

Fraud and Corruption in Insurance

Professor dr. **ZORAN PAVLOVIC***, Ph.D.
University Business Academy, Faculty of Law

DANIJELA GLUSAC, MA
Novi Sad Business School

Abstract:

Since the creation of mankind, fraud and corruption existing and it will exist, and Insurance did not stay immune to the occurrence of to this phenomenon in the Society. Insurance can be defined as a contractual agreement between an insurer (insurance company) and the insured on which basis the second is bound to other or a third person from the moment of occurrence of the insured event to cash out a certain amount of money (sum insured) with the fact that the insured is obliged, independently of the occurrence of the insured case to pay to insurer a fee of insurance (premium) in accordance with the terms of insurance. The mentioned illegal activities pose a threat to the integrity and reputation of the insurance companies and the stability of the entire financial system. The paper deals with critically considered an act of fraud in the insurance referred to in Article 208a of the Criminal Code of the Republic of Serbia. In this article we will first take a look at criminal act of fraud in insurance, examine the justification for the introduction in Criminal Code, particularly bearing in mind the form in which it is done. The authors analyzed and preventive measures for the detection and fight against insurance fraud. The aim is to highlight the unexploited possibilities to be in Serbia, to join forces insurers, policy holders and other insurance in the fight against that fraud. With timely preventive and repressive operation simultaneously in multiple directions they may be largely mitigated or prevented, and the perpetrators of that acts can be legally sanctioned. The second part is devoted to the problem of corruption in insurance. Topic of corrupt crime is so complex and important that it has become not only a serious internal, but also an international problem. The task set in front of all states means that the problem of corruption to be taken seriously and to be confronted with the problem appropriately, because this "disease" is a danger to all segments of human activity, including in the field of insurance.

Keywords: fraud, corruption, insurance, prevention, insurer.

1. Instead of introduction

With the increase of the economic crisis, there is a growing number of fraud and corruption in insurance. According to estimates by the Association of Serbian Insurers, insurance companies in Serbia annually lose two to four million Euros for insurance fraud. Scams most likely occur in motor insurance. Even if you pass a car accident without injuries, it does not mean that one of the participants will not soon get a call of insurance company to pay part of the damages that this house was already paid to

* E-mail: zoran.pav@hotmail.com.

another accident participant. This happens when the insurance company tricked, and individual amounts go up to several thousand euros.

Traffic accidents almost as a rule happen at night, without witnesses, at the small traffic roads. In them participate expensive vehicle that's kasko insured, and one old, almost worthless. After the alleged incident, the participants call the police to conduct an investigation, after which they apply for the payment of damages. Scams are usually the result of falsifying medical reports or police reports, which are reached in a illegal way.

Most often charged so. Whiplash neck injuries, which usually comes up when the car is hit from behind. For it can receive up to 3,000 euros. Often sought compensation for the fear, which is paid around 500 euros.

Insurance is charged and because of the "faked" charges of theft, but also for arson, usually in the business premises, and as a rule, when a client took a loan, which can not be returned. The specialty is definitely a massive registration of whiplash injury in the city transport company in Novi Sad, in which fraud was attended by employees of the carrier.

Fraud is difficult to prove, and therefore the number of insurance companies addressing the Ministry of Interior and the prosecution is relatively small. However, the police discovered in previous years even several organized groups who participated in fraud. During 2013, in Novi Sad the competent court initiated criminal proceedings against the doctor orthopedics, medical technicians, traffic police (for false records of the accident were given 1,000 euros), lawyers and others due to fraud and corruption in connection with insurance.

So although is apparent increase of this form of prohibited behavior, until an only few years ago there were no criminal charges, and not any convictions for these offenses.

Final judgment for insurance fraud, despite numerous machinations, however missing! According to data from the National Statistics, in 2010, were submitted only two reports, but no indictments issued. Two years ago, it was not even charges. The situation is slowly changing, and it is expected not only repressive, but also preventive action in relation to such behaves, as well as the education of all participants in that operation. But, we need to start step by step!

2. The criminal justice aspect of insurance fraud

The statement that there is no perfect crime at the same time does not mean that there is no ideal crime, for whose execution tends to. Under ideal crime we mean on such action that brings huge profits with minimal risk. Action concerned is difficult to uncover, and if found, the crime in court is difficult to prove. In short, it is a fraud.

For study of the phenomenon of fraud in insurance necessary precedes the introduction to the Institute of fraud in law with an emphasis on prevention that accompanies this whole paper. The possibility of fraud exists in all commercial contracts, except the fact that in insurance contract, the insurer is often in a more difficult position, especially if takes into account that the contractual relationship between the insurer and the insured is relationship of trust.

(uberrimae fidei).

In this paper, the Civil Aspects of fraud will be largely left out. Amendments to the Criminal Code of the Republic of Serbia¹ from 2009 to Serbian criminal legislation

¹ Službeni glasnik Republike Srbije, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013 i 108/2014.

introduced the offense of fraud in insurance, which is incriminated in Article 208a, in the group of crimes against property. In the theory of law raised the issue of the introduction of this crime in the legal system of the Republic of Serbia, bearing in mind that the actions that are subsumed under this criminal offense are covered by „ordinary” fraud under Article 208 of the Criminal Code. Eighty years ago, the Criminal Code of the Kingdom of Yugoslavia (1929) had known, „the insurance fraud,” with the far better incrimination than today.²

The crime of fraud in the insurance referred to in Article 208a of the current CC stands out as the act of committing the intention of guiding a person to do or not do so at the expense of their own or someone else's property. Guidance is performed by another person in delusion another misleading or by maintaining him in delusion, *i.e.* deception. Delusion is to create misperceptions about some facts, such as an existing fact masquerading as different than it really is, or so as to conceal the existence of certain facts. If we bear in mind that fraud can also be done keeping in delusion, guiding means securing and supporting others to do or not to do something, and the perpetrator knows of that can result in property damage. There must be a causal connection between the fraud and the act or omission.

The ways in which the other person can be brought or maintained in delusion, when is word about the criminal offense of fraud in insurance are:

- 1) misrepresentation of facts;
- 2) false concealment of facts;
- 3) giving false opinions and reports;
- 4) Giving false evaluation;
- 5) submitting false documentation;
- 6) as well as in some other way.

If we compare the action of the criminal act insurance fraud, and action of criminal act of „ordinary” fraud in Article 208 CC, we can notice some similarities. First of all, the first two modes which are expressed in the basic forms of fraud under Article 208 of the Criminal Code. Misrepresentation exists when it is claimed that there is something that does not exist or when something exists and its shown as false. Concealing the facts means misleading about unexisting of existed facts or concealing their existence or their contents, in cases where there was an obligation of communicating these facts.³

One of the most common forms of fraud is the submission of false documents. This criminal offense can be done only from person who has filed a claim for damages. This may be the Insured, *i.e.* "injured party" or a proxy. It is believed that proving is more difficult if the submission of documents is going over a proxy, whether it be a lawyer or other person. The problem of proving includes consideration of whether the attorney knew or had reason to know that he submits false evidence. In this case, the injured party who has given power of attorney may be liable for a criminal offense of incitement insurance fraud – referred to in Article 208a, in conjunction with Article 34 CC.⁴

² Stojanović, Z., Da li je Srbiji potrebna reforma krivičnog zakonodavstva?. Crimen-časopis za krivične nauke. broj 2. 2013. str. 121.

³ Ljubiša Lazarević. Komentar Krivičnog zakonika Republike Srbije. Savremena administracija. Beograd. 2006. strana 586.

⁴ Novica Mihajlović. Krivičnopravni aspekt prevara u osiguranju s primerom iz prakse. Zbornik radova Osiguranje u CEFTA regionu. Privredna komora Srbije. Zlatibor. 2010. strana 402.

Operations of making false statements and opinions and giving false estimates represent the elements of the criminal acts incriminated in Insurance Law⁵. Specifically in Section 223 of this Act regulates the offense of making false statements and opinions which stipulates that the certified actuary or certified auditor, who contrary to the provisions of the Insurance Act, makes a false opinion or report, shall be punished for a criminal offense punishable by imprisonment of one to three years. If we compare the formulation of this crime with the crime of insurance fraud under CC observe that the perpetrator of this crime under the Insurance Act is certified actuary or certified auditor. However, it should be borne in mind that the opinions and statements that may arise from a variety of profile of the profession (doctors, engineers, and others), where on the basis of such reports may result in delusion of authorized persons from insurance companies. Object of the criminal offenses is construction of a false opinion or false report. Article 208a CC action is referred to as „giving” and Article 223 of the Insurance Act as “making” of false opinions and reports. However, in general it is one and the same activity. With regard to the provision of false opinions and reports, only one of the possible ways of bringing or maintaining in delusion in this context could be taken as the act referred to in Article 223 of the Insurance Act contained in the offense of fraud in insurance scheme under Article 208a CC. This criminal offense can be done only with the direct intent

Insurance Act predicts the offense (Article 224) of false estimates that regulates that the responsible person of the insurance company, insurance brokerage, insurance agencies or insurance agency for providing other services in insurance, company or other legal entity which has a special department for providing other insurance services, as well as insurance agents, which in the determination and assessment of risk and damage assessment and make a false statement, shall be punished for the offense by a fine or imprisonment up to three years. And this work belongs to the so-called circle *delicta propria*, because as the offender may arise responsible person in the insurance company and other companies that have a special department for providing other insurance services, as well as insurance agents. The action consists in compiling estimates and statements in the determination and assessment of risks and damages at insurance. The work can be done only with the direct intent.⁶

It is essential that deception should be related to the security and that applies to both life and non-life insurance⁷ in terms of the Insurance Law, while what we call social insurance covers the incrimination of the abuse of social insurance rights under Article 168 of the CC.⁸

Furthermore, imprecise provisions it can be seen in the fact that the legislator has predicted that in mind can come and „other ways” of bringing/maintaining in delusion.

⁵ Službeni glasnik Republike Srbije, br. 55/2004, 70/2004 - ispr., 61/2005, 61/2005 - dr. zakon, 85/2005 - dr. zakon, 101/2007, 63/2009 - odluka US, 107/2009, 99/2011, 119/2012 i 116/2013.

⁶ Emil Ćorić. Prevara u osiguranju u Krivičnom zakoniku Srbije sa predlogom de lege ferenda. Nova rešenja u kaznenom zakonodavstvu Srbije i njihova praktična primena. Srpsko udruženje za krivičnopravnu teoriju i praksu. Zlatibor. 2013. strana 465.

⁷ As a rule, at national insurance market where premiums of auto liability recorded the largest share in total annual premium, most fraud occurs in connection with automobile liability insurance. If the national market insurance premiums from life insurance accounts for the largest share in total annual insurance premium, then the most fraud occurs in connection with life insurance.

⁸ Emil Ćorić. *ibid*, str. 463.

In theory, the question is why this formulation if we take into account the generality of the first two modes of commission of this crime.⁹ But on the other hand we find in the legal theory the opinion that the resolution of the legislator is positive, because mankind technologically and intellectually faster and more developing than legislation, so it is impossible to predict all cases of fraudulent activities and modalities of deluding.¹⁰

Object of protection is the property in general, assuming the totality of the property rights of a person. Under damage must be understood any form of impairment of property. It is possible just attempt of this crime which exists when the offender deception started or finished specifying the act or omission, but there is not damage achieved at the expense of the property of the victim or any other person. The subjective element of the offense, except intention, is intent to be bringing or maintaining in delusion the passive entity obtains for himself or another kind of unlawful material gain. This intention should exist at the offender when the other person is misleading. Intent should include awareness of how labeling the act or omission, and the awareness that it can be made by deception or maintaining deception. The developer may be, according to the legal formulation any person.

It is the same with the passive subject, however, stated it is questionable, because it should be an insurance company, possibly to another person who is engaged in the insurance business.¹¹

The privileged form of fraud in insurance differs from the basic shape only in terms of intentions. The privileged circumstance is the intention to deceive others, and only to damage them and not to obtain unlawful material gain. In theory rightly raises the question of whether the regulation of this form should be justified. Indeed, it is unclear why for the insurance area is predicted only this form, because you can not see what purpose would be achieved only in damage to another, without intent to unlawfully benefitting from it.¹² Also, a comparison of this legislative solution with the criminal offense of fraud under Article 208 paragraph (2) of CC leads to the conclusion that this is a legal solution taken from the description of the basic fraud charges. Heavy (qualified) forms of fraud in insurance, existing in two cases, which are tied to the amount of the material benefit or damages.

Fraud often have contact points with other acts. Then raising the question of relations with that fraud offenses, and in particular with the problem of concurrence. In practice, the problem of concurrence occurs in cases where the execution of the fraud was accompanied by abuse of official position, using falsified documents, destruction of official documents, bribery, misrepresentation and other offenses. However, when is fraudulently or in connection with fraud achieved another crime, there is in principle concurrence of offenses, except in cases where that other work appears as a mode of scams. In such cases there is just a scam.¹³

⁹ Emil Ćorić, *ibid.*

¹⁰ Novica Mihajlović. Krivičnopravni aspekt prevara u osiguranju s primerom iz prakse. Zbornik radova Osiguranje u CEFTA regionu. Privredna komora Srbije. Zlatibor. 2010. strana 402.

¹¹ Zoran Stojanović: Komentar Krivičnog zakonika. Službeni glasnik. Beograd. 2012. strana 624.

¹² Emil Ćorić. *ibid*, strana 464.

¹³ Miloš Samardžić. Ljubiša Serdarević. Socioškoppravni aspekt prevara u osiguranju i odnos sa koruptivnim krivičnim delima. Zbornik radova Osiguranje u CEFTA regionu. Privredna komora Srbije. Zlatibor. 2010. strana 412.

3. Measures for combating insurance fraud

Insurance fraud, as well as the type of business risk, insurers and reinsurers from developed economies have already started to pay a lot of attention. Insurance is based on the principle of reciprocity and is designed to protect against significant but unexpected losses. Insurance fraud, however, undermine the system as claims for damages scammers exhaust the funds that are intended for payment to honest customers that cover the costs of actual losses. For Europe's approach to the fight against insurance fraud is characterized by great diversity of forms of organization.

On the territory of a State often has at least one, and sometime two or more bodies responsible for the fight against insurance fraud. If the territory of the country has more than one body, responsible for the fight against insurance fraud, other bodies are not competitors to the first, but there is division of labor, so that one specialize in life insurance fraud and other scams in nonlife insurance.

As a general observation mentioned bodies, committees or general associations to the development of the insurance business is growing number of fraud, and therefore losses in the insurance business.¹⁴ The legal framework for the selection of forms of organization of insurers and reinsurers for the fight against fraud is an important Article 220 of the Insurance Act which in paragraph (1) provides that the insurance company may form an association of insurance companies. This article represents a legal basis for insurers and reinsurers in Serbia to found the kind of organization, a special body or a specialized committee what they already have other European countries to combat insurance fraud.

At the international level, in addition to the United Nations, the World Trade Organization and the Council of Europe, one of the specialized bodies to combat insurance, is the International Association of supervisory authorities in the insurance¹⁵.

Sub-committee that association, in which the scope are fraud, published a "Report on the study of preventing, detecting and resolving the consequences of insurance fraud"¹⁶. This report has inspired the adoption of secondary legislation supervisory body Serbia on the insurance business. Specifically, Article 18 of the Insurance Act provides that the National Bank of Serbia shall supervise the insurance business and performs other duties prescribed by law. The National Bank of Serbia adopted the Guideline No. 6 on the prevention, detection and elimination of fraud in the insurance

¹⁴ Slobodan Ilijić. Javnopravni aspekti prevara u osiguranju u Srbiji. Zbornik radova Osiguranje u CEFTA regionu. Privredna komora Srbije. Zlatibor. 2010. strana 390.

¹⁵ International Association of supervisory authorities in the insurance (IAIS) is an organization of insurance supervisors and regulators, which consists of 200 bodies in nearly 140 countries. This association has more than 130 observers representing international institutions, professional associations of insurers and reinsurers, as well as consultants and other professionals who participate in the activities of the IAIS. Founded in 1994, the IAIS is an international body which is responsible for supervision and assistance in implementing the principles, standards and other rules for the supervision of the insurance sector. More at: <http://www.iaisweb.org/About-the-IAIS-28>.

¹⁶ Primary goal is to, on the one hand, internally mounted measures to combat money laundering and fraud to legislator being presented acceptable and complete treatment of suspected cases. On the other hand, it is necessary to prevent damage to the reputation of their own financial institution or financial damage.

More at: Christian R. Drescher. Suzbijanje pranja novca i prevare u fokusu osiguravajućih društava. Integracija (Prava) osiguranja Srbije u evropski (EU) sistem osiguranja": [zbornik radova] / [X] Savetovanje. Palić, 24-26. april 2009. strana 86.

business.¹⁷ This policy was adopted in order to protect the interests of policyholders and beneficiaries, and to create confidence in the financial system and the insurance sector, and in order to establish the conditions for an efficient, fair, safe and stable insurance market and the functioning of market discipline. Also, this guideline aims to propose ways in which the possible risks of fraud can be identified and prevented. The National Bank of Serbia should ensure that its guidelines are applicable.¹⁸ At public law aspect of the fight against fraud in insurance at the international level has an important role EUROPOL and the European Police Office for the area of the European Union. Europol aims to establish close cooperation between the Member States that joined forces to successfully fight against terrorism, drug trafficking, money laundering, organized fraud,¹⁹ money counterfeiting and trafficking.²⁰ Established a special unit for fight against fraud European Anti-fraud Office (European Anti-Fraud Office, OLAF), which protects the financial interests of the European Union investigating fraud, corruption and any other illegal activities.²¹ Identifying, reducing and preventing insurance fraud are priorities of Insurers Association of Europe (Insurance Europe).²² Insurance Europe is the umbrella association of European insurers and reinsurers, which was founded in Paris in 1953, whose activities are primarily focused on the exchange of information and joint action in the fight against insurance fraud.²³ Due to the fact that attempts fraud not limited to one country, on the initiative of the Croatian Insurance Bureau was signed on 12 April 2011, the Protocol on cooperation in the prevention of insurance fraud which were associations of insurers from Hungary,

¹⁷ Guideline No. 6 is available on the internet page: <http://www.nbs.rs/internet/latinica/scripts/showContent.html?id=1868&konverzija=no>.

¹⁸ The Insurance Act is supervision of insurance undertakings entrusted to NBS, because the time as outlined in the explanation of the proposal creates the conditions for the future establishment of an integrated supervision of the whole financial sector and reinforces cooperation between banks and insurance. It is a known fact that nonbank services in Serbia in 1990 was not effective enough. That is why he entrusted to the central bank, not a special body that would only cover insurance activities. He did not, however, take into account the fact that the world's central banks are not trusted even Banking Supervision of insurance that is entrusted to a separate independent bodies. Given the importance of banking services in relation to insurance services within an integrated surveillance emphasis would be on the operations of banks and insurance would be neglected even though it requires specially trained personnel. There is an opinion that the establishment of a special expert body under the relevant ministries (Finance, Justice) which would include individuals from the science and practice of insurance, representatives of the central bank and other state authorities acted in the best interest of insurance policyholders and the national economy.

Look at: Jasna Pak. *Pravo osiguranja*. Univerzitet Singidunum. Beograd. 2011. strane 151-152. On the other hand, points out that the independence of the central bank, infrastructure and staff training for the tasks of supervision, as well as the connection between banks and insurance companies, are the most important advantages of entrusting these responsibilities to the National Bank of Serbia. Compare: <http://nbs.rs/internet/latinica/60/index.html>.

¹⁹ The objective of Europol is to increase the efficiency of work at the national level in the field of prevention and fight against organized crime, and in this framework that certain inputs and fraud in insurance.

²⁰ <https://www.europol.europa.eu/content/strana/about-us>.

²¹ http://ec.europa.eu/anti_fraud/about-us/mission/index_en.htm.

²² Insurers Association of Serbia obtained the status of an associate member of the Association of Insurers of Europe (Insurance Europe) in 2011. Associate member status to the Association of Serbian Insurers among other things to take an active role in making proposals and suggestions during the adoption of new or amend existing regulations of the European Union with regard to insurance.

²³ <http://www.insuranceeurope.eu/>.

Slovenia, Macedonia, Montenegro, Bosnia and Herzegovina, Croatia and Serbian commitment to cooperation and exchange of experience in the field. Bulgaria, Switzerland, Austria, Romania, and the Czech Republic have subsequently signed the said Protocol. The protocol envisages exchange of information between countries or with respect to the regulations governing the protection of personal data. Interested parties are obliged to cooperate and exchange information on the activities of preventing insurance fraud at the level of association of insurance companies, on statistical and other indicators that indicate the presence of different aspects and consequences of fraud on their own insurance markets, as well as the systems of detection and prevention of fraud and development of national legislation in this area and existing jurisprudence.

In addition to developing a variety of instructions for the implementation of the conditions of insurance and training to insurance agents and insured as a customer of the polis, it is necessary to state authority responsible for the supervision perform the control over the insurance companies or their business acts (conditions, tariffs), as well as over application of these laws in practice.²⁴ Detecting fraud involves a joint effort of insurance companies in the prevention and detection of fraud from insured in order to make fraudulent action. This requires the elaboration and adoption of the methodology of control that are specific for each type of insurance and the establishment of specialized departments in the fight against fraud in insurance companies.²⁵ To protect against fraud, insurance companies need to establish greater cooperation and access to information on cases of fraud and that such cases are needed to being entered into register. Should be organized seminars to be and conducted training for staff to detect and prevent fraud. It is necessary to create a separate manual for detecting and preventing fraud, to awaken the media and educate the public, because undetected fraud rates increase the cost of premiums and thus affect the budget of honest users. People are aware that fraud in insurance illegal but it is not perceived as a crime but as a most likely to driving car at illegal speed. This attitude of the public insurers must be changed through marketing activities and warning policyholders about the legal consequences.²⁶ Then, it is necessary to establish as soon as a database of damages for all types of insurance in the framework of the Forum for the prevention of insurance fraud²⁷ which operates in the Serbian Chamber of Commerce or the Commission for fraud in the Association of Serbian Insurers²⁸. Insurance companies should play an

²⁴ Tomislav Petrović, *Prevare u osiguranju života*. Zbornik radova Osiguranje u CEFTA regionu. Privredna komora Srbije. Zlatibor. 2010. strana 348.

²⁵ Elena Popa, *Insurance fraud*. AGORA International Journal of Juridical Sciences 2008/2. strana 232.

²⁶ Živorad Ristić. *Nastanak i mogućnosti suzbijanja prevara u osiguranju sa posebnim akcentom na osiguranje motornih vozila*. XI Simpozijum sa međunarodnim učešćem: "Veštačenje saobraćajnih nezgoda i prevare u osiguranju". Zlatibor. 05 - 08. april 2012. strana 177.

²⁷ Forum for the prevention of fraud in insurance was established in order to prevent insurance fraud. Forum members are representatives of insurance companies who are responsible for their companies' business of preventing, detecting fraud and operational risk management; more at: <http://www.pks.rs/ONama.aspx?id=376>.

²⁸ One of them is the Commission to prevent fraud which analyzes the causes of fraud as well as methods for their control, which was established by the Decision of the Assembly of the Serbian Association of Insurers. As one of the measures of prevention to detect fraud Insurers Association of Serbia has signed an agreement on cooperation with the Ministry of Interior (MOI) according to which in the next period by the Ministry of Interior to submit to police reports on traffic accidents in digital form.

active role in criminal proceedings as the injured parties, and to monitor the criminal proceedings until the completion, as is often the perpetrators of criminal acts insurance fraud occur and employees of insurance companies. Creating a "close" cooperation platform primarily the Ministry of Internal Affairs, Prosecutor's Office, the entire judicial system (for example, through proposing stricter sanctions) through coordinated action and treatment should lead to uncovering, prosecution and punishment of perpetrators of fraud in insurance.²⁹

4. Corruption in theory and corruption as a criminal act in Serbia

To start let's say that the criminal justice legislation in Serbia does not recognize the concept of "corruption". This does not mean that corruption is not punishable – on the contrary, it has always been. The point is that the authors of the criminal law must be as precise as possible to describe the action of the crime and that usually prescribe different punishments for heavier and easier forms of execution of these crimes. On the other hand, questions about what should be meant by corruption among theorists can not be a general consensus. Precisely because there is still no unified and generally accepted concept and definition of corruption,³⁰ although it is a phenomenon that comes from ancient times, in to the legal, sociological, philosophical, security, politicological and other literature can find various definitions of this term.

At the same some authors provide clear and concise definitions as opposed to those who are trying to with descriptive way to make broader range of different forms manifestation of corruption brought under a features and characteristics of this concept.³¹ Corruption (corumpere – spoil, deface, bribe) is an abuse of official position in the administration, economy and politics, with the aim material or immaterial benefit, which is not legally based. Corruption offenses have until the new Criminal Code of the Republic of Serbia, which entered into force on 1st January 2006 was systematized in a separate head behind „offenses against official duties” under the heading „Criminal acts of corruption.” Although the theory and practice of corruption subsumed under the concept of different criminalized behavior, however, can be found inside systematics of all these individual conceptual definitions. In a broader sense, corruption offenses or quasi-offenses of corruption include: dereliction of business operations, service and embezzlement. In a narrow sense or in law, pure corruption offenses include: active and passive bribery, trading in influence and forgery of official documents.³² In the classical sense, corruption is always an active and passive bribery as well as the abuse of public

These data will be stored in databases Information Center Association and made available to authorized persons from insurance companies that deal damage, which will improve the entire process of claims handling, primarily due to greater availability of data from the record of the Ministry of Interior and the various possibilities for their processing and analysis as part of the Information System. More at: Živorad Ristić. Aleksandar Đoković. Prevare u osiguranju u Republici Srbiji. XII Simpozijum sa međunarodnim učesćem: "Veštačenje saobraćajnih nezgoda i prevare u osiguranju". Divčibare 2013. strana 308.

²⁹ Berislav Matijević. Prijevar u osiguranju motornih vozila. Naknada štete, bezbednost saobraćaja i obavezno osiguranje / XII Međunarodni naučni skup. Zlatibor. 2009. strana 215.

³⁰ Davor Derenčinović. Mit o korupciji. Zbornik Pravnog fakulteta u Zagrebu 2001/6. Zagreb. strane 1465-1468.

³¹ Dragan Jovašević. Marina Gajić Glamočlija. Problem korupcije u svetlu zaštite ljudskih prava. Beograd. 2008. strane 231-243.

³² Dragan Jovašević. Korupcija u pravnoj teoriji i praksi. Teme-časopis za društvene nauke 2008/4. Univerzitet u Nišu. strana 861.

office. These are works that deserve the attention not only of theory and practice, but also the professional and general public by a series of its characteristics, of which the most important are: 1. these acts perform officials (domestic or foreign) persons responsible, 2. It shall be in line of duty which violates and abuse in various ways, 3. illegality of the conduct of officials in the the execution of duty, due to actions taken or passed legislation, 4th harm to other persons or entities or injury of their rights or obtaining benefits for officials to which they have no right 5. breach of trust in the service of the public authority, including in the legal system and government institutions in the framework of the rule of law and 6. corruption, depravity, corruption of public authorities.³³ Protective object of criminal acts against official duties is the official duty or lawful, proper, efficient and well-functioning official duties. It is characteristic that for these offenses as a perpetrator appears official. The concept of a public official is defined in Article 112, paragraph 3 of the Criminal Code. Official deemed to be: 1) a person in a state body perform official duties; 2) elected, appointed or designated person in the state authority, local government, or a person who regularly or occasionally perform official duties or official functions in these bodies; 3) The notary public, executor and arbitrator, and the person in an institution, company or other entity who is vested with public authority, which decides on the rights, obligations or interests of natural or legal persons or the public interest; 4) the officer is considered and persons who are entrusted with the performance of certain official duties or tasks; 5) military. As the perpetrator of these crimes may appear and responsible person. A responsible person is considered to be the owner of the company or other business entity or person in the company, institution or other entity which is due to its function, funds invested under the authority delegated specific tasks in the management of property, production or other activities or in the exercise of supervision over them or he actually entrusted with certain tasks. As a business entity shall be considered: 1) the company; 2) other legal entity that carries out an economic activity, and 3) an entrepreneur. According to the „National Strategy for Combating Corruption for the period from 2013 to 2018,” the notion of constituent elements of corruption, are not yet in a unique uniformly defined. So far, the definition used in the Republic of Serbia, as prescribed by the Law on the Anti-Corruption³⁴ defines corruption as a relationship based on the abuse of official or social position or influence, in the public or private sector, in order to gain personal benefit or the benefit for another. In comparative practice in the world, corruption is most often understood as the abuse of authority for personal gain („abuse of power for private gain”). This concept is used in the Global Programme of the United Nations Convention against Corruption, which was adopted in the practice of the European Union (particularly mentions the announcement of the European Union on the fight against corruption from 2011).³⁵ About extent of the problem indicates the Corruption Perceptions Index of Transparency International, according to which Serbia in 2013 was on 72 place.³⁶

³³ Dragan Jovašević. Korupcija u pravnoj teoriji i praksi. Teme-časopis za društvene nauke 2008/4. Univerzitet u Nišu. strana 863.

³⁴ Službeni glasnik RS br. 97/08, 53/10, 66/11-US i 67/13-US.

³⁵ http://www.acas.rs/sr_cir/zakoni-i-drugi-propisi/strategija-i-akcioni-plan.html.

³⁶ http://www.transparency.org.rs/index.php?option=com_content&view=article&id=359%3Aapomak-srbije-na-listi-transparency-international&catid=14%3Avesti&Itemid=40&lang=sr

5. Corruption in Insurance

Dangers of corruption³⁷ are particularly exposed places of third parties whose conduct may be expected to benefit. Because of the conditions in which in some developed countries and developing countries being transmitted resources to private companies, the risk grows, cause the insurance industry in the future will increasingly be a target of corruption. Politicians are in fact willing to make certain concessions to insurance companies, but they expect a favor in return.³⁸ In the meantime, many companies, in addition to the question of the organization of monitoring compliance with law, deal with the issue effective and sustainable prevention of corruption. How, for example, in the past has shown, there is corruption not only through bribery in an insurance company, but also through bribery by the insurance company.

For an effective fight against corruption is not enough repression.³⁹ Contemporary trends in combating corruption are increasingly turning to the prevention of a way to recognize the risks of occurrence of corruption and are trying to remove it with preventive measures, *i.e.* adoption of the law, institution building and awareness of citizens and the media is trying to forestall and prevent corruption before it comes at all. System approach to the fight against corruption should be carried out in several directions. First, the legislative level, it is necessary to adequately enforce existing laws and legal framework to make corrections where is necessary to harmonize national legislation with the relevant international standards and obligations. At the institutional level, it is necessary to strengthen the capacity of institutions, as a prerequisite to effective enforcement. The emergence of various forms of corruption and unethical behavior is primarily explained as a consequence of the lack of democratic reputation, which today is a special feature of developing countries.⁴⁰

In the fight against corruption in the insurance is set as a priority the improvement of professional and ethical conduct of employees, increase employee satisfaction, as well as customers, and increase corporate social responsibility society. Ethics should be included as an important part of education in the fight against corruption. In order to detect and punish corruption, it is necessary that, in addition, as many believe, the political will, there is a team of experts who know the job for the early detection of corruption in Insurance (knowledge gained through scientific research).

6. Conclusion

The specificity of insurance fraud in relation to fraud, reflects in fact directed against whom the criminal act is directed. It is directed towards insurers, other elements are the same. Insurance fraud has existed since the insurance, only legislator in Serbia

³⁷ Professor Stanko Pihler lists three groups of causes of corruption: economic, political and legal. more at: Stanko Pihler, *Karakteristike i problemi definisanja i suzbijanja korupcije, osnovni rezultati istraživanja*, Tematsko izdanje Univerzalne karakteristike i regionalne i nacionalne specifičnosti organizovanog kriminaliteta, 1/2005. strana 98.

³⁸ Wolfgang Rohrbach. *Privatno osiguranje kao sredstvo u borbi protiv korupcije*. *Evropska revija za pravo osiguranja* 2006/3. strana 14.

³⁹ Poslovna etika i antikorupcijsko delovanje u Croatia osiguranju d.d. strana 30. preuzeto sa http://www.crosig.hr/media/o_nama/antikorupcija/publikacije/poslovna_etika_i_antikorupcijsko_djelovanje.pdf.

⁴⁰ Dragan Lajović. *Uticaj etičkog kodeksa na smanjenje korupcije u privatnom sektoru*. *Preduzetnik* 8/2012. Ekonomski fakultet u Podgorici. strana 36.

until to the Amendment of the Criminal Code of 2009 did not attach great importance to that.

The fact that it prescribes a specific criminal offense of fraud in insurance talks about the intention of the legislator to this area specifically regulates and protect due to more frequent and more organized insurance fraud, as well as connections to other acts with corruptive elements. There is justification for the notion that an act of fraud in insurance does not offer anything new, as are the actions described in Section 208a CC covered by the frauds.

Approaches to combat fraud are different, but each state has the appropriate form of coordination for the fight against fraud. This diversity of forms of organization enables the legislature, insurers and reinsurers to choose the form of organization which will focus on the fight against fraud with results. Detecting and preventing fraud in insurance requires a serious approach and professional association of different subjects that should contribute to the detection and prevention of harmful consequences of this crime. Prescribing certain procedures can reduce or eliminate the risk of insurance fraud and prevent the exercise of corrupt acts and other illegal activities. It is necessary to educate employees about the rules, procedures and methods and allow the application of legal norms. Although the Criminal Code prescribes penalties for execution of those criminal offenses, individuals can still choose to participate in these illegal activities and to prevent the commission of the same should work on continuous education, training, interview and efficient control system. Corruption as an issue of our time has not missed the insurance. It is a global problem, especially for countries in transition. If the problem of corruption is not resolved in an adequate way there will be serious consequences in the field of insurance.

Finally, insurance companies in this area in these matters are not and can not be competitive in the market, but on the contrary partners that mutual exchange the information on new forms, individuals and groups that have a exclusive goal to obtain illegal money, can significantly disable perpetrators in start and prevent damage.