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LEGAL AND INSTITUTIONAL FRAMEWORKS FOR THE PROTECTION OF VOLUNTARY PENSION FUNDS IN REPUBLIC OF SERBIA

ABSTRACT: This paper represents a synthesis of both theoretical and practical research studies in the field of voluntary pension funds in Republic of Serbia. The authors have selected two significant segments in the scope of these funds contributing to their unobstructed functioning. These refer to the legal and institutional frameworks for the protection of pension funds. Our country is among the last to have introduced the possibility of voluntary pension insurance. This was done by passing an independent Law on Voluntary Pension Funds and Pension Plans. The National Bank of Serbia passed a large number of bylaws regulating their business conduct in our country in more detail. The legal protection frameworks for these funds span across the other branches of law (criminal law, misdemeanor law, and other). In this way, the normative domain of voluntary pension funds functioning has been rounded off. Institutional frameworks for the protection of voluntary pension funds are entrusted to the National Bank of Serbia, which supervises their functioning. This institution can also conduct the supervision over legal entities connected with the subject of the supervision by property, management or business relations, thus enabling a complete insight into their business conduct.

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1. Introduction

Voluntary pension insurance is a specific kind of insurance that ensures compensation to a person upon reaching retirement. Installments of monetary payment, as a form of investment in the voluntary pension insurance, is one of the most secure ways of investing into one's own future. Therefore, the manner in which these funds function is conceived in such a way that their policy is to be cautious and controlled. In a large number of countries, voluntary pension funds exist in parallel with government pension funds. The citizens pay contributions both to the government pension fund and the voluntary pension fund. Apart from that, the pension systems of certain countries enable the citizens not to pay the contributions to the government pension fund, but they can pay them into a fund of their choice. Here, the individual has the right to receive payments only from the fund that was the recipient of the person's monetary contributions.¹

Developed countries with a high level of monetary dispensation, accompanied by significant material funds necessary for their application, are no longer able to bear such financial burden. Therefore, voluntary pension funds aid the government in this field. In modern time, the countries allow contributions to be paid into the government pension fund that will later enable the individual to ensure minimal material existence. These variations in the functioning of voluntary pension funds represent the models of their organization in most countries with voluntary pension insurance. Serbia has introduced the option of voluntary pension insurance rather late. This was done by passing an independent law regulating the field of voluntary pension insurance (Law on Voluntary Pension Funds and Pension Plans, 2005).²

Institutional frameworks for the protection of voluntary pension funds were entrusted to the National Bank of Serbia. It conducts continuous supervision over their business in our country. Its supervisory function

¹ "Investment in a voluntary pension fund is not limited to employees; everyone can invest in it, but it is more profitable if the company pays for its employees as a form of additional contribution, because then there are certain benefits, i.e. tax relief" (Damjanović, 2017, p. 328).

² "In current practice across the world, there are countries that have unique pension insurance systems (Bulgaria, Ireland, China, Canada, the USA), countries with all three pillars of pension insurance (Austria, Hungary, Germany, Slovenia, Croatia, Chile, Switzerland, Sweden), while in Serbia, only the first and the third pillar exist" (Piljan, Brzaković, 2017, p. 42).

includes carrying out active control over the work of various subjects in the insurance sector. It passed a large number of bylaws for that purpose that regulate in more detail their business conduct in our country.

2. Legal framework for the protection of voluntary pension funds

The legal frameworks for the protection of voluntary pension funds in our country is done through the application of various branches of law. In this way, the possibilities for protection of the subjects that exercise the rights and obligations in the field of voluntary pension insurance are complete. Therefore, we deem it significant to point out the: economic and legal, misdemeanor, and criminal protection of voluntary pension funds.

2.1 Economic offenses in voluntary pension insurance

Economic offenses in voluntary pension insurance are a reflection of their bad business conduct. This is a special kind of delict that borders a criminal offense. Therefore, in criminal doctrine, we have adopted a special section of criminal law titled corporate criminal law. It came as a result of further development of criminal law and its adaptation to modern business tendencies of legal entities. We can find various definitions for it in literature, as well as the significance of this field in criminal law. As such, Jovašević states that “corporate criminal law is a part of a unique legal system with a special task – to ensure that legal entities provide legal, high-quality, efficient and timely protection of valuables, goods, and interests proscribed in criminal legislature” (Jovašević, 2019, p. 112).

The Law on Voluntary Pension Funds and Pension Plans dedicates special attention to economic offenses of management companies and other legal entities (Article 73). Thereby, it does not point to the definition and meaning of economic offenses in the spirit of this Law, but it exclusively prescribes a monetary fine as the only criminal sanction. However, the meaning of economic offense is tied to the provision of Article 2 of the Economic Offenses Act that proscribes the following: “An economic offense is a socially harmful violation of regulations on economic or financial operations which has caused or may have caused graver consequences and which is defined as an economic offense under the competent authority’s relevant regulations. A violation of regulations on economic or financial operations, which despite, having the elements of an economic offense as defined by regulation, represents only

marginal social harm due to its significance and negligibility or its not having any harmful effects shall not be considered an economic offense" (Economic Offenses Act, 2005).

It proscribes a system of monetary fines that is aimed at meeting the purpose of punishment. Nominal fines are prescribed in the span of RSD 500,000 dinars to 3,000,000 for an economic offense for any management company or other legal entity if it:

1. uses the name "management company of voluntary pension fund" in economic trade or any similar name without receiving work permit of a management company (Article 6 of this Law);
2. does not obtain the consent of the National Bank of Serbia for the acquisition of qualified participation in the management company (Article 14, paragraph 1 of this Law);
3. does not relieve the duties of a member of the management even though it was known or it must have been known that such a person ceased to meet the requirements from article 15 of this Law;
4. carries out a merger and acquisitions without the consent of the National Bank of Serbia (Article 20, paragraph 2 of this Law);
5. calculates fees contrary to Article 23 of this law, and thereby severely endangers the interests of voluntary pension fund members;
6. does not keep documents and records in the manner proscribed (Article 27, paragraph 7 of this Law);
7. invests the property of the voluntary pension fund contrary to the provisions of Articles 31, 32, and 33 of this Law and thus severely endangers the interests of its members;
8. uses the name "voluntary pension fund" or a term derived from this name contrary to the Article 35 of this Law;
9. initiates the management of a voluntary pension fund prior to receiving consent of the National Bank of Serbia (Article 36, paragraph 1 of this Law);
10. refuses the surveillance of the National Bank of Serbia over the legality of the business conducted by the management company or voluntary pension fund (Article 68 of this Law).

The possibility of fining the person responsible of the management company or another legal entity is also prescribed. The person responsible shall be fined with a monetary fine of RSD 50,000 to 200,000 for an economic offense. The liability of the legal entities in our country fits with the modern tendencies of this kind of liability in parallel legislature. This is a consequence

of the process of gradual harmonization of our legal solutions with parallel legislature. This process is specifically present in fields that, prior to this, were not the subject of legal regulation. However, the present solutions in parallel legislature indicate various tendencies. Often, they intertwine the criminal and economic responsibility of legal entities and the persons responsible in legal entities. In practice, there are situations where it is not simple to differentiate between the delicts committed and the type of delict liability. This is the result of different solutions in relation to the position of legal entities as subjects that engage in various kinds of legal and business relationships. So, for example, the USA and countries with Anglo-Saxon legal systems apply their legislative solutions in the spirit of precedent law. We have examples in judicial practice where it is not possible to make a clear judgment regarding the extent of the overlap of the responsibility of legal entities and the persons responsible in European solutions that are based on European continental legal systems.

2.2. Offenses in voluntary pension insurance

Offenses pose a special kind of delicts regulated through the framework of several legal regulations. According to the provision of Article 2 of the Misdemeanors Law, a misdemeanor is an unlawful culpably committed act that is stipulated as a misdemeanor by a regulation of the competent authority and for which a misdemeanor sanction is stipulated (Misdemeanors Law, 2019). The legality in proscribing the misdemeanors and misdemeanor sanctions stipulates that no one can be punished for a misdemeanor, or any other misdemeanor sanctions can be applied towards such a person, if the act committed is not stipulated as a misdemeanor by law or by any regulation based on law, and if the kind and severity of the sanction available for the perpetrator is not proscribed (Article 3 of the Law on misdemeanors).

In the field of voluntary pension insurance, the law prescribes the sanctioning of several subjects (legal entities) for misdemeanors. The legislator prescribed misdemeanor liability for three possible subjects: management company, custody banks and pension plan organiser. They have various roles or competencies in the field of voluntary pension insurance. Thus, in exercising their competencies, the subjects responsible (legal entities), can commit misdemeanors through actio or non-action, i.e. failure to perform due diligence. Our legislator purposefully separated the subjects that commit misdemeanors, and lists for each one the manners of committing the misdemeanor. The common factor in all subjects is related to the type of

proscribed sanction, which is a monetary fine, thus not leaving the possibility of applying any other sanction.

Misdemeanors of legal entity – management company (Article 73 a of the Law on voluntary pension funds and pension Plans) are the subject of special legal regulation. They proscribe monetary fines in the span of 300,000 to 1,000,000 dinars, if the management company commits one of the following misdemeanors:

1. “fails to compile and submit financial statements in accordance with Article 27, paragraphs 1 and 6 of this Law;
2. fails to submit the prospectus, and/or summary prospectus of a voluntary pension fund within the prescribed timeline, for the purpose of obtaining the approval by the National Bank of Serbia (Article 38, paragraphs 5-7 hereof);
3. fails to transfer funds in accordance with Article 44, paragraph 2 and Article 45 hereof;
4. offers benefits contrary to Article 49 hereof;
5. publishes an announcement, and/or public invitation, or provides information contrary to Article 50, paragraphs 1, 2, 5 and 6 hereof;
6. engages natural persons not holding the licence of the national Bank of Serbia (Article 51, paragraph 3 hereof);
7. fails to deliver notifications to voluntary pension fund members in accordance with Article 52 hereof;
8. fails to execute the contract regarding withdrawal and use of pooled funds through scheduled payments (Article 62, paragraphs 3 and 4 hereof);
9. enters into the contract of membership and/or pension scheme prior to entering into the contract with the custody bank on the maintenance of the voluntary pension fund’s account referred to in Article 63, paragraph 1 hereof.”

The law proscribes misdemeanor liability of the responsible person within a legal entity (management company). For these offenses the person responsible within a management company shall also be fined between RSD 10,000 and 150,000.

Offenses of legal entity – custody bank (Article 74 of the Law on voluntary pension funds and pension Plans) are the subject of special legal regulations. The legislator standardized the responsibility of the custody bank independently of the management company. That is in accordance with the separate role of the custody bank in the field of voluntary pension insurance.

The law prescribes a monetary fine in the span of RSD 300,000 to 1,000,000, if the custody bank commits one of the following misdemeanors:

1. “fails to notify the management company of corporate actions that need to be taken in respect of fund assets (Article 64, paragraph 1, indent 3) hereof);
2. fails to execute orders of the management company that are in conformity with the law and the fund’s prospectus, or executes the orders of the management company for the purchase and sale of assets contrary to the law and the fund’s prospectus (Article 64, paragraph 1, indent 4) hereof);
3. fails to control, confirm and report on a daily basis to the National Bank of Serbia on the net asset value of the voluntary pension fund and the value of investment units (Article 64, paragraph 1, indent 5) hereof);
4. fails to control the return of the voluntary pension fund (Article 64, paragraph 1, indent 6) hereof);
5. fails to notify the National Bank of Serbia of irregularities detected in the management company’s operations immediately upon detection of such irregularities (Article 64, paragraph 1, indent 7) hereof);
6. fails to submit to the National Bank of Serbia and other competent authorities, in the name of the fund, reports against the management company for the damage incurred to the fund (Article 64, paragraph 1, indent 9) hereof);
7. fails to notify the National Bank of Serbia of termination of the contract and reasons for such termination (Article 65, paragraph 3 hereof).“

The law proscribes misdemeanor liability of the responsible person with the custody bank. For these offenses the person responsible within the custody bank shall also be fined between RSD 10,000 and 150,000.

Misdemeanors of the pension scheme organiser (Article 75 of the Law on voluntary pension funds and pension plans) are the subject of special legal regulations. It is necessary to emphasize the specific legal position of the pension plan organiser in the domain of voluntary pension insurance. The organiser is obliged to ensure equal membership conditions to the employees and/or members in the pension plan. The organiser can organize another pension plan for specific groups of employees and/or members under specific conditions, if the organiser previously organized the pension plan and ensured the payment of pension contribution in accordance with that plan for all employees and/or members (Article 3 of the Rulebook the conditions, manner and procedure of organizing and functioning of pension plans, 2011).

In accordance with the special role of pension plan organiser in the field of pension insurance, the law proscribes a monetary fine in the nominal span of RSD 300,000 to 1,000,000 if the organiser does not ensure equitable conditions of membership in the pension plan in accordance with the provision of Article 61, paragraph 1 of this Law. Any natural person and/or contractor – organiser of pension plan, shall be fined for similar offenses with RSD 10,000 to 500,000. Apart from that, any person responsible with the pension plan organiser shall be fined for these misdemeanors with a fine of RSD 10,000 to 150,000.

To sum up the liability of legal entities and natural persons for the committed misdemeanors, we can state that our legislator applied the same criteria for the conditions, manners of establishing and types of misdemeanors. However, the differences can be noted in the proscribed nominal spans of monetary fines. They are incomparably higher for legal entities and lower for natural persons. Such a manner of prescribing the sanction spans is unique to monetary fines in our legislature. Therefore, it is not possible to discuss unjustified limitation of property law of the aforementioned subjects, which would mean its reduction for the amount of the given monetary fine. On the contrary, the legal regulation of limiting the rights to property lies in the fact that it ensures the setting of claims of the government based on fiscal obligations and fines (Joksić, Radovanov, & Rajković, 2018, p. 188).

2.3. Criminal offenses in voluntary pension insurance

Unobstructed functioning of voluntary pension funds is not possible without legal protection mechanisms. They serve as the final means (*ultima ratio*) in preventing unlawful activities. That is why there is a greater number of incriminations that protect the rights and interests of subjects in the field of voluntary pension funds. Within the penal provisions, the Law on Voluntary Pension Funds and Pension Plans contains criminal acts that primarily protect the interests of the members of the voluntary pension fund. Their meaning and essence should be interpreted in the spirit of the current criminal legislation. This is how the protective function of criminal law in the field of voluntary pension insurance is realized most effectively. This is what makes criminal law the necessary link in the protection of individual and collective social values (Joksić, 2019, p. 7).

The penal provisions of the Law on Voluntary Pension Funds and Pension Plans prescribe two criminal offenses. Those are:

Criminal offense of publication of prospectus with false data (Article 72 of the Law on Voluntary Pension Funds and Pension Plans, 2005) prescribes

the following: “Anyone who, with a view to misleading the public, publishes false data on the legal and financial position of the fund or its business opportunities, or other false facts relevant for making the investment decision, or fails to publish complete data on such facts in the prospectus, summary prospectus, annual and semi-annual report of the voluntary pension fund, shall be sentenced to up to three years in prison.“

The protected subject of this criminal offense is not specified in the description of the criminal offense. We believe that the intention of the legislator was for the protected object of this offense to be the property of the voluntary pension fund members, and we interpret so based on the very description of the criminal offense. Any person can be the perpetrator of this criminal offense. However, it is evident that only certain individuals can be the perpetrators of this offense in practice. The nature of the work of certain persons must be related to the act of committing a criminal offense. The subjective element of a criminal offense is related to the perpetrator that commits the offense with intent. This is clear in the beginning of the description of the offense, therefore, for its existence the highest level of consciousness of the perpetrator of the criminal offense is required. The object of the criminal act is the voluntary pension fund’s prospectus, summary prospectus, annual and semi-annual reports. These are the material objects upon which the perpetrator commits the offending act. When it comes to act of committing a crime, it is alternatively defined, which means that a criminal offense will exist if the perpetrator commits one of the following actions: publishes false data and false facts, or does not publish complete data about those facts. In recent years, the publication of data is done using the possibilities provided by the Internet (Joksić, Mitrić, & Rajković, 2015, pp. 227-229).

“Criminal offense of Unauthorised performance of management company’s activities and unauthorised operations (Article 72a of the Law on Voluntary Pension Funds and Pension Plans, 2005) prescribes the following: A responsible person in a legal entity performing the activities of a management company or operating as a voluntary pension fund without being granted the operating licence and without being registered under the law shall be sentenced to up to three years in prison.“

The protected object of this criminal offense is the legal security of the business that is jeopardized. Unlike the one previously analyzed, only a person responsible in a legal entity can be the perpetrator of the criminal offense, which narrows the circle of the possible perpetrators of this criminal offense. Therefore, we believe that by prescribing these criminal offenses, the legislator protected the most sensitive points related to the functioning

of voluntary pension funds, as well as that this was done in a high-quality manner, with a clear criminal policy.

The legal framework of voluntary pension funds should be aligned with the basic principles on which they operate. Those are: voluntariness, freedom to decide on payments and subsequent withdrawals of funds, accumulation of funds on individual user accounts and capitalization of paid contributions (Bilankov & Aleksić, 2016, pp. 676-677).

3. Institutional frameworks for the protection of voluntary pension funds

Institutional frameworks for the protection of voluntary pension funds are done by the National Bank of Serbia. Such is done through a special surveillance system over the business conduct of these funds. This derives from the fact that insurance is an economic activity of social interest (Šulejić, 2005, 98).³ The National Bank of Serbia conducts supervision in the field of insurance as a segment in which there is a potential for various misuse. National Bank of Serbia can also supervise legal entities that are connected by property, management or business relations with the supervised subject, and to request insight into the business ledgers of all participants in the business that is the subject of surveillance – if such action is necessary in order to conduct surveillance over the insurance related activities (Article 187, paragraph 2 of the Insurance Law, 2014). Its supervisory function entails actively exercising control over the work of various entities in the insurance sector. Hence, voluntary pension insurance is the subject of primary supervision of the National Bank of Serbia.

3.1. Competence of the National Bank of Serbia in the business of voluntary pension insurance

Creating monetary policy and managing its flows is the primary function of the National Bank of Serbia. However, its role is far more complex when one considers the fact that it carries out supervision and control over the entire financial market, all its participants, and, at the same time, it

³ In legal doctrine, there are various forms of insurance fraud classification. One of the more prevalent is the division into hard and soft fraud. Hard fraud includes pre-prepared plans, while soft fraud implies the situational actions of the perpetrators, thus excluding premeditated action in a specific case (Petrović, Stojanović, 2012, p. 61).

was derogated the right to create its own normatives in all segments of its competence. This is precisely the reason why this government institution is an active participant in all processes related to voluntary pension insurance. Its significance and role in terms of establishment, functioning, control and supervision, i.e. normative regulation of certain issues, is of vital importance for the proper functioning and business conduct of all entities participating in this process.

Supervising function of the National Bank of Serbia is done in order to protect the interests of the voluntary pension fund members, to take care of their property, and to control the entities entrusted with the affairs of managing the voluntary pension fund. In the field of voluntary pension fund, its role is seen as follows:

1. The main role of the National Bank of Serbia refers to the implementation of supervision in connection with the implementation of the provisions of the Law on Voluntary Pension Funds and Pension Plans. The basic idea of the legislator, when passing this law, was to place all issues in the domain of ensuring the implementation of this law under the competence of this government institution. In this way, the implementation of all the provisions of the mentioned law is in most cases the responsibility of the National Bank of Serbia.
2. An important role of the National Bank of Serbia is also in the scope of passing bylaws. They are a necessity and a need, generally related to the implementation of any other legal regulation. The exception is the fact that certain normative powers are transferred to the government institution, and not to the legislator or law proposer.

By carrying out comprehensive supervision over implementation of legal regulations, the National Bank of Serbia is authorized to maintain the register of voluntary pension funds (Article 67 of the Law on Voluntary Pension Funds and Pension Plans). In a special Decision, it specified the legal provisions regulating the legal area and practical scope of its supervision in voluntary pension insurance (Decision on the method voluntary pension fund management company supervision, 2011). The Decision prescribes the manner of conducting supervision over the voluntary pension fund management company, the procedure for issuing orders and taking measures in carrying out this supervision, the deadlines for executing orders and the duration of the measures, as well as other activities that the company should carry out based on the order to eliminate irregularities (indent 1) of the Decision). We believe that the scope of the issues in the competence of the National Bank of

Serbia should be decreased, and that passing bylaws by the Bank should be an exception not a rule. Finally, the obligation of the National Bank of Serbia to manage the registers of voluntary pension funds should not be neglected. The register includes the names of all voluntary pension funds in the Republic of Serbia, as well as the names of their management companies, the value of those funds, their investment units, and the value of the overall fund.

3.2. Supervision modalities of the National Bank of Serbia

As part of conducting supervision, the National Bank of Serbia issues and revokes operating licenses and management licenses of management companies of voluntary pension funds. Within the framework of the competences entrusted to it, the National Bank of Serbia conducts supervision by applying the following control measures (Article 68 of the Law on Voluntary Pension Funds and Pension Plans):

1. Off-site control, i.e. the collection, monitoring and inspection of reports and notifications submitted to the National Bank of Serbia according to law. Off-site control of this kind has the goal to provide and deliver high-quality, up-to-date and systematic information that are of direct or indirect interest in connection with the functioning of voluntary pension funds.
2. On-site control, which includes measures and activities of extraordinary nature, and which occur as a result of certain conditions that are carried out mainly in extraordinary circumstances that indicate a greater degree of irregularities in the work of a fund management company or custody bank. It is a type of field control, which, apart from the aforementioned, can include requests regarding the delivery of information on certain issues of importance for the business conduct of management society and/or custody bank. In a special Decision (indent 2), National Bank regulated in more detail the ways of conducting supervision within the framework of direct and indirect control.

Within the framework of the supervisory function of the National Bank of Serbia, such established way of performing on-site and off-site control can be labeled as the most effective. Our legislator purposefully focused the supervision to all the most important segments of functioning of voluntary pension insurance.

3.3 Supervision measures of the National Bank of Serbia

Conducting supervision by the National Bank of Serbia includes taking certain supervision measures in case that certain irregularities are determined during this procedure. These irregularities can refer to the work of management companies and custody banks. If it is determined that a management company or a custody bank is engaged in unlawful or irregular business activity, the National Bank of Serbia could order certain supervision measures focused on these subjects. When the legislator gives a certain institution the right to revoke the work licence of a management company which established the voluntary pension fund, then it is quite clear that this institution represents the most important influencing factor in the triangle consisting of the management company, the custody bank and the National Bank of Serbia. We are of the opinion that it is quite understandable that the legislator has prescribed this type of competence for this institution, because otherwise it would not be consistence in the implementation of this law. We highlight precisely because the National Bank of Serbia issues the work licence to a management company and a permit to establish a voluntary pension fund, so it would be extremely illogical for another institution or other state body to decide on its revoking (Golubović, 2003, pp. 111-117).

The National Bank of Serbia does not issue strict supervision measures if the management department of a given company is willing to work on removing the aforementioned issues, and it has the ability to find a suitable solution. On the contrary, the observed omissions and violations of the law by the management company certainly gain more importance bearing in mind the fact that the management is not willing or capable to remove them. In these situations, the main interest that must be taken into account is the interest of the members of the voluntary pension fund and the protection of their investment units. Hence, our legislator, immediately before stating the type of measures “points out that if in the course of supervision of the management company or the custody bank it establishes any illegalities and/ or irregularities under this or other law pursuant to which the National Bank of Serbia is in charge of performing supervision, or identifies non-compliance with the risk management rule, the National Bank of Serbia shall take one or more measures (Article 69, paragraph 1 of the Law on Voluntary Pension Funds and Pension Plans, 2005):

1. issue a written warning notice,
2. issue the order to eliminate the identified irregularities,

3. withdraw the approval of appointment of a member of the management company's management,
4. revoke the operating licence of the management company."

Apart from these supervision measures, the National Bank of Serbia can resort to monetary fines. In practice, monetary fines are most often applied to legal entities, as part of determining their economic, misdemeanor and criminal liability.⁴ Therefore, it is understandable that this kind of punishment finds its place in the supervision of their business.

4. Conclusion

Voluntary pension insurance is a novelty in our pension insurance system. Traditionally relying on the government pension system, our society has long resisted the idea of private form of insurance. The existing mistrust arose from the fact that there are numerous possibilities of abuse in the field of private pension insurance. That is why legal provisions regulate in more detail the manners of legal and institutional protection in their functioning.

The legal framework for the protection of voluntary pension funds in our country is based on economic, misdemeanor and criminal liability. Our legislator pays special attention to economic offenses of management companies and other legal entities. However, the concept and the meaning of economic offenses are not specified, but instead nominal (minimal and maximum) fines are prescribed. At the same time, the law prescribes the possibility of fining the person responsible of the management company, and/or other legal entity. Legal provisions purposefully separate the entities that commit offenses. As part of that, the methods of their misdemeanor behavior are listed in detail. As with economic offenses, financial penalties are proscribed for legal entities (management company, custody bank and pension fund organiser) and for natural persons, i.e. the persons responsible. Finally, as the last resort (*ultima ratio*) of protection, criminal liability is foreseen in the field of voluntary pension insurance. Two criminal offenses are prescribed, namely: Publication of prospectus with false data (Article 71) and Unauthorized performance of management company's activities and unauthorised operations (Article 72a).

⁴ As part of determining criminal liability, two types of penalties can be imposed on a legal entity: a monetary fine and termination of the legal entity. They can only be imposed as major punishments (Joksić, 2010, p. 139).

The institutional form of protection of voluntary pension funds is in the competence of the National Bank of Serbia. This is done through a special supervision system overseeing the work of all funds. The National Bank of Serbia can also supervise legal entities that are connected by property, management, or business relations with the subject of the supervision where supervision is carried out, and to gain insight into the business ledgers of all participants in the business that is the subject of supervision – if such is necessary in order to supervise the performance of insurance activities (Article 187, paragraph 2 of the Insurance Act). In this way, the framework of institutional protection of voluntary pension funds in our country is completed.

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PRAVNI I INSTITUCIONALNI OKVIRI ZAŠTITE DOBROVOLJNIH PENZIJSKIH FONDOVA U REPUBLICI SRBIJI

REZIME: Rad predstavlja sintezu teorijskih i praktičnih istraživanja na području dobrovoljnih penzijskih fondova u Republici Srbiji. Autorke su odabrale dva značajna segmenta u radu ovih fondova kojima se doprinosi njihovom nesmetanom funkcionisanju. Oni se odnose na pravne i institucionalne okvire zaštite penzijskih fondova. Naša zemlja je među poslednjima uvela mogućnost dobrovoljnog penzijskog osiguranja. To je učinjeno donošenjem samostalnog Zakona o dobrovoljnim penzijskim fondovima i penzijskim planovima. Narodna banka Srbije je donela veći broj podzakonskih propisa u kojima se detaljnije reguliše njihovo poslovanje u našoj zemlji. Pravni okviri zaštite ovih fondova prostiru se i na području drugih grana prava (krivičnog prava, prekršajnog prava i dr.). Na taj način je zaokružen normativni domen funkcionisanja dobrovoljnih penzijskih fondova. Institucionalni okviri zaštite dobrovoljnih penzijskih

fondova povereni su Narodnoj banci Srbije, koja vrši monitoring nad njihovim funkcionisanjem. Ova institucija može vršiti nadzor i nad pravnim licima, koja su povezana imovinskim, upravljačkim, odnosno poslovnim odnosima sa subjektom nadzora, kod koga se vrši nadzor, čime se omogućava celoviti uvid u njihovom poslovanju.

Ključne reči: *Narodna banka Srbije, dobrovoljni penzijski fondovi, nadzor, krivično delo, prekršaj, privredni prestup.*

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