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LIFE INSURANCE FOR BENEFIT OF A THIRD PARTY -Testamentary effects-

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***Abstract:** Popularity of life insurance contract is associated with a number of functions that this oldest modality of insurance of persons performs. In addition to the protective and saving function, life insurance is a valued product due to its testamentary effects. The authors deal with the analysis of the life insurance contract in favor of the third party as a form that allows policyholder to appoint a certain person as a beneficiary of the sum insured and thus achieve the effect of testamentary disposition. In the first part of the paper, the authors explain the elements of the validity of the beneficiary naming clause. The second part of the paper is devoted to accepting benefits, while the third part opens legal issues on the border of inheritance and insurance law. The authors conclude that life insurance in favor of a third party is an original and effective mechanism for achieving testamentary goals.*

***Keywords:** Insurance, Life Insurance, Contract for the Benefit of a Third Party, Testamentary disposition*

1. ON LIFE INSURANCE

1.1. Definition

One of the most popular contracts in the field of insurance is certainly the life insurance contract. A life insurance contract is defined as a contract based on which the policyholder or the insured undertakes to pay a certain premium to the insurer, and the

insurer undertakes to pay a pre-agreed sum insured or annuity to the insured or beneficiary if the insured event occurs (Petrović Tomić, 2019: 634; Beckmann, Matusche-Beckmann, 2009: 2530; Bonnard, 2012: 325; Bigot, 2011: 31). This event is the death of the insured or another person, the experience of certain years of age, the death or experience of certain years (so-called mixed insurance).¹ The insured event is, therefore, related to the life of a certain person. Life insurance is fundamentally different from property insurance. For his understanding, it is crucial that it is capital insurance, the amount of which is determined in advance by the contract and which is concluded for the payment of money to the insurance contractor or the user (Lambert-Faivre, Leveneur, 2011: 737-738; Teslau, Prang, 2009: 1621). The insured case depends on how long a person's life will last, and the insurer has the obligation to pay the agreed amount of insurance regardless of the material losses of the insurance beneficiary (Pak, 2011: 297).² The obligation of the insurer is a lump sum. It depends exclusively on what is agreed (ie primarily on the amount of insurance). The obligation of the insurer is not affected by any damage that the user has suffered due to the occurrence of the insured event, or his material circumstances.

1.2. Target function

Life insurance is one of the most important types of insurance from the point of view of achieving multiple goals of potential insurance contractors (Lambert-Faivre, Leveneur, 2017: 754-756). Namely, in addition to the elements of insurance protection, the element of savings is traditionally associated with this insurance. As life insurance

¹ These are the so-called classic life insurances, which are the oldest and need not be explained in particular (one French author jokingly says that life insurances are like mobile phones: everyone knows how to handle them, and almost no one knows anything about how they really work). However, the term life insurance also includes a number of other insurances, such as: insurance with refund of premiums, insurance in case of marriage, insurance in case of childbirth, as well as annuity insurance and supplementary insurance with life insurance.

² There is no doubt that life insurance serves to meet the financial needs of insurance beneficiaries in specific situations. But, unlike property insurance, the principle of indemnity does not apply to life insurance and the insurer's obligation cannot be affected by changes in the financial situation of the insurance beneficiary, as well as whether the insurance beneficiary has actually incurred direct or indirect costs and losses.

does not prohibit the accumulation of insurance rights and rights of the person responsible for the occurrence of the insured event, this regulation sends a clear message to potential life insurance consumers that those who have been saving through life insurance cannot be in the same situation as those who have not been saving.³ The possibility to also achieve by purchasing life insurance - in addition to insurance protection, which is taken for granted - relatively secure savings, makes this insurance a very important segment of the capital market. An insured person who can demand redemption, full or partial, before the maturity of the contract, in fact has the possibility to return the invested capital if he needs liquid assets at some point (Elhabbouli, 2015: 21-22).

An equally important function of life insurance is to provide material security in old age.⁴ In developed countries, the correction and supplementation of the classic pension system is achieved through life and pension insurance. Therefore, it should not be surprising that in the countries with a high standard of living more than 60% of the population has some form of life insurance.⁵ In this way, the social function of life insurance is manifested. Namely, the importance of life insurance is especially great in countries where benefits based on compulsory social insurance do not provide material security for the family and the individual. Furthermore, its social component is manifested in the form of family care in the event of the death of a dependent, as well as

³ "There are no legal restrictions to conclude several life insurance contracts." Life has no price and a person who wants to get a higher insured sum can conclude more contracts. The only obstacle is the inability to pay the premium on the basis of several concluded contracts. "J. Pak, 2011, 297.

⁴ Therefore, developed countries adopt programs and measures to encourage the purchase of life insurance, which provides a supplementary pension (eg by adopting tax breaks). See.: J. Pak, „Značaj životnih osiguranja za materijalnu sigurnost u starosti“, *Promene u pravu osiguranja Srbije u okviru evropskog (EU) razvoja prava osiguranja* (zbornik radova), Palić 2011, 126–127.

⁵ Since the insurance policy enables long-term savings, it can serve as collateral for obtaining various types of loans. In developed countries, it is understood when it comes to obtaining loans either from the sphere of personal investments or from the sphere of private business. Today, there are modern forms of life insurance, which are based on a combination of elements of life insurance and investment funds. See more in: B. Preložnjak, "Pravna priroda ugovora o osiguranju života vezanog uz investicijske fondove", *Zbornik Pravnog fakulteta u Zagrebu*, br. 3, 2011, 967.

in cases where there is an increased need for material resources (children's education, marriage, etc.). Life insurance that contains a clause on the beneficiary is a mechanism by which part of the property is transferred, within the family or outside the family circle, without applying the rules of inheritance law (Elhabbouli, 2015: 23). Finally, life insurance is increasingly being used to secure consumer and housing loans. Usually, life insurance contracts are concluded for the amount corresponding to the obtained loan. With the repayment of the loan, it decreases. If the insured dies before repaying the loan, the insurer pays the insured amount to cover the remaining debt.

One of the extremely important functions of life insurance, to which not enough attention has been paid, is related to the testamentary-legal actions of appointing a life insurance beneficiary. One of the most important questions is how suitable such a statement of will is for achieving goals that coincide with inheritance law issues. In particular, is it “worthwhile” for the insurance contractor to activate the will mechanism? Or can a valid user naming clause achieve the same effect? And how burdensome are the formalities that accompany this clause compared to the formalism of inheritance law?!

1.3. Insured person

The originality of life insurance is reflected in the existence of the insured person. This is the person in whose life the insured event should occur (Bonnard, 2012: 326; Šulejić, 2005: 468). The insured person (eng.: insured; fran.: l'assuré; nem.: versicherte Person) is the person whose life is linked to the realization of a certain event (insured event) and the payment of the sum insured. In many cases, the policyholder is also the insured.

The Law on Obligations specifies that life insurance and accident insurance can refer to the life of the insurance contractor or to the life of a third party. Due to the protection of this person and the preservation of public order in the field of personal insurance, the consent of that person is required, otherwise the contract is void. The consent of the insured person, which obviously must be obtained beforehand (ie until the conclusion of the contract!), aims to ensure that the insured person is aware of all the circumstances of the contractual relationship of which he is an actor, and in particular who the policyholder is, who the potential user is, what is the insured amount,

etc. This consent must be given in the policy or in a separate written document when signing the policy, indicating the sum insured.⁶ It is then considered that the insured person has given his / her consent both in terms of concluding the contract and in terms of the amount of the insurance amount. A third party's life insurance contract is void without that person's consent.⁷ Anyone can invoke nullity (absolute nullity). The contract is also null and void if it is concluded for the life of a person under the age of 14 or a person deprived of legal capacity.⁸ A minor over the age of 14 may be designated as an insured person in death insurance with his or her written consent and the written consent of the legal representative.

1.4. Beneficiary

Beneficiary (eng.: beneficiary; fran.: le beneficiaire; nem.: Bezugberechtigter) is a natural or legal person specified in the contract and to whom the sum insured is paid (Elhabbouli, 2015: 101). The provision on determining the beneficiary of life insurance in comparative law is given the greatest attention. This provision seeks to eliminate the possibility of abuse of life insurance contracts, especially those concluded in the event of death. In the case of a life insurance contract, the beneficiary is usually the policyholder or the insured. In the case of a life insurance contract in the event of death,

⁶ *"The condition for concluding a valid insurance contract in the event of the death of a third party is the written consent of that person with regard to the conclusion itself, but also the amount insured."* (Judgment of the Supreme Court of Republic of Serbia Rev. No. 5661/95 of 17 January 1996)

⁷ In theory, the question arose as to whether the insured person could give consent later (after the conclusion of the contract) and thus strengthen it. In German theory, such a possibility is denied (because it is an absolute nullity), while Italian theorists do not rule out this possibility. In.: M. Ćirković, *Ugovor o osiguranju osoba, Život – nezgoda – zdravstveno*, 86.

⁸ In our law, as in most continental rights, the existence of an interest in life insurance is not required. In Anglo-Saxon law, personal insurance cannot be taken out if there is no interest. At the same time, the interest in securing one's own life is implied (everyone has an interest in preserving their life and bodily integrity). As far as insuring the life of another person is concerned, the interest is that there is an interest in the insured person being alive. It is assumed that this interest exists if the policyholder and the insured are related.

the beneficiary is a third party.⁹ When concluding the contract and determining the beneficiary, the insurer must point out the possible consequences of the manner of determining the beneficiary of life insurance. This is very important, so that it does not happen that the policyholder had in mind one person, and that the sum insured is paid to another person.

2. THE CLAUSE ON APPOINTMENT OF LIFE INSURANCE BENEFICIARY

2.1. Personal right of the policyholder

It is indisputable that the policyholder can dispose of his rights from the life insurance contract: to pledge them, transfer them to third parties, etc. One of the most controversial issues in life insurance is the appointment of beneficiaries. Namely, the appointment of the beneficiary requires answering numerous questions concerning the status of the beneficiary himself, but also the status of the amount of insurance that will be paid to him. Before we turn to the conditions of validity and the manner of appointment, the question arises as to whether the rules on the beneficiary of life insurance are *lex specialis* rules in relation to the contract in favor of third parties. Since the contractual insurance laws usually contain at least one (or several) articles on the designation of beneficiaries, it can be concluded that the intention of the legislator is to create a special legal regime for this issue.¹⁰ Despite this intention, the current application of other branches of law remains, especially family and inheritance law¹¹, and in some cases bankruptcy and executive law.¹²

⁹ The theory points out that life insurance is the "most important area" in which a contract appears in favor of a third party. See more in.: V. Sokal, *Ugovor u korist trećeg*, Savremena administracija, Beograd 1976, 74.

¹⁰ In Republic of Serbian law, all issues related to life insurance for the benefit of a third party are found in the Law on Obligations, Art. 957-965.

¹¹ Is the position of the beneficiary adequate to that of the successor of the policyholder? What is his position in relation to other heirs of insurance policyholders, whether legal or testamentary? Does the insured amount intended for the user enter into the legacy?

¹² What is the position of the creditors of the insurance contractor towards the beneficiary?

In many cases, the beneficiary of life insurance is the insurance contractor himself. However, if the insurance in case of death of the insurance contractor is concluded, it is necessary for him to determine the beneficiary of the insurance rights. The appointment of beneficiaries of insurance rights is not limited to life insurance in the event of death, but may also apply to life insurance in the event of survival, as well as to combined insurance in the event of death and survival. In combined insurance covering death and survivorship, the policyholder may choose to link the appointment of the beneficiary to the event of his death, while retaining the right to claim payment of the sum insured if he reaches the agreed age¹³

The beneficiary of life insurance is therefore determined by the policyholder. That is his exclusive right, that is a unilateral declaration of will, regardless of whether he is also an insured person (Elhabbouli, 2015: 148-149; Bigot et. all, 2011: 235-236). The same applies to the recall of life insurance beneficiaries.¹⁴ Translated into the language of the contract for the benefit of a third party, the policyholder is the stipulator, the insurer is the promitter, and the beneficiary is the beneficiary who acquires his own and direct right towards the insurer (Čolović, 2021: 318). In French law, following the 2005 reform of the Insurance Code, a life insurance contract should contain information relating to the consequences of appointing a person as a beneficiary of insurance rights (Abravanel-Jolly, 2017: 385). Although this is a personal act of the policyholder, which achieves the effect of testamentary distribution of property without formal drawing up a will, the consequences it produces require the policyholder to be thoroughly acquainted with them before submitting a legally binding statement appointing the beneficiary. The consent of the insurer is not required for the appointment of the beneficiary, but it is useful for him to be informed.¹⁵ As far as the modality of

¹³ The beneficiary can also be named in case of accident insurance, which unequivocally arises from the insurance conditions of our insurers.

¹⁴ Only the policyholder, and not his representatives, heirs or creditors, can appoint and recall the life insurance beneficiary. From the point of view of the insurance contractor, the appointment of the beneficiary is an alternative institute which *de facto* expresses the testamentary will. That is another way to make a will. See more in: L. Mayaux, „L'attribution du bénéfice“, 236.

¹⁵ Here, a distinction should be made between the formal-legal situation (the insurer does not give consent for the appointment of the beneficiary, nor is the condition of a valid appointment that he be informed about it!) And pragmatism (it is opportune for the insurer to be informed

appointment is concerned, the two common ways are the life insurance contract clause and the testamentary clause.¹⁶

The beneficiary of the insurance is determined at the time of concluding the contract or later, until the moment when the insured amount matures. The beneficiary can be named at the time of concluding the contract and listed in the policy (beneficiary appointment clause) or later in the policy appendix (Elhabbouli, 2015: 149-150). With regard to the appointment of beneficiaries of life insurance rights, this can be done by some other legal business, including the will.¹⁷ The appointment of the beneficiary by the will indicates the serious intention and awareness of the policyholder to provide a certain person with funds that have been set aside from the rest of the estate. It follows from the rules of insurance law, therefore, that the beneficiary does not have to be appointed solely and exclusively in the insurance policy.

A particular beneficiary can be revoked and another one can be designated. The life insurance beneficiary may be appointed until the moment of the insured person's death, but the insurer should be informed, although the validity of the statement on the appointment of the life insurance beneficiary does not require his consent.¹⁸ And so on until the acceptance of the appointment by the beneficiary, when his appointment

about the appointment or change of beneficiaries). This is because it can happen that an insurer, who is not informed about the appointment of the beneficiary in time, pays the amount of insurance to another person (eg: former beneficiary of the insurance). The beneficiary would then have to claim a refund of the sum insured from the person who received it.

¹⁶ It should be noted that in practice, the appointment of beneficiaries based on the clause of the life insurance contract is much more common. It is precisely this way of naming - which indisputably achieves hereditary effects - that attracts attention and can be the subject of controversy. It is also possible to appoint a user by will, but the testator usually does so with legal assistance, which is why he is considered to be more protected from making hasty statements compared to the case of appointing a user on the basis of a life insurance contract.

¹⁷ The appointment of a life insurance beneficiary by will does not have the significance of a *mortis causa* job. It follows that the beneficiary determined by the will can renounce the inherited part, while retaining the rights from the life insurance contract. In.: S. Abravanel-Jolly, *Droit des assurances*, 377; Y. Lambert-Faivre, L. Laveneur, *Droit des assurances*, 2011, 825.

¹⁸ The insurer does not have to be aware of the age and health condition of the beneficiary, as in many cases he will not be aware of his identity until the request for payment of the insurance amount is submitted.

becomes irrevocable. However, the acceptance of the benefit by the beneficiary does not mean that another person cannot be appointed as a subsidiary beneficiary.¹⁹

Who can be declared a beneficiary

In principle, any person with legal capacity can be appointed as a beneficiary.²⁰ It can be someone from the circle of heirs of the insurance contractor, but also any other person. The contractor is not obliged to state the reasons for appointing a person as a user. The heirs cannot prevent the appointment of any person as a beneficiary. Animals cannot be a beneficiary (Ćurković, 2009: 133). When a third party is designated as the beneficiary, and not the insurance contractor himself, it can be charity (when naming a certain person as a beneficiary makes the insurance contractor a gift)²¹ or encumbrance (when the contractor receives a certain consideration, an example is the appointment of a creditor as a beneficiary). It is not necessary to inform the beneficiary himself for the legal effect of the appointment clause.

For the validity of the clause on naming the beneficiary, it is not necessary for the beneficiary to be determined by name, although in that case it is possible to determine his identity with the greatest certainty (Greko, 2014: 312-313). It is enough for a beneficiary to be definable that is as the Law on Obligations states, that the act of appointment contains the necessary information for his determination. The goal is to determine the identity of the beneficiary at the time of the contractual obligation based on the data from the contract. In practice, there were problems with identifying users

¹⁹ A subsidiary beneficiary acquires the right if for any reason the first named beneficiary is deprived of the right. See: L. Mayaux, "L'attribution du bénéfice", 267.

²⁰ Thus, the contractor can designate a creditor as the beneficiary of the right to life insurance (then insurance is a type of claim insurance!) or a relative (in which case the appointment of the beneficiary is a charity).

²¹ It is assumed that the appointment of the beneficiary is a benevolence, until it is proven that it was done with appropriate counter-performance of the beneficiary. As the French theory points out, life insurance for the benefit of a third party is a modality of indirect gift (French: *libéralité indirecte*), by avoiding the formalities related to the gift contract. More in.: H. Elhabbouli, 2015: 148.

with the terms “children, descendants, spouse”.²² The Law on Obligations tried to prevent lengthy court proceedings between relatives after the death of a life insurance policyholder by determining that the benefit intended for the spouse belongs to the person who was married to the insured at the time of his death.²³ What happens if there is a divorce between the policyholder and the person identified as the beneficiary? In the absence of a post-marital revocation of the beneficiary appointment clause, it could be considered, strictly formally, that the appointment is still valid.²⁴ However, in essence, the appointment of a spouse as a beneficiary loses its meaning if a divorce occurs later. If, for example, the death of an insurance policyholder occurred shortly after the divorce, it could be reasoned that the policyholder did not have time to possibly revoke the appointment clause.²⁵

As for “children or descendants”, existing children, as well as the fetus, will be covered by the appointment. In addition, children who are not conceived are also considered to be covered by the clause on the appointment of the beneficiary, because it is rebuttably assumed that the policyholder does not intend to separate a certain descendant. The Law on Obligations specifies, therefore, that the benefit also belongs to those descendants who were born later. This is an important provision, which reduces disputes on the border between insurance law and inheritance law.²⁶ An exception would only exist if a specific child, by name and surname, is identified as the (sole) beneficiary of insurance.²⁷

²² The basic dilemma was whether to determine these persons according to the characteristics they had at the time of appointment or at the time of the insured's death.

²³ Naming in the form of “Mrs. A, born B” would be valid even if the policyholder dies before the wedding.

²⁴ If an agreement has been concluded on the financial consequences of the divorce, unless otherwise agreed, that agreement per se does not mean the revocation of the appointment of the life insurance beneficiary.

²⁵ For the sake of comparison, divorce leads to the loss of the inheritance right of the divorced spouse, and it is not excluded that the collection of the insurance amount as a beneficiary of life insurance would lead to unjust enrichment?

²⁶ As a reminder, the beneficiary's right arises independently of his consent, and the validity of the contract in favor of a third party does not require the beneficiary to be legally capable.

²⁷ In that case, the interpretation of the insurance contractor's intention to take care of all children, those born at the time of the appointment of the beneficiary and those who were born

It is not uncommon for an insurance policyholder to designate his or her heirs as beneficiaries of life insurance. This appointment means that all heirs are considered beneficiaries at the time of the death of the policyholder. If the policyholder states that the beneficiaries are the legal heirs, he automatically excludes the testamentary heirs from the inheritance.²⁸ If, on the other hand, the policyholder has designated the beneficiaries as “heirs listed in the will”, only those persons will be beneficiaries, regardless of whether the will was drawn up after the appointment of the beneficiary.

If several life insurance beneficiaries with predetermined shares are determined, the sum insured is divided between them according to those shares. If the contractor designates several beneficiaries without specifying their shares, the insured amount is divided into equal parts. If the policyholder has appointed his heirs as beneficiaries of the sum insured, it shall be divided in proportion to their hereditary shares in the estate of the policyholder. In our law, the insured amount is included in the amount of the inheritance. Namely, there is a provision in the Law on Inheritance that regulates the inclusion in the inheritance part.²⁹ According to that provision, the legal heir is credited with the gift that he received from the testator in any way³⁰ Although that provision does not explicitly mention the amount of insurance, it should not be concluded that a gift made in the form of insurance is not included. Namely, there is a special article entitled If the gift consists of insurance (Article 73). When the gift consists of insurance in favor of the recipient, the value of the gift is the sum of paid premiums if that sum is less than the insured amount (paragraph 1 of Article 73). If the sum of paid premiums is higher than the insured amount, the insured amount is taken as the value of the gift (paragraph 2 of Article 73). According to the letter of the law, life insurance is included, therefore, only in the case of legal heirs. What about testamentary heirs? Does the waiver

later, cannot be applied. By naming a specific child, he stands out as the only beneficiary of insurance. The same goes for the spouse. The same in: M. Ćurković, *Ugovor o osiguranju osoba, Život-nezgoda-zdravstveno*, 134-135.

²⁸ An exception would exist only if it is established that the policyholder has misused the term legal heirs, without intending to exclude testamentary heirs.

²⁹ Law on Inheritance, *Official Gazette of RS*, no. 46/95, 101/2003 - USRS decision and 6/2015, art. 66

³⁰ LoI, Art. 66 para. 1.

of the inheritance right mean ipso jure also the loss of the right to the insured amount?! From what is written in the Law on Inheritance, it is not so.

And does the rule on inclusion in the inheritance part imply that the life insurance regime is different when it comes to donations through insurance of persons outside the circle of heirs? Linguistically interpreting the Law of Inheritance, it should be so. In that case, the rules from the section Law on Obligations dedicated to the insurance contract have priority. This further leads to the conclusion that there are two regimes that apply to the appointment of life insurance beneficiaries. One is the regime that applies to legal heirs. They include the amount of insurance premiums paid or the amount of insurance, depending on which amount is higher, in the inheritance part. The situation is completely different when the insurance contractor has designated a person outside the circle of heirs as the beneficiary. His fate is determined by the Law on Obligations, which means that the amount of the insured amount will be inaccessible to third parties, including heirs. The sum provided is quite safe from the beneficiary's point of view, within the limits of revocation of benefits dictated by reasons of public order.

If there are several beneficiaries, and one of them dies or refuses to accept the benefit, his part is shared with the other beneficiaries of the benefit. If none of the named beneficiaries accepts the sum insured, it enters the property of the policyholder. The issue of appointing a person outside the circle of heirs as a beneficiary is especially problematic, if this calls into question the realization of the right to inherit guaranteed by law.

For the legal effect of the clause on naming the user, the most important thing is that it must be precisely redacted, so that it is possible to determine with certainty who the beneficiary is. It is crucial that this clause implies a clear and unambiguous intention of the policyholder to appoint a person as a beneficiary. The beneficiary appointment clause should contain all the information necessary to identify the insurance beneficiary. If the life insurance contract does not specify who the beneficiary is, the sum insured enters into the estate of the policyholder and is divided between his heirs. The same is the case when the user appointment clause is imprecise or void. Thus, the key difference between the case when an insurance beneficiary is appointed and when he is not appointed is reflected in whether the sum insured belongs to the property of the insurance contractor. If the clause on the appointment of the beneficiary is valid, the insured amount belongs to the beneficiary, who directly addresses the insurer. The sum

insured is inaccessible to the heirs of the insurance contractor, as well as to his creditors. This does not mean that no successor can be appointed as the beneficiary of the insurance.

Due to the separation of the sum insured and other assets of the insurance policyholder, the heir who is appointed as the beneficiary of the insurance is entitled to the sum insured, even if he has waived the inheritance right.³¹ If the beneficiary has not been appointed or the clause is invalid or for some reason cannot produce legal effect, the sum insured enters the property of the policyholder, belongs to his heirs and generally shares the fate of his assets (Šulejić, 2005: 486). If more than one beneficiary has been determined, but it is not specified which part of the sum insured belongs to which beneficiary, the sum insured is divided into equal parts if the beneficiaries are not the heirs of the policyholder.³² If the beneficiaries are the heirs of the insurance contractor, the sum insured is divided according to their inheritance shares.

Restrictions dictated by public order

If the life insurance is concluded for the life of another person (ie when the policyholder is not also the insured person!), his consent is required for the appointment of the beneficiary. In this way, the public order in the field of insurance is manifested. A distinction should be made here between the consent given by each insured person for concluding a life insurance contract (consent to be an insured person, because the insured case relates to his life) and the consent for appointing an insurance beneficiary. Consent to the conclusion of a life insurance contract in the event of the death of the insured person is a *conditio sine qua non*. If there is no written consent of the insured person to have his life insured, the contract is invalid. If, on the other hand, the consent of the insured person for the appointment of a certain beneficiary is missing, the contract is valid, but the appointment of that beneficiary is not valid. The insured person can, therefore, veto the appointment of a certain insurance beneficiary (Sokal, 1976).

³¹ Otherwise, in our law, the insured amount and the rights related to the insured amount are treated independently of inheritance relations. See.: V. Kapor, S. Carić, 311-312.

³² "By filing a lawsuit by one insurance beneficiary from a life insurance contract, the statute of limitations of claims of other beneficiaries from the same contract is not terminated." (Judgment of the District Court in Valjevo, Gž. 1688/2005 as of 3.11.2005)

The same applies to any change in insurance beneficiaries. This is an attempt to prevent speculation on other people's lives. If the insurer does not appoint another beneficiary, with the written consent of the insured person, the rule applies that the insured amount belongs to the property of the insurance contractor. The second type of consent, consent for the appointment of the beneficiary, aims to protect the interests of the insured person in relation to the policyholder and the beneficiary.³³

3. ACCEPTING THE BENEFIT

3.1. Beneficiary's personal right

A person who is intended to benefit from life insurance can accept it (which will usually be the case) or reject it. Although the appointment does not require the consent of the user *stricto iuris*, it is possible that he will refuse this transfer of rights for reasons known to him.

A statement of acceptance of life insurance benefits is also a unilateral statement of intent, which can only be made by the beneficiary, at any time after the appointment (Elhabbouli, 2015: 154). This can happen already at the time of appointment or later, even after the death of the insured person. Acceptance of the appointment may be explicit or tacit, which ultimately means that no special form is required. Explicit acceptance is when the user expresses his will by sending the appropriate contractual document to the insurer: thus the policy can provide that the user is considered to have accepted the appointment if he signed the policy, an addendum to the policy or sent a letter to the insurer. The benefit is tacitly accepted by making a statement to the insurer about the occurrence of the insured event. Acceptance can be made at any time before revocation, even after the death of the insured person. After accepting the benefit, the policyholder cannot exercise the rights from the mathematical reserve: to request the

³³ He must be acquainted with the person to whom the sum insured will be due in the event of his death. If there is no trust in that person, ie. if he suspects the existence of a *votum mortis* in respect of him, he shall refuse consent to his appointment as a beneficiary of life insurance. By denying consent to the appointment of a beneficiary, the insured person protects his or her life. French theory points out that otherwise the insured person would give "permission to be killed" (fran.: *permis d'être tué*). Detaljnije: L. Mayaux, „L'attribution du bénéfice“, 235-238.

redemption or advance payment of the sum insured.³⁴ Heirs may require the beneficiary to state whether he accepts the stipulation within one month. If, however, the user refuses the benefit, such a statement has retroactive effect, it will be considered that the appointment of the user has not been made.³⁵ The benefit from the contract will belong to the property of the insurance policyholder. The death of the beneficiary before or at the same time as the death of the policyholder has the same effect. Since the user has not acquired the right to the stipulated benefit, his heirs do not have the right to claim it either.

3.2. The aleatory character of the right to the insured sum

Two principles are relevant for understanding the legal position of life insurance beneficiaries (Belanić, 2018, 146-166). First, the beneficiary acquires his own and direct right to the sum insured at the time of concluding the contract, with the proviso that it may be revoked by the policyholder (Picard, Besson, 1964: 513). His statement on accepting the appointment has no constitutive, but declarative effect.³⁶ He has the right to contact the insurer directly.³⁷ However, the right of the life insurance beneficiary is not direct in the same way as with other contracts in favor of a third party. The aleatory

³⁴ Redemption, complete or partial, has the effect of complete or partial termination of the insurance contract. Therefore, it can no longer be performed for the benefit of the user. For this reason, there is a difference between the legal regime of redemption before and after the acceptance of life insurance benefits. In.: L. Mayaux, „L'attribution du bénéfice“, 286.

³⁵ The silence of the beneficiary also has the significance of accepting the benefits.

³⁶ Contracting in favor of a third party was in principle prohibited in Roman law (*alteri stipulari nemo potest*), although there were exceptions to this rule. Only pandect law allows contracting in favor of a third party, but even then the understanding that the user acquires a direct right from the contract did not prevail. With the development of insurance contracts during the 19th and 20th centuries, this characteristic of contracts in favor of the third party came to the fore. More in: S. Perović, *Obligaciono pravo*, 439-440.

³⁷ In this regard, the amount of the insured amount belongs to the beneficiary from the beginning, it does not enter the inheritance of the insurance contractor. The French Court of Cassation ruled on this at the end of the nineteenth century. See in.: L. Mayaux, „Les droits des personnes intéressées au contrat“, u: Jean Bigot, Philippe Baillet, Jérôme Kullmann, Luc Mayaux (ed.), *Les assurances de personnes*, Tome 4, L. G. D. J, Paris 2011, 314.

character of the insurance contract contributes to the aleatory character and the rights of the insurance beneficiary. Namely, he will be able to receive the sum insured only if the risk covered by the insurance contract is realized within the agreed period. Second, the scope and content of the user's rights are determined by the policyholder in the insurance contract in his favor. Therefore, the insurer can point out to the beneficiary all the objections that he can point out to the insurance policyholder, which have a basis in the insurance contract: risk exclusion, non-payment of the premium, etc. The policyholder has the right to dispose of all rights under the insurance contract, including the revocation of the beneficiary, until the occurrence of the insured event. However, if he has accepted the benefit, the beneficiary has the right to cede the sum insured before the occurrence of the insured event, with the written consent of the policyholder and the insured person.

3.3. Autonomy of the right to the insured sum in relation to the heirs and creditors of the insurance contractor

If the contract is concluded in favor of a third party, the beneficiary acquires a direct right towards the insurer. A statement of acceptance is therefore not relevant to the creation of his right. It is enough that he does not refuse the stipulation in his favor.³⁸

Insurers' creditors have no rights to the sum insured. They cannot collect from the insured amount, nor can they seize it. This guarantees that the insured amount will actually be paid to the beneficiary for whom the insurer intended it. Identical provisions are contained in all laws in comparative law. However, under certain conditions, creditors are granted the right to demand a refund of part of the premiums paid in the name of life insurance. Namely, if the paid insurance premiums are disproportionately high in relation to the property possibilities of the insurance contractor at the time of payment, the creditors can demand that the part of the premium that exceeds those possibilities be returned to them. Since this is a modality of *actio pauliana*, other conditions must be met to refute the debtor's legal actions. Therefore, creditors can get

³⁸ The beneficiary is the creditor of the promitter, and has the right to request the execution of the due prestation in accordance with the contractual provisions.

a certain part of the paid premiums, but not a part of the insured amount, based on the refutation of the legal actions of the life insurance contractor.

One of the controversial issues related to the life insurance contract in favor of a third party concerns the situation that arises when the beneficiary dies before the maturity of the insured amount or annuity. Our Law on Obligations regulates only the case when the beneficiary is determined free of charge. Then the insurance benefit belongs to other beneficiaries, and if there are none to the insurance contractor. The question is what will happen if the beneficiary determined for a fee dies before maturity. The only logical interpretation would be that the benefit from the contract then belongs to the policyholder, by analogy with the rules that apply to insurance without specifying the beneficiary (Ćurković, 140-141).

4. BENEFICIARY REVOCATION

4.1. Revocation before the acceptance of benefits

When it comes to the legal regime of revocation of insurance beneficiary, there are differences according to when the revocation takes place.³⁹ Revocation of the beneficiary before his acceptance of the benefit is the right of the policyholder *ad nutum*, which he can do at the latest until the acceptance of the benefit by the beneficiary, ie until the occurrence of the insured event.⁴⁰ No formality is required for revocation, it is important that the intention of the insurance contractor to revoke the beneficiary is unequivocally expressed (Reglero Campos, 1995: 47-48). Revocation can also be made tacitly. Thus, it is considered that the beneficiary is tacitly revoked if the insurance contractor requests the purchase of insurance from the insurer. But, the mere verbal statement of the contractor that he would like to replace the beneficiary, without changing the beneficiary clause, explicitly or tacitly, is not enough to recall the beneficiary. Likewise, the silence of the insurance contractor on the question of whether he retains the appointment of the beneficiary is not considered a revocation of the

³⁹ It may be debatable whether, in the event of the insolvency of the policyholder, the trustee has the duty to revoke the appointment of the beneficiary and demand payment of the sum insured from the insurer in order to distribute it to the creditors.

⁴⁰ The beneficiary cannot be recalled by the creditors of the insurance contractor, nor by his heirs.

appointment. The validity of the revocation of the beneficiary does not require the consent of the insurer or the previously named beneficiary. But it is useful that the information about the recall reaches the insurer. The revocation of one beneficiary does not have to be accompanied by the designation of another beneficiary.

The termination of life insurance also has the legal effect of recalling the beneficiary. Namely, if the policyholder cancels without a notice period and demands payment of the redemption value, it can be considered that the appointment of the life insurance beneficiary has been tacitly revoked.

4.2. Revocation after the acceptance of benefits

When it comes to recalling the beneficiary after accepting the benefit, the rule is that the acceptance of the beneficiary results in the termination of the right to recall. However, there are deviations from this rule, introduced for the protection of public order in the field of insurance. We have already explained that by accepting the benefit, the user acquires his own right. Nevertheless, taking into account the fact that life insurance is usually a long-term contract and that after the appointment of the beneficiary, the circumstances that motivated the contractor to appoint a certain person as a beneficiary may change significantly, the laws recognize exceptions to the impossibility of recalling the beneficiary. In most rights, two situations are regulated. First, if the beneficiary attempted to kill the insured person.⁴¹ The aim of recalling the beneficiary in this case is to protect the insured person from the risk of re-attempted murder by the beneficiary.⁴² Second, if the benefit from the insurance contract is granted without compensation, the revocation may be made on the basis of the rules on revocation of gifts. The second case is particularly suitable for an insurance policyholder who, after the appointment of a life insurance beneficiary, is faced with a change in the economic circumstances in which he has lived until then. According to the Law on Obligations, if the donor becomes so impoverished after giving the gift that he has no

⁴¹ Although this is not explicitly stated in the Law on Obligations, the same should apply if the user tried to kill the insurance contractor.

⁴² Who can guarantee the insured person that a beneficiary who once tried to kill him will not do the same in the future? The beneficiary must be recalled so that there is no financial motivation to commit the crime. By attempting to kill the insured person, the beneficiary proved himself unworthy.

means of subsistence, and there is no person who is obliged to support him, he can revoke the gift. Also, the gift can be revoked due to the rudeness and ungratefulness of the recipient. By applying this provision, the beneficiary could be recalled if he has committed a criminal offense against the insurance contractor or a member of his immediate family or has committed a serious offense about the legally established duty towards the same persons. As for the deadline for recalling the beneficiary according to the rules that apply to the recall of gifts, it is not determined by law. We believe that the contractor has the right to recall the beneficiary until his death. If the policyholder recalls the beneficiary and does not specify another, the sum insured is from that moment part of his property.

The promiser may be released from the obligation to the beneficiary only if he has refused the benefit from the contract or if the insurance beneficiary has been recalled. In all other cases, the insurer is obligated. Therefore, even if the obligation to the beneficiary has been fulfilled by the stipulator, it does not release the promitter from the same. Although he has the position of a creditor from the contract in favor of a third party, the beneficiary does not have the position of the other contracting party. For the validity of the determination of the beneficiary, his consent is not necessary, even if he is familiar with the contracting of benefits. Also, it follows from the general rules of the law of obligations that the beneficiary has no obligation to accept the agreed benefit. The key moment for his position from the contract in favor of the third party is precisely the acceptance / rejection of the benefit. If he accepts the agreed benefit, the beneficiary acquires his own and irrevocable right. The moment of acceptance of the stipulation (which is usually related to the occurrence of the insured event, but may be sooner or later) makes the determination of the user irrevocable and definitive. From that moment on, the contractor can no longer make changes or terminate the contract. Modification or revocation of rights by the stipulator is possible only if they are explicitly agreed and with the consent of the beneficiary.

The situation is completely different if the naming of the beneficiary is “irrevocable”. In this case, the policyholder has no right to recall the beneficiary or cancel his appointment. Waiver of the right to recall the beneficiary may be agreed at the time of conclusion of the contract or during its duration. An irrevocable appointment creates a right on the part of the beneficiary to demand payment of the sum insured from the insurer at the time of appointment. The policyholder may not

revoke or limit the rights of the beneficiary without his consent. Therefore, the policyholder has no right to pledge or transfer the sum insured, just as he cannot replace the beneficiary or appoint additional beneficiaries. The beneficiary has the independent right to transfer or pledge the right to the insured amount. If the beneficiary dies before the insured person in case of irrevocable appointment, his right is transferred to the heirs.

CONCLUSION

Life insurance for the benefit of a third party is an institution with a dual target function. On the one hand, it provides protection to the insurance contractor, who is the central figure, and on the other hand, it enables him, with all formalities, to appoint a certain person as the beneficiary of the sum insured, thus providing him with immunity from inheritance procedure. The appointment of a beneficiary is especially valuable when it wants to provide a person outside the circle of legal heirs. Although the clause on the appointment of the beneficiary is subject to certain formalities, they are incomparably easier to achieve compared to the appointment of the same person as the successor. The same effect can be achieved with a testamentary clause. But, if the policyholder wants a surprise factor in terms of separating part of the property from the estate, a contractual clause is a better option.

What are the advantages of naming a beneficiary over testamentary assignment of assets? First, a person who can be designated as a beneficiary is any person who has legal capacity. A wider circle of potential beneficiaries makes it easier for an insurance contractor who cares to provide a person outside the circle of legal heirs with the transfer of part of his property or at least a secure income. The circle of beneficiaries is, therefore, wider than the circle of heirs. Secondly, the beneficiary can be determined both in the case of life insurance in case of death, in life insurance in case of survival, as well as in the case of mixed insurance. This further means that testament-like effects can be achieved during the life of the policyholder, and not just in the event of death. Third, if the contractor wants complete freedom with regard to the appointment of the beneficiary, he will have it only if he is also the insured person. If, on the other hand, he

has designated another person as insured, he will need the consent of that person to appoint the beneficiary.

Following the example of French law, a life insurance contract should contain information relating to the consequences of appointing a person as a beneficiary of insurance rights.⁴³ Such a change in the regulatory framework is necessary. Since the appointment of a life insurance beneficiary is a personal act of the policyholder, which achieves the effect of testamentary disposition of property without formally drawing up a will, the consequences of the product require the policyholder to familiarize themselves with them in detail before making a legally binding statement.

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