja u toku 2020. godine. Agencije nisu bile u mogućnosti da izvrše povraćaj sredstva koja su uplatili hotelijerima i prevoznicima i samim tim nisu mogle da izvrše povraćaj uplata putnicima. Sve države su se suočile sa ovim problemom.

U Republici Srbiji je u toku pandemije Kovid-19, Uredbom Vlade uveden sistem po kome su putnicima ponuđena zamenska putovanja za putovanja koja se nisu mogla realizovati. Uslov je bio da putnik prihvati ponudu agencije i da zamensko putovanje ispunjava određene uslove. Pre realizacije zamenskog putovanja storniran je stari ugovor i zaključivan novi za zamensko putovanje u istoj novčanoj vrednosti i uz obezbeđenu garanciju putovanja za zamensko putovanje. Ova zamenska putovanja su mogla da se iskoriste do 31. 12. 2021, a ako putnik želi povraćaj novca za nerealizovano putovanje ili odustane od zamenskog putovanja organizator je bio u obavezi da mu vrati uplaćena sredstva u roku od 14 dana računajući od 31. 12. 2021. Izmenom Uredbe zamenska putovanja su mogla da se iskoriste do 31. 12. 2022, a rok za povraćaj sredstava je produžen do 1. februara 2023. godine.

Na taj način su suspendovana prava putnika na povraćaj uplata najkasnije u roku od 14 dana nakon što je ugovor raskinut (ZZP, 2021, čl. 108, st. 1, t. 2, st. 3; ZOT, 2019, čl. 68, st. 1, t. 6, 7, 8). Da bi se spasao sektor turizma potrošači su nevoljno postali zajmodavci agencijama, a pri tom nisu dobili obezbeđenje za povraćaj ovih zajmova (Twigg-Flessnera, 2020, 89). Na sličan način se postupalo i u većini država članica Evropske unije. Pojedine države su uvele dobrovoljne vaučere, dok su neke zloupotrebile mogućnost izdavanja vaučera i uveli ih kao obavezu, među njima i Hrvatska, Poljska, Slovačka. Za Evropsku komisiju su vaučeri bili prihvatljivi samo ako nisu obavezni tako da su nakon pokrenutih postupaka za povredu prava putnika ove države morale da uvedu neobavezne vaučere.

Manji broj putnika nije prihvatio zamenska putovanja umesto povraćaja uplaćenih sredstava i obratili su se sudu. U obrazloženju svoje odluke kojom potvrđuje prvostepenu presudu u korist putnika, Viši sud navodi da: „Uredba predviđa samo način i uslove pod kojima se može dati ponuda za korišćenje zamenskog putovanja za turističko putovanje koje je otkazano ili nije realizovano usled pandemije" tako da ova Uredba nije mogla biti primenjena na ugovorni odnos putnika i agencije i na pravo putnika na povraćaj uplaćenih sredstava nakon raskida ugovora.

Primena Uredbe je doprinela da je putnicima izvršen povraćaj najvećim delom kroz zamenska putovanja od ukupno dugovanih 70 miliona evra na početku pandemije. Agencije su od dugovanih 6,5 miliona evra u gotovini za nerealizovana putovanja, isplatile putnicima šest miliona evra, dok su osiguravači isplatili preostali dug.

Pojedini organizatori putovanja koji su u prethodnom periodu bili vrlo uspešni nisu usled nastale krize izazvane epidemijom Kovid-19 bili u mogućnosti da nastave poslovanje. Jedan od razloga je bio i to što osiguravači nisu želeli da im produže osiguranje. Neke su se preregistrovale u posrednike, a neke su otišle u stečaj. Osiguravači su protiv pojedinih agencija podnosili krivične prijave zbog sumnje da je došlo do prouzrokovanja lažnog stečaja i nepravilnog knjiženja. Ove prijave su odbačene od strane tužilaštva sa obrazloženjem da nije utvrđeno da postoji osnov za krivično gonjenje, da se ne može dokazati umišljaj vlasnika agencije i ovlašćenih zaposlenih, koji je bitan elemenat ovog krivičnog dela. Neke agencije su po savetu konsultanata ekonomske struke donele odluku da prekinu poslovanje i odu u stečaj. Pojedine agencije su donele poslovnu odluku da odu u stečaj iako je na poslovnom računu bilo sredstava za delimično izmirenje obaveza, ali nedovoljno da se isplate sva dugovanja putnicima i drugim poveriocima.

Dodatan problem u vreme krize je bio taj što pojedini organizatori putovanja zbog nastale finansijske krize, nedovoljnog obima poslovanja i nastalih finansijskih teškoća nisu redovno plaćali premiju osiguranja za garanciju putovanja. Prema odredbama srpskog prava osiguravač korisniku osiguranja može da iznese sve prigovore koje može da istakne prema ugovaraču osiguranja (ZOO, 1978, 905, 921). Osiguravači, koliko nam je poznato, nisu u praksi koristili ovo svoje pravo za vreme krize. Kod ove vrste osiguranja nije propisano da osiguravač nema pravo na određene prigovore, tako da može istaći i prigovor neplaćanja premije od strane ugovarača osiguranja – organizatora putovanja (Ivančević, 2017, 228). U hrvatskom i nemačkom pravu nije dozvoljeno isticanje ovog prigovora od strane osiguravača (Ćurković, 2015, 174).

Nakon krize izazvane pandemijom Kovid 19 i stečaja Grupacije *Thomas Cook*, banke su prestale da daju bankarske garancije, a osiguravači su se povlačili sa evropskog tržišta, što je, na primer, bilo posebno izraženo u Austriji i Belgiji (Izveštaj EK, 2021, 12). To je bio slučaj i na srpskom tržištu. Banke su posebno oprezne pri izdavanju bankarske garancije i ne daju je lako. Ovo osiguranje izlaže osiguravače velikom riziku. Posebno što dobrim delom od ponašanja osiguranika zavisi da li će se ostvariti osigurani slučaj, tako da je kod ovog osiguranja u velikoj meri izražen subjektivan rizik (Jankovec, 1978, 137). Zbog toga i nemogućnosti obezbeđenja odgovarajućeg reosiguranja ponuda osiguravača

Tabela br. 1. Broj zaključenih ugovora o osiguranju po godinama.

godina	osiguranje od odgovornosti	Premija (u 000 dinara)	osiguranje od insolventnosti	Premija (u 000 dinara)
2024	254	27.288.000	308	162.163.000
2023	197	21.181.000	248	123.638.000
2022	161	14.088.000	482	98.474.000
2021	115	15.677.000	166	96.954.000
2020	532	58.956.000	600	28.515.900
2019	134	7.475.000	549	230.106.000

na srpskom tržištu je i danas ograničena na nekoliko društava.

Prema podacima Narodne banke Srbije broj zaključenih ugovora o osiguranju po godinama je prikazan u tabeli na predhodnoj strani:

3. ISKLJUČENJA IZ POKRIĆA

Osiguravači posluju u skladu sa pravilima svoje struke, procenama rizika i na osnovu aktuarskih obračuna isključuju pojedine rizike. Premija osiguranja koja bi pokrila sve rizike bi bila visoka i dovela bi u pitanje mogućnost agencija da sebi obezbede osiguranje. Svojevremeno je ukazano da pojedina isključenja iz osiguranja srpskih osiguravača nisu u interesu korisnika garancije putovanja i da bi se moglo postaviti pitanje opravdanosti obezbeđenja garancije putovanja ugovorom o osiguranju. U tom smislu je ukazano osiguravačima da treba da preispitaju uslove osiguranja garancije putovanja (Ivančević, 2017, 226, 233).

Krajem 2020. godine su udruženja turističkih agencija ukazala da je Pravilnikom o garancijama putovanja od 15. novembra 2020, uređeno da se „garancijom putovanja ne može ugovoriti isključenje od odgovornosti davaoca garancije", ali da se u ugovorima o osiguranju turističkih agencija navodi više situacija kada se primenjuje izuzeće. Prema uslovima osiguranja garancije neće pokriti štetu ukoliko je ona nastala kao posledica vanrednog stanja i pandemije. Na ovaj način putnici ostaju nezaštićeni ako agencija ne može da isplati štetu, odnosno da vrati plaćeni iznos putovanja (Jovanović, 2020). Vlasnici agencija ne poznaju i ne razumeju u potpunosti kako osiguranje posluje. Polisa osiguranja im je skupa i oni imaju često nerealna očekivanja od osiguranja.

U trenutno važećim uslovima osiguranja je manji broj isključenja od onih koja su bila ranije prisutna. Osiguravači su nakon donošenja Zakona o turizmu (2019) doneli nove uslove osiguranja usaglašene sa odredbama ovog zakona. Međutim, i dalje su prisutna isključenja koja se čine nelogičnim ili su na štetu su putnika po garanciji za insolventnost. Tako se isključuje obaveza osiguravača ako putnik nije u potpunosti izvršio svoje ugovorne obaveze prema osiguraniku po ugovoru o putovanju u skladu sa Opštim uslovima putovanja i programom putovanja; (DDOR, 2019, čl. 4, stav 1, tač. 3); Globos, 2020, čl. 4, stav 1, tač. 5) odnosno drugačije formulisano isključenje obaveze osiguravača „usled utvrđenih propusta u neispunjenju ugovornih obaveza koji se pripisuju putniku" (Milenijum, 2022, čl. 17, st. 1, tač. 7; Dunav insolventnost, 2020, čl. 9, st. 1, tač. 6). Ovo bi se moglo tumačiti da osiguravač ne pokriva povraćaj uplaćene akontacije za putovanje koje nije izvršeno zbog insolventnosti osiguranika, odnosno deo uplaćenih sredstava kada je putnik, na primer, kasnio sa uplatom ostatka cene. Tim pre je nelogično ovo isključenje kada se uz podnošenje zahteva od dokumentacije, između ostalog, traži „dokaz o uplati celog ili dela aranžmana." Isključenje obaveze osiguravača „usled prestanka ugovora o turističkom putovanju zbog nemogućnosti ispunjenja ugovornih obaveza za koje nisu odgovorne ugovorne strane" (Milenijum, 2022, čl. 17, st. 1, tač. 6), ugrožava prava putnika s obzirom da u kriznim situacijama dolazi do raskida ugovora usled okolnosti koje ne zavise od ugovornih strana.

Propisano je da se garancijom putovanja ne mogu ograničiti prava korisnika garancije putovanja na naknadu u skladu sa zakonom (ZOT, 2019, čl. 60 st. 2). Obezbeđenje garancije putovanja podrazumeva da su u potpunosti pokriveni svi rizici koji mogu nastati kao posledica insolventnosti organizatora putovanja. Međutim, osiguravači, u skladu sa pravilima struke, uslovima osiguranja isključuju svoju odgovornost tako da nisu u obavezi da isplate naknadu u slučaju da do insolventnosti dođe usled: terorizma, ratnih događaja, pandemija, epidemija, zatvaranja granica zemlje destinacije ili zemlje tranzita putnika, štrajkova, pobuna, manifestacija, mera državnih organa koje utiču na nastanak osiguranog slučaja, ako je država proglasila ratno stanje, vanredno stanje ili moratorijum na izmirenje svojih obaveza i slično (Milenijum, 2022, čl. 17, st. 1, tač. 8; DDOR, 2019, čl. 4, stav 1, tač. 2); usled više sile, odnosno nepredviđenih dogadaja na koje ugovorne strane nemaju uticaja i čije su posledice neizbežne uprkos primeni dužne pažnje odnosno čije se dejstvo nije moglo predvideti, izbeći ili otkloniti (Milenijum, 2022, čl, 17, st. 1, tač. 8, 9; slično i Dunav insolventnost, 2020, čl. 9, st. 1, tač. 2).

4. DOVOLJNOST SUME OSIGURANJA GARANCIJE PUTOVANJA

U srpskom pravu, prema odredbama Pravilnika, predmet jednog ugovora su garancija putovanja za slučaj insloventnosti i garancija putovanja za naknadu štete (Pravilnik, 2023, čl. 6, st. 1). Nije navedeno da se za svaku garanciju putovanja ugovara pojedinačno poseban limit u najmanjem iznosu koji je propisan za pojedinu licencu. Uslovima srpskih osiguravača se pretežno jednom polisom osiguranja obezbeđuju obe garancije putovanja, što je u skladu sa važećim Pravilnikom. Ugovor o osiguranju se zaključuje na jedinstvenu propisanu minimalnu sumu osiguranja za obe garancije putovanja. Od strane osiguravača je prihvaćen ovakav način ugovaranja imajući u vidu da su štete po osnovu garancije putovanja za naknadu štete retke i manjeg obima. Pojedini osiguravači uslovima osiguranja predviđaju podelu funkcionalnog dela premije u polisama (Triglav). *Globos osiguranje* određuje da od ukupno ugovorene sume osiguranja limit pokrića iznosi 60% od sume osiguranja za osiguravajuće pokriće rizika troškova nužnog smeštaja, ishrane i povratka putnika sa putovanja u zemlji i inostranstvu, u mesto polaska; 40% od sume osiguranja za osiguravajuće pokriće ostalih osiguranih rizika (Globos, 2020, čl. 5, st. 3). Ukoliko se garancija putovanja obezbeđuje i bankarskom garancijom i ugovorom o osiguranju, oba ugovora se pojedinačno zaključuju sa limitom pokrića u najmanjem propisanom iznosu (Pravilnik, 2023, čl. 6, st. 2).

Nema posebnih odredaba o minimalnoj sumi osiguranja, ali se ona ugovorom određuje u skladu sa odredbama Pravilnika o minimalnom iznosu garancije putovanja za pojedine organizatore. Iznos minimalne garancije putovanja je prema sada važećem Pravilniku u srpskom pravu određen u različitom iznosu zavisno od kategorije (A ili B) organizatora putovanja i visine prometa. Organizatori putovanja imaju mogućnost da se osiguraju na veće iznose od minimalnih ali oni to po pravilu ne čine. U pojedinim zemljama se zakonom uređuje minimalna suma osiguranja (Schulte-Nölke, Meyer, 2008, 336).

Pravilnik propisuje obavezu organizatora putovanja da za sve vreme važenja garancije putovanja obezbedi minimalni iznos pokrića propisan Pravilnikom u zavisnosti od kategorije licence (Pravilnik, 2023, čl. 8, st. 2). Ugovorom o osiguranju se ugovara iscrpljujuća suma osiguranja. Ugovorena suma osiguranja se iscrpljuje isplatom svake naknade iz osiguranja u skladu sa uslovima osiguranja. Osiguranje prestaje da važi ako dođe do iscrpljivanja sume osiguranja. Većina osiguravača se u uslovima osiguranja ne izjašnjava u vezi mogućnosti obnove sume osiguranja. Neki osiguravači uslovima osiguranja priznaju pravo ugovarača osiguranja da traži obnovu sume osiguranja na prvobitno ugovoreni iznos, ali zadržavaju pravo da ne izvrše obnovu osiguranja (Globos, 2020, čl. 5, st. 4). Drugi osiguravač navodi u uslovima da osiguranik može da ugovori dopunu iscrpljujuće sume osiguranja uz poseban prihvat od strane osiguravača i uz obračun dodatne premije (Dunav insolventnost, 2020, čl. 5, st. /2).

5. LIKVIDACIJA ŠTETA

U postupcima za likvidaciju šteta osiguravači su se susretali sa brojnim problemima. Agencije nisu uredno dostavljale podatke o broju putnika osiguravačima, u knjigovodstvu je nedostajala dokumentacija. Bilo je i pokušaja prevara. Pojedinim putnicima nisu uručivane garancije putovanja, najčešće od strane subagenata-prodavaca, a nekima su davali nevažeće garancije putovanja na starim obrascima. Dokazi o uplati aranžmana i otkaza putovanja su nekad bili sporni ako putnik ne poseduje pisani trag o dogovorima postignutim telefonom i sl.

Na osnovu izveštaja o kontroli turističkih inspektora i spiskova putnika koji bi uz njih bili priloženi radilo se na obradi podnetih zahteva putnika. Zahvaljujući dobroj saradnji osiguravača sa nadležnim Ministarstvom i udruženjem *YUTA* putnici su obeštećeni, iako su u nekim slučajevima čekali duže vreme zbog velikog broja zahteva za obeštećenje. Osiguravači su uglavnom isplatili u potpunosti nominalni iznos putnicima agencija koje su otišle u stečaj. Za sada su samo putnici agencije *Mitos travel* dobili procentualno obeštećenje u iznosu od 24,85% od svog potraživanja. Prema izjavi predstavnika *Globos osiguranja* ukupna osigurana suma je bila 50.000 evra (5.858.385 dinara), dok su prijavljeni validni zahtevi premašili 23 miliona dinara (Danas Online, 2025).

U budućnosti bi likvidacija šteta trebala da bude efikasnija i postupak brži zbog mogućnosti brzog i tačnog informisanja o poslovanju agencije. Naime, u okviru Ministarstva turizma i omladine ustanovljen je Centralni informacioni sistem *eTurista* (CIS). Ovaj sistem je počeo sa radom 1. oktobra 2020. godine u početku sa zadatkom jednostavne prijave i odjave gostiju, evidencije uplaćenih boravišnih taksi i zahteva za kategorizaciju smeštaja u Srbiji. Danas ovaj sistem obuhvata brojne baze podataka od značaja za praćenje rada agencija od strane turističke inspekcije i mogućnosti blagovremenog reagovanja na uočene nepravilnosti. U delu značajnom za organizovana putovanja od značaja je (Ministarstvo turizma i omladine, n/a/a):

– *evidencija ugovora o posredovanju* – sadrži osnovne podatke o organizatoru putovanja i posredniku, kao i opšte podatke o ugovoru. Nakon unosa podataka o prodaji putovanja od strane posrednika, organizator ima mogućnost da odobri ili odbije prodaju putovanja. Pre same evidencije prodaje turističkog putovanja, turistička agencija organizator putovanja i turistička agencija posrednik putovanja, van sistema mogu dogovoriti prodaju i proveriti raspoloživost.

– *evidenciju ugovora sa trećim licima* kojima je povereno izvršenje usluga za određeni program putovanja,

– *evidenciju programa putovanja* koji je organizator pripremio samostalno ili po zahtevu putnika koji se prilaže u skeniranom obliku;

– *evidencija prodatih turističkih putovanja*, koja, pored podataka o organizatoru putovanja i subjektu prodaje, sadrži i podatke o putniku i detaljima putovanja. U ovu evidenciju podatke unose organizator putovanja i posrednik. Posrednik ne može da evidentira prodaju ukoliko je došlo do dostizanja limita pokrića garancije putovanja.

– *evidentiranje predevidencije* – vrši se evidencija turističkog putovanja koje je ugovoreno bez poznavanja tačnog broja putnika i njihovog identiteta (kongresni turizam, konferencije, školske ekskurzije...) Nakon unosa predevidencije prodatog turističkog putovanja u CIS-u se od visine prometa vrši zauzeće iznosa prodajne cene tog turističkog putovanja.

– *evidencija zauzeća visine prometa* – Nakon unosa evidencije, odnosno predevidencije prodatog turističkog putovanja u CIS-u se od visine prometa vrši zauzeće iznosa prodajne cene turističkog putovanja. U slučaju dostizanja punog iznosa visine prometa, CIS onemogućava dalju prodaju turističkih putovanja. U slučaju otkazivanja turističkog putovanja organizator putovanja to turističko putovanje stornira u CIS-u, a iznos zauzetih sredstava se oslobađa. Nakon realizacije turističkog putovanja, po povratku putnika na odredište i unošenjem izdatog propisanog računa u CIS, iznos zauzetih sredstava se oslobađa.

– *Evidencija potvrda o garanciji putovanja* – Potvrdu o garanciji putovanja turistička agencija štampa iz CIS-a nakon evidencije prodaje putovanja. Prilikom prodaje turističkog putovanja turistička agencija putniku uručuje potvrdu o garanciji putovanja koja sadrži: opšte podatke o organizatoru putovanja, davaocu garancije putovanja, opšte podatke o putniku i turističkom putovanju, broj ugovora o turističkom putovanju, broj programa putovanja, cenu turističkog putovanja, datum početka i završetka turističkog putovanja, destinacija i dr., kao i podatke o predmetu garancije putovanja, način aktiviranja garancije putovanja i dr.

Pristupom linku Pretraga potvrda o garanciji putovanja i unošenjem verifikacionog koda sa potvrde o garanciji putovanja, putnik dobija sve podatke sadržane u potvrdi koja mu je izdata, i na taj način može da proveri njenu validnost.

6. OSIGURANJE OD OTKAZA PUTOVANJA

Putnici se mogu obezbediti od posledica otkaza putovanja ili prekida turističkog putovanja ugovaranjem dobrovoljnog osiguranja uz neznatnu premiju. Uslov je da se ovo osiguranje mora zaključiti istovremeno sa zaključenjem ugovora o turističkom putovanju ili u kratkom vremenskom periodu nakon toga. U Evropskoj uniji je ovo osiguranje veoma zastupljeno, a kod nas nedovoljno. Razloge možemo potražiti u slaboj angažovanosti osiguravača i agencija u nuđenju ovog osiguranja, neodgovarajućoj informisanosti putnika, finansijskoj neobrazovanosti i nedostatku veština u upravljanju ličnim rizicima (Ivančević, 2017a, 471). Turističke agencije od 2019. godine mogu da ponude putnicima dobrovoljna putna osiguranja uz ostvarivanje provizije, među kojima je i ovo osiguranje (ZOT, 2019, 75). Mišljenja smo da bi trebalo uvesti obavezu za agencije da ponude dobrovoljna osiguranja putnicima, kao što je to propisano u Hrvatskoj (Zakon o pružanju usluga u turizmu, 2017, čl. 54). Po pravilu u agencijama nude putno zdravstveno osiguranje, a osiguranje od otkaza putovanja i druga osiguranja tek ako se putnik za njih raspituje. Zaposleni u agencijama ne poseduju dovoljno znanja da bi putniku objasnili uslove osiguranja tako da im je potrebna edukacija o osiguranjima koja nude.

Prema podacima Narodne banke u 2020. godini je zaključeno 4.844 ugovora o osiguranju rizika otkaza turističkog putovanja, u 2021. godini je zaključeno 22.809 ugovora. Potom sledi pad broja ovih ugovora, tako da je u 2022. godini zaključeno 7.722, dok je u 2023. godini zaključeno 3.115 ovih ugovora, i u 2024. godini 2791. Deluje da su nakon krize 2020. godine putnici bili oprezniji i obezbeđivali su se ovim osiguranjem. Međutim vremenom su zaboravili da su izloženi ovom riziku. U vreme pre i u vreme pandemije ovim osiguranjem je kod nekih srpskih osiguravača bio pokriven i rizik epidemije bolesti (Triglav U/T-OTP/19-08, čl. 3, st. 1, al. 3). U Evropskoj uniji su utvrdili da osiguranjem od otkaza putovanja po pravilu nisu pokriveni rizici povezani sa pandemijom čime se putnicima onemogućava da se osiguraju od mogućeg gubitka uzrokovanog pandemijom. Iz turističke branše je predlagano da se omogući da se u cenu paket aranžmana može uključiti i trošak ličnog putnog osiguranja ako to putnik prihvati. Potrošačke organizacije su istakle da ugovaranje bilo kog oblika osiguranja ne sme da ugrozi prava putnika na povraćaj i zaštitu u slučaju insolventnosti (Izveštaj EK, 2021, 22).

7. ZAKLJUČAK

U praksi se garancija putovanja najčešće zaključuje ugovorom o osiguranju. Kako osiguranje garancije putovanja ne spada u obavezna osiguranja to osiguravači nisu u obavezi da zaključe ovo osiguranje. Mali broj društava za osiguranje nudi osiguranje garancije putovanja. Osiguravači su na srpskom tržištu na isti način postupali i danas i u prethodnom periodu.

Pritisci na sektor turizma nastali zbog masovnog otkazivanja putovanja zbog pandemije Kovida-19 u toku

2020. godine su amortizovani donošenjem Uredbe Vlade Republike Srbije. Najveći teret ove krize su podneli putnici i osiguravači. U toku 2020. godine je značajan broj agencija otišao u stečaj, a putnike su obeštetili osiguravači.

Uslovi srpskih osiguravača su usaglašeni sa neznatnim razlikama u formulacijama isključenja iz osiguranja. Prisutna su isključenja koja se čine nelogičnim za garanciju putovanja zbog insolventnosti ili su na štetu putnika korisnika garancije putovanja. U duhu dobre poslovne prakse osiguravači bi trebali da preispitaju svoje uslove osiguranja garancije putovanja. Navdeno podrazumeva da ih koriguju kako bi odgovarali ciljnom tržišnom segmentu i bili u skladu sa potrebama osiguranika i korisnika osiguranja.

Pravilnikom o garanciji putovanja bi trebalo ograničiti pravo osiguravača na prigovore koje može istaći korisniku osiguranja – putniku, kada je garancija putovanja obezbeđena ovim ugovorom.

Od značaja je da se radi na edukaciji putnika i zaposlenih u turističkim agencijama, o mogućnostima i pravilima osiguranja, posebno o karakteristikama dobrovoljnih putnih osiguranjima koje agencije nude putnicima. Potrebno je razvijati svest putnika o značaju i korisnosti osiguranja od otkaza putovanja, koje je sada u padu po broju zaključenih ugovora u prethodnom periodu.

Trebalo bi razviti svest u društvu da se osiguranjem ne može obezbediti garancija putovanja koja će u svakom slučaju biti dovoljna da se isplate u potpunosti potraživanja putnika u slučaju insolventnosti organizatora putovanja. U tom smislu treba razmišljati da se formira garantni fond iz koga bi se obeštetili putnici za razliku potraživanja koja nisu ostvarili od osiguravača.

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Provision of a travel guarantee in the event of insolvency by an insurance contract

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Abstract

The development of mass tourism has influenced the economic development of regions and countries and represents an important source of income for individuals, local communities, and countries. In order to protect travellers, an obligation has been introduced for travel organisers to provide a travel guarantee in the event of insolvency and for compensation of damage. The paper examines certain issues of importance for securing a travel guarantee against insolvency by means of an insurance contract under Serbian law, with reference to comparative law. The state of the market regarding the provision of travel guarantee insurance is presented, with particular reference to developments before the crisis caused by the COVID-19 pandemic, during its duration, and today. In this paper, the author points to observed irregularities in the content of insurance terms, especially with regard to exclusions from coverage. Furthermore, the sufficiency of the insured sum of the travel guarantee and issues of importance for claims settlement are considered. The final part of the paper discusses travel cancellation insurance and its prevalence. The author provides proposals for amendments to certain practices and rules currently in application.

Keywords: travel guarantee, insolvency, travel guarantee insurance, travel cancellation insurance

1. INTRODUCTION

With the aim of ensuring more efficient and uniform protection of the rights of travellers, who are most often consumers, contributing to the proper functioning of the single market, and achieving a higher level of legal certainty, the European Union adopted Directive (EU) 2015/2302 on package travel and linked travel arrangements (hereinafter: Directive 2015/2302), by which the previous Directive 90/314/EEC was repealed. This Directive modernised the legal framework, taking into account market trends and technological development. This Directive, which is a directive of maximum harmonisation, has been implemented in Serbian law in the status-related part through the Law on Tourism (hereinafter: LOT, 2019), and in the contractual part through the Law on Consumer Protection (hereinafter: LCP, 2021). The provisions of this Directive require travel organisers to provide a travel guarantee in the event of insolvency and for compensation of damage. The same obligation is prescribed under Serbian law. (LOT, 2019, Articles 57–61; LCP, 2021, Article 118).

The provisions of the LCP prescribe that the organiser is obliged to possess a travel guarantee in the event of insolvency, which particularly covers the costs of necessary accommodation, food, and the return of travellers from the trip to the place of departure in the Republic of Serbia and abroad, as well as all claims of travellers, in accordance with the law governing tourism. In addition to this guarantee, the organiser is also obliged to possess a travel guarantee for compensation of damage, likewise in accordance with the law governing tourism (LCP, 2021, Article 118, Paragraph 1). A condition for issuing a licence to a travel agency is that it possesses the prescribed travel guarantee in the event of insolvency and a travel guarantee for compensation of damage (LOT, 2019, Article 57). The Rulebook adopted by the competent minister prescribes the type, amount, and conditions of the travel guarantee (Rulebook, 2023, Article 1).

In most countries, it is prescribed that a travel guarantee in the event of insolvency may be secured by an insurance contract, a bank guarantee (on first demand), or a cash deposit. In the Republic of Srpska, it is prescribed that the travel organiser may choose between these three methods of securing a travel guarantee (Law on Tourism, 2011, Article 31).

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In certain countries, which are very few in number, including Belgium, the travel guarantee may be secured solely by means of an insurance contract (Schulte-Nölke & Meyer, 2008, 334). In the majority of countries, the travel organiser has the right to choose between a bank guarantee and an insurance contract. This is the case, for example, in Germany, Spain, Croatia, Montenegro, as well as under Serbian law (Ivančević, 2017, 220).

In practice, this travel guarantee is predominantly secured by means of an insurance contract. A smaller number of travel organisers opt for a bank guarantee because it is, as a rule, significantly more expensive than the insurance premium.

Insurance policies offered to travel agencies, such as travel guarantees for compensation of damage and in the event of insolvency, as well as travel insurance offered to travellers, are not compulsory insurance policies, meaning that insurers may refuse to conclude them. Insurers must possess good knowledge of the regulations governing the operation of travel agencies in order to properly assess the risk and decide whether and under what conditions they will accept them for insurance coverage (Marin, 2019, 153). Since travel guarantee insurance does not fall within the category of compulsory insurance, insurers are not obliged to include this insurance in their offer.

2. OFFER OF TRAVEL GUARANTEE INSURANCE ON THE MARKET

On the European market, a small number of insurance companies offer travel guarantee insurance in the event of insolvency. Insurers on the Serbian market acted in the same manner both today and in the previous period. At one point, the Commission for Protection of Competition (hereinafter: the Commission) conducted an investigation and established that, out of a total of twelve insurance companies operating on the market, in the period from 2017 to 2018 only five insurance companies engaged in non-life insurance provided this type of insurance. These were *Milenijum Insurance, DDOR Insurance, Dunav Insurance, Uniqa Insurance*, and *Wiener Insurance*. In 2019, *Triglav* joined them, and in 2020 *Sava Insurance*, while *Wiener Insurance* ceased providing this type of insurance due to the inability to secure adequate reinsurance (Commission Report, 2020, 17).

During 2018, approximately six hundred travellers of *Jazz Travel* were compensated in the amount of seven million dinars, while more than eight million dinars was paid to seven hundred injured travellers of *Milenijum* from Paraćin. At the end of June 2018, one major loss event occurred when the agency *SAB Travel* cancelled 2,249 arrangements, thereby causing damage to approximately six thousand travellers. The compensation claim amounted to approximately EUR 600,000, which represented around 30% of the business revenues of the SAB Travel agency from 2017. The amount of the compensation claim exceeded many times not only the amount of premium earned by *DDOR Insurance*, but also the total premium earned by all insurance companies combined (Commission Report, 2020, 14).

Based on their experience with claims in the previous year, insurers increased insurance premiums, which was met with dissatisfaction by travel organisers. The total premium earned under this type of insurance in 2019 increased by 3.5 times compared to 2018. According to the Rulebook in force at the time from 2019, agencies were classified into four categories according to the number of travellers. The lowest insured sum amounted to EUR 200,000 and the highest to EUR 400,000, while insurance premium prices ranged from EUR 3,000 to EUR 12,000. In mid-2019, a certain number of contracts concluded with *Triglav Insurance* were replaced by contracts with *Milenijum Insurance*. From the beginning of February 2020, organisers started moving to *Milenijum* due to the lower insurance premium (Commission Report, 2020, 17).

2. 1. Crisis Caused by the COVID-19 Pandemic

As a consequence of the public health emergency of international concern caused by the COVID-19 disease and the declared pandemic of this disease by the World Health Organization in 2020, national travel bans and border restrictions were introduced. Travel in Europe and other parts of the world was almost completely suspended. This had significant consequences for the business operations of carriers, travel organisers, and other tourism service providers. It led to the impossibility of carrying out planned paid trips and the mass cancellation of travel during 2020. Agencies were not in a position to obtain refunds of funds paid to hoteliers and carriers and, consequently, were unable to refund payments to travellers. All countries faced this problem.

During the COVID-19 pandemic in the Republic of Serbia, the Government Regulation introduced a system under which travellers were offered substitute travel arrangements for trips that could not be realised. The condition was that the traveller accept the agency's offer and that the substitute travel arrangement fulfil certain requirements. Prior to the realisation of the substitute travel arrangement, the original contract was cancelled and a new contract for the substitute travel arrangement was concluded in the same monetary value and with a secured travel guarantee for the substitute travel arrangement. These substitute travel arrangements could be used until 31 December 2021, and if the traveller requested a refund for the unrealised trip or withdrew from the substitute travel arrangement, the organiser was obliged to return the paid funds within 14 days calculated from 31 December 2021. By amendments to the Regulation, substitute travel arrangements could be used until 31 December 2022, while the deadline for the refund of funds was extended until 1 February 2023.

In this way, the rights of travellers to a refund of payments no later than 14 days after the contract had been terminated were suspended (LCP, 2021, Article 108, Paragraph 1, Item 2, Paragraph 3; LOT, 2019, Article 68, Paragraph 1, Items 6, 7, 8). In order to save the tourism sector, consumers unwillingly became lenders to agencies, while at the same time not receiving security for the repayment of these loans (Twigg-Flessner, 2020, 89). A similar approach was adopted in the majority of Member States of the European Union. Certain countries introduced voluntary vouchers, while some abused the possibility of issuing vouchers and introduced them as mandatory, including Croatia, Poland, and Slovakia. For the European Commission, vouchers were acceptable only if they were not mandatory, so after infringement proceedings concerning the violation of travellers' rights had been initiated, these countries were required to introduce non-mandatory vouchers.

A smaller number of travellers did not accept substitute travel arrangements instead of the refund of paid funds and brought the matter before the courts. In the reasoning of its decision confirming the first-instance judgment in favour of the travellers, the Higher Court stated that: "The Regulation provides only the method and conditions under which an offer for the use of substitute travel arrangements may be made for tourist travel that was cancelled or unrealised due to the pandemic", so that this Regulation could not be applied to the contractual relationship between the traveller and the agency and to the traveller's right to the refund of paid funds after termination of the contract.[1]

The application of the Regulation contributed to travellers being refunded largely through substitute travel arrangements out of the total EUR 70 million owed at the beginning of the pandemic. Out of the EUR 6.5 million owed in cash for unrealised trips, agencies paid travellers EUR 6 million, while insurers paid the remaining debt.[2]

Certain travel organisers that had been highly successful in the previous period were, due to the crisis caused by the COVID-19 epidemic, unable to continue their operations. One of the reasons was that insurers did not wish to renew their insurance coverage. Some re-registered as intermediaries, while others entered bankruptcy proceedings. Insurers filed criminal complaints against certain agencies on suspicion that false bankruptcy and improper bookkeeping had occurred. These complaints were dismissed by the public prosecutor's office with the explanation that no grounds for criminal prosecution had been established and that intent on the part of the agency owner and authorised employees, which constitutes an essential element of this criminal offence, could not be proven. Some agencies, following the advice of economic consultants, decided to cease operations and enter bankruptcy proceedings. Certain agencies made a business decision to enter bankruptcy proceedings even though there were funds in the business account sufficient for partial settlement of obligations, but insufficient to pay all debts owed to travellers and other creditors.

An additional problem during the crisis was that certain travel organisers, due to the financial crisis, insufficient business volume, and resulting financial difficulties, did not regularly pay insurance premiums for travel guarantees. According to the provisions of Serbian law, the insurer may raise against the beneficiary of the insurance all objections that may be raised against the policyholder (Law on Contracts and Torts, 1978, Articles 905, 921). As far as is known, insurers did not exercise this right in practice during the crisis. In this type of insurance, it is not prescribed that the insurer is deprived of the right to raise certain objections, so the insurer may also raise the objection of non-payment of the premium by the policyholder – the travel organiser (Ivančević, 2017, 228). Under Croatian and German law, raising this objection by the insurer is not permitted (Ćurković, 2015, 174).

Following the crisis caused by the COVID-19 pandemic and the bankruptcy of the *Thomas Cook Group*, banks ceased issuing bank guarantees, while insurers withdrew from the European market, which was particularly pronounced, for example, in Austria and Belgium (European Commission Report, 2021, 12). This was also the case on the Serbian market. Banks are particularly cautious when issuing bank guarantees and do not grant them easily. This insurance exposes

[1] Ruling of the High Court in Belgrade, Civil Appeal Case No. 31666/21 of 28the September 2023. Available at: https://efektiva.rs, Accessed 5th May 2026.

[2] According to the statement of YUTA director A. Seničić, six million euros were returned to passengers, and the rest will be settled by insurers (Antelj, 2023).

Table No. 1. Number of concluded insurance contracts by year

Year	Liability insurance	Premium (in RSD 000)	Insolvency insurance	Premium (in RSD 000)
2024	254	27,288,000	308	162,163,000
2023	197	21,181,000	248	123,638,000
2022	161	14,088,000	482	98,474,000
2021	115	15,677,000	166	96,954,000
2020	532	58,956,000	600	28,515,900
2019	134	7,475,000	549	230,106,000

insurers to considerable risk, especially since the occurrence of the insured event largely depends on the conduct of the insured, meaning that subjective risk is highly pronounced in this type of insurance (Jankovec, 1978, 137). For this reason, and due to the inability to secure appropriate reinsurance, the offer of insurers on the Serbian market remains limited to several companies even today.[3]

According to the data of the National Bank of Serbia, the number of concluded insurance contracts by year is presented in the following table No 1.

3. EXCLUSIONS FROM COVERAGE

Insurers operate in accordance with the rules of their profession, risk assessments, and actuarial calculations, and therefore exclude certain risks. An insurance premium that would cover all risks would be high and would call into question the ability of agencies to secure insurance for themselves. It was previously pointed out that certain exclusions from insurance applied by Serbian insurers were not in the interest of the beneficiaries of travel guarantees and that the justification for securing a travel guarantee by means of an insurance contract could be questioned. In this regard, insurers were advised to reconsider the terms and conditions of travel guarantee insurance (Ivančević, 2017, 226, 233).

At the end of 2020, associations of travel agencies pointed out that the Rulebook on Travel Guarantees of 15 November 2020 prescribed that "the travel guarantee may not provide for the exclusion of the guarantor's liability", but that insurance contracts of travel agencies listed multiple situations in which exclusions applied. According to the insurance terms and conditions, the guarantee would not cover damage if it arose as a consequence of a state of emergency or a pandemic. In this way, travellers remain unprotected if the agency is unable to compensate the damage or refund the amount paid for the trip (Jovanović, 2020). Agency owners do not fully understand how insurance operates. They feel that insurance policies are expensive for them and they often have unrealistic expectations regarding insurance.

The currently applicable insurance terms contain a smaller number of exclusions than those previously present. Following the adoption of the Law on Tourism (2019), insurers adopted new insurance terms harmonised with the provisions of this law. However, exclusions that appear illogical or detrimental to travellers under the insolvency guarantee are still present. Thus, the insurer's obligation is excluded if the traveller has not fully fulfilled his or her contractual obligations towards the insured under the travel contract in accordance with the General Terms and Conditions of Travel and the travel programme (DDOR, 2019, Article 4, Paragraph 1, Item 3; Globos, 2020, Article 4, Paragraph 1, Item 5), or, differently formulated, the exclusion of the insurer's obligation "due to established omissions in the fulfilment of contractual obligations attributable to the traveller" (Milenijum, 2022, Article 17, Paragraph 1, Item 7; Dunav Insolvency, 2020, Article 9, Paragraph 1, Item 6). This could be interpreted to mean that the insurer does not cover the refund of an advance payment for travel that was not realised due to the insolvency of the insured, or part of the paid funds where the traveller, for example, was late in paying the remainder of the price. This exclusion is even more illogical considering that, among the documents required when submitting a claim, "proof of payment of the entire arrangement or part thereof" is requested. The exclusion of the insurer's obligation "due to termination of the tourism travel contract because of the impossibility of fulfilling contractual obligations for which the contracting parties are not responsible" (Milenijum, 2022, Article 17, Paragraph 1, Item 6) jeopardises the rights of travellers given that, in crisis situations, contracts are terminated due to circumstances beyond the control of the contracting parties.

It is prescribed that the travel guarantee may not limit the rights of the beneficiary of the travel guarantee to compensation in accordance with the law (LOT, 2019, Article 60, Paragraph 2). Securing a travel guarantee

[3] These are *Milenijum Insurance*, *GLOBOS Insurance*; *Triglav Insurance*, *DDOR Insurance* and *Dunav Insurance*.

implies that all risks that may arise as a consequence of the insolvency of the travel organiser are fully covered. However, insurers, in accordance with professional rules, exclude their liability through insurance terms and conditions so that they are not obliged to pay compensation in the event that insolvency occurs as a consequence of: terrorism, war events, pandemics, epidemics, closure of the borders of the destination country or the traveller's transit country, strikes, riots, public manifestations, measures of state authorities affecting the occurrence of the insured event, where the state has declared a state of war, a state of emergency, or a moratorium on the settlement of its obligations, and similar circumstances (Milenijum, 2022, Article 17, Paragraph 1, Item 8; DDOR, 2019, Article 4, Paragraph 1, Item 2); due to *force majeure*, that is, unforeseeable events beyond the influence of the contracting parties and whose consequences are unavoidable despite the exercise of due care, or whose effects could not have been foreseen, avoided, or removed (Milenijum, 2022, Article 17, Paragraph 1, Items 8, 9; similarly Dunav Insolvency, 2020, Article 9, Paragraph 1, Item 2).

4. SUFFICIENCY OF THE INSURED SUM OF THE TRAVEL GUARANTEE

Under Serbian law, according to the provisions of the Rulebook, the subject matter of one contract comprises the travel guarantee in the event of insolvency and the travel guarantee for compensation of damage (Rulebook, 2023, Article 6, Paragraph 1). It is not specified that a separate limit in the minimum prescribed amount for a particular licence is contracted individually for each travel guarantee. Under the terms and conditions of Serbian insurers, both travel guarantees are predominantly secured by a single insurance policy, which is in accordance with the applicable Rulebook. The insurance contract is concluded for a single prescribed minimum insured sum covering both travel guarantees. Insurers have accepted this method of contracting having regard to the fact that claims arising from the travel guarantee for compensation of damage are rare and of smaller scope. Certain insurers provide in their insurance terms for a division of the functional part of the premium within policies *(Triglav)*. *Globos Insurance* stipulates that, from the total contracted insured sum, the coverage limit amounts to 60% of the insured sum for insurance coverage of the risks relating to the costs of necessary accommodation, food, and return of travellers from travel in the country and abroad to the place of departure; and 40% of the insured sum for insurance coverage of other insured risks (Globos, 2020, Article 5, Paragraph 3). Where the travel guarantee is secured both by a bank guarantee and an insurance contract, both contracts are individually concluded with a coverage limit in the minimum prescribed amount (Rulebook, 2023, Article 6, Paragraph 2).

There are no special provisions regarding the minimum insured sum, but it is determined by contract in accordance with the provisions of the Rulebook concerning the minimum amount of the travel guarantee for particular organisers. Under the currently applicable Rulebook in Serbian law, the amount of the minimum travel guarantee is determined in different amounts depending on the category (A or B) of the travel organiser and the amount of turnover. Travel organisers have the possibility to insure themselves for amounts higher than the minimum prescribed amounts, but, as a rule, they do not do so. In certain countries, the minimum insured sum is regulated by law (Schulte-Nölke & Meyer, 2008, 336).[4]

The Rulebook prescribes the obligation of the travel organiser to maintain, throughout the entire duration of the validity of the travel guarantee, the minimum amount of coverage prescribed by the Rulebook depending on the licence category (Rulebook, 2023, Article 8, Paragraph 2). An exhausting insured sum is contracted under the insurance contract. The contracted insured sum is exhausted through the payment of each insurance indemnity in accordance with the insurance terms and conditions. The insurance ceases to be valid if the insured sum is exhausted. The majority of insurers do not address in their insurance terms the possibility of reinstatement of the insured sum. Certain insurers, in their insurance terms, recognise the right of the policyholder to request reinstatement of the insured sum to the originally contracted amount, but reserve the right not to reinstate the insurance coverage (Globos, 2020, Article 5, Paragraph 4). Another insurer states in its terms and conditions that the insured may contract a replenishment of the exhausting insured sum subject to special acceptance by the insurer and payment of an additional premium (Dunav Insolvency, 2020, Article 5, Paragraph 2).

5. CLAIMS SETTLEMENT

In claims settlement procedures, insurers encountered numerous problems. Agencies did not regularly submit data on the number of travellers to insurers, and accounting documentation was missing.

[4] This is the case in Austria, Belgium, Denmark, Estonia, Ireland, Cyprus, Lithuania and Hungary.

There were also attempts at fraud. Certain travellers were not provided with travel guarantees, most often by sub-agents acting as sellers, while others were given invalid travel guarantees on outdated forms. Proofs of payment for package arrangements and cancellation of travel were sometimes disputed where the traveller did not possess written evidence of agreements reached by telephone and similar means.

The processing of submitted claims by travellers was carried out on the basis of inspection reports prepared by tourism inspectors and lists of travellers attached thereto. Owing to the good cooperation between insurers, the competent Ministry, and the *YUTA* association, travellers were compensated, although in certain cases they waited for a longer period due to the large number of compensation claims. Insurers generally paid the full nominal amount to travellers of agencies that entered bankruptcy proceedings. So far, only travellers of the *Mitos Travel* agency received proportional compensation in the amount of 24.85% of their claim. According to a statement by representatives of *Globos Insurance*, the total insured sum amounted to EUR 50,000 (5,858,385 dinars), while the reported valid claims exceeded 23 million dinars (Danas Online, 2025).

In the future, claims settlement should become more efficient and the procedure faster due to the possibility of rapid and accurate access to information concerning the operations of agencies. Namely, within the Ministry of Tourism and Youth, the Central Information System *eTurista* (CIS) has been established. This system commenced operation on 1 October 2020, initially with the task of enabling simple registration and deregistration of guests, recording paid residence taxes, and handling requests for accommodation categorisation in Serbia. Today, this system encompasses numerous databases of importance for monitoring the work of agencies by the tourism inspection authorities and for enabling timely reactions to identified irregularities. In the part significant for organised travel, the following are of particular importance (Ministry of Tourism and Youth, n/a/a):

- the *register of intermediary contracts* – containing basic data on the travel organiser and intermediary, as well as general data regarding the contract. Following the entry of data on the sale of travel by the intermediary, the organiser has the possibility to approve or reject the sale of travel. Prior to the actual registration of the sale of tourist travel, the travel organiser and travel intermediary agencies may, outside the system, agree upon the sale and verify availability;
- the *register of contracts with third parties* entrusted with the provision of services for a particular travel programme;
- the *register of travel programmes* prepared independently by the organiser or at the request of the traveller, which is attached in scanned form;
- the *register of sold tourist travel arrangements*, which, in addition to data on the travel organiser and the sales entity, also contains data on the traveller and travel details. Data are entered into this register by the organiser and intermediary. The intermediary may not register a sale where the coverage limit of the travel guarantee has been reached;
- the *registration of preliminary records* – involving the registration of tourist travel contracted without knowledge of the exact number of travellers and their identities (congress tourism, conferences, school excursions, etc.). Following the entry of the preliminary registration of sold tourist travel into the CIS, the amount corresponding to the sale price of that tourist travel is reserved from the turnover amount;
- the *register of reserved turnover amounts* – following the entry of a registration or preliminary registration of sold tourist travel into the CIS, the amount corresponding to the sale price of the tourist travel is reserved from the turnover amount. Upon reaching the full turnover amount, the CIS prevents further sales of tourist travel arrangements. In the event of cancellation of tourist travel, the organiser cancels that particular tourist travel in the CIS, and the amount of reserved funds is released. Following the completion of the tourist travel, upon the traveller's return to the destination and entry of the issued prescribed invoice into the CIS, the amount of reserved funds is released;
- the *register of certificates of travel guarantees* – the travel agency prints the certificate of travel guarantee from the CIS following the registration of the travel sale. Upon the sale of tourist travel, the travel agency provides the traveller with a certificate of travel guarantee containing: general data on the travel organiser, the provider of the travel guarantee, general data on the traveller and the tourist travel, the number of the tourist travel contract, the number of the travel programme, the price of the tourist travel, the start and end date of the tourist travel, destination, and similar information, as well as data concerning the subject matter of the travel guarantee, the method of activation of the travel guarantee, and similar information.

By accessing the appropriate link and entering the verification code from the certificate of the travel guarantee, the traveller obtains all data contained in the certificate issued to them and may thereby verify its validity.

6. TRAVEL CANCELLATION INSURANCE

Travellers may protect themselves against the consequences of travel cancellation or interruption of tourist travel by concluding voluntary insurance for a negligible premium. The condition is that this insurance must be concluded simultaneously with the conclusion of the tourist travel contract or within a short period thereafter. Within the European Union, this insurance is widely represented, while in Serbia it remains insufficiently present. The reasons may be found in the weak engagement of insurers and agencies in offering this insurance, inadequate information provided to travellers, financial illiteracy, and a lack of skills in personal risk management (Ivančević, 2017a, 471). Since 2019, travel agencies have been permitted to offer travellers voluntary travel insurance in exchange for a commission, including this insurance (LOT, 2019, 75). It is our opinion that an obligation should be introduced requiring agencies to offer voluntary insurance to travellers, as prescribed in Croatia (Act on the Provision of Services in Tourism, 2017, Article 54). As a rule, agencies offer travel health insurance, while travel cancellation insurance and other forms of insurance are offered only if the traveller specifically inquires about them. Employees in agencies do not possess sufficient knowledge to explain insurance terms and conditions to travellers, and therefore require education regarding the insurance products they offer.

According to data of the National Bank of Serbia, in 2020 a total of 4,844 travel cancellation insurance contracts were concluded, while in 2021 a total of 22,809 contracts were concluded. This was followed by a decline in the number of such contracts, so that in 2022 a total of 7,722 were concluded, while in 2023 a total of 3,115 such contracts were concluded, and in 2024 a total of 2,791. It appears that following the crisis in 2020 travellers became more cautious and protected themselves through this insurance. However, over time they forgot that they remained exposed to this risk. Prior to and during the pandemic, the risk of epidemic disease was covered under this insurance by certain Serbian insurers (Triglav U/T-OTP/19-08, Article 3, Paragraph 1, Indent 3). Within the European Union, it was established that travel cancellation insurance, as a rule, does not cover risks associated with pandemics, thereby preventing travellers from insuring themselves against potential losses caused by a pandemic. Representatives of the tourism sector proposed that the cost of personal travel insurance should be allowed to be included in the price of package arrangements if accepted by the traveller. Consumer organisations emphasised that the conclusion of any form of insurance must not jeopardise travellers' rights to refunds and protection in the event of insolvency (European Commission Report, 2021, 22).

7. CONCLUSION

In practice, travel guarantees are most frequently secured through insurance contracts. Since travel guarantee insurance does not fall within the category of compulsory insurance, insurers are not obliged to conclude this type of insurance. A small number of insurance companies offer travel guarantee insurance. Insurers on the Serbian market have acted in the same manner both today and in the previous period.

The pressures on the tourism sector caused by the mass cancellation of travel due to the COVID-19 pandemic during 2020 were mitigated through the adoption of the Regulation of the Government of the Republic of Serbia. The greatest burden of this crisis was borne by travellers and insurers. During 2020, a significant number of agencies entered bankruptcy proceedings, while travellers were compensated by insurers.

The terms and conditions of Serbian insurers are harmonised, with only minor differences in the wording of exclusions from insurance coverage. Certain exclusions remain present which appear illogical for travel guarantees in the event of insolvency or are detrimental to travellers as beneficiaries of the travel guarantee. In the spirit of good business practice, insurers should reconsider their travel guarantee insurance terms and conditions. This implies that they should amend them so as to correspond to the target market segment and to be aligned with the needs of policyholders and insurance beneficiaries.

The Rulebook on Travel Guarantees should limit the right of insurers to raise objections against the beneficiary of the insurance – the traveller – where the travel guarantee is secured through this contract.

It is important to work on the education of travellers and employees of travel agencies regarding the possibilities and rules of insurance, particularly the characteristics of voluntary travel insurance offered by agencies to travellers. Awareness among travellers should be developed regarding the importance and usefulness of travel cancellation insurance, which is currently experiencing a decline in the number of concluded contracts compared to the previous period.

Awareness should also be developed within society that insurance cannot secure a travel guarantee that will in every case be sufficient to fully satisfy travellers' claims in the event of the insolvency of a travel organiser. In this sense, consideration should be given to forming a guarantee fund from which passengers would be compensated for the difference in claims they did not receive from insurers.

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