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INSURANCE AS A MEANS OF PROTECTION OF CONSUMER RIGHTS AND JUDICIAL PRECEDENT

Abstract Insurance can be considered as a means of protecting consumer rights. Emphasis on consumer rights corresponds to the principle of justice, and the development of the consumer market contributes to sustainable development, which is what any welfare state strives for. The essence of insurance, the formulation of its concept and role in the protection of consumer rights are revealed. In the conditions of modern state formation, insurance is an important and necessary type of activity that ensures general economic stability, development of all economic spheres, effective protection against numerous natural, man-made and other risks. Its development becomes one of the directions of state social policy. The full development of the insurance market gives a noticeable impetus to the growth of the national economy, as insurance contributes to the effective redistribution of the country's financial resources. As for the social orientation of court decisions, judicial practice, court precedent, the most important area for measuring this orientation is insurance itself. . It should be noted that recently the level of scientific and methodological work of the Supreme Court has significantly increased, especially in the person of its chambers, the motivation of court decisions made by it has improved, and how actively the judges of the Supreme Court apply European experience in the preparation of court decisions, increasingly turning to precedent practice. All this can be confirmed by reference to procedural documents, which combine the traditional classical approaches adopted by him from the Supreme Court of Ukraine with new, progressive directions of judicial practice development.

Key words. Insurance, the principle of justice, consumer rights protection policy, consumer rights, consumers, consumer market, sustainable development, procedural documents, European experience, preparation of court decisions, case law, court precedent.

Introduction. The centuries-old experience gained by world practice regarding the organizational principles of creating insurance entrepreneurship deserves detailed attention, critical reflection and thoughtful use in Ukrainian practice. Each country

forms its own, unique means of forming and functioning of insurance entrepreneurship. Therefore, this scientific article is devoted to their justification and formulation of further directions of development in Ukraine.

Analysis of recent research and publications. The characteristics of modern trends in the development of forms of economic and legal organization of insurance business, insurance market, insurance services market were in the field of view of a number of well-known domestic theorists and practitioners. Among them are U. Ivasechko, M. Skydan, N. Kudryavska V. Machusky, N. Patsurin, V. Nadyon, N. Mokritska and others.

Reviews of modern trends in the development of economic and legal regulation of insurance activities in a market economy were presented on the pages of domestic professional journals. However, a comprehensive systematic study of this problem is absent.

Statement of the task. The purpose of the article is to analyze the organization of insurance entrepreneurship, including and taking into account world experience. To achieve this goal, the following tasks have been set: to analyze the development of insurance as a type of economic relations, to create conditions for the creation and functioning of insurance entrepreneurship entities, highlighting the features and substantiating the directions for improving the organization of domestic insurance entrepreneurship.

Presentation of the main material. Insurance is the oldest category of socio-economic relations between people. Its individual elements were known thousands of years BC.

The simplest form of loss distribution was insurance in kind. Signs of insurance in monetary form appear in the 3rd millennium BC. Thus, among the Sumerians, merchants were given certain amounts of money in the form of a loan or they were supposed to create a "common treasury" in case of loss of cargo during transportation. The decrees of the Babylonian king Hammurabi (1792-1750 BC) required the conclusion of an agreement between the participants of a trade caravan on joint coverage of losses in the event of an unexpected event [1].

In general, in ancient times, the simplest form of insurance was collective mutual assistance. Mutual insurance was most widespread in Ancient Rome, where mutual insurance of ritual expenses was carried out. Money was accumulated in professional colleges and unions, and its intended use was ensured by legal guarantees. In the Middle Ages, insurance was carried out through guilds and workshops. Relations between members were closer than in the colleges of Ancient Rome. The principle of mutual assistance was enshrined in the guild charter. Mutual insurance did not aim to make a profit, it was based on the principles of the subsequent distribution of damage.

Insurance develops actively during the period of capitalism. Gradually, its "companies" form turns into "commodity". In the early 60s of the 18th century. in the West there were about 100 types of property and personal insurance. In 1706, the first life insurance company was created. In many European countries, joint-stock insurance companies appeared, which were engaged in marine insurance, fire insurance. In tsarist times, almost all types of insurance known at that time existed: marine insurance, fire

insurance, building insurance, means insurance transport, cargo, etc. Life insurance has developed somewhat [2].

After the revolutionary events of 1917, insurance was declared a state monopoly. However, it developed unevenly, lagging behind Western countries. The dynamic development of the insurance business in Soviet times was hindered by the presence of only one insurance company - the State Insurance of the USSR, which indicated the lack of competition and normal market relations. The beginning of the 90s in Ukraine was marked by significant political and economic changes. Insurance also underwent positive changes - the state monopoly in this area was abolished. New insurance companies emerged, and the insurance market began to form, which gradually became an integral part of the new economic mechanism.

The first special regulatory act regulating insurance activity was adopted only in 1993. It is unlikely that we can talk about any significant role of it and subject it to serious analysis. Moreover, it was not even a law, but a Decree of the Cabinet of Ministers "On Insurance" (although it had the status of a legislative act). The adoption in 1996 of the Law of Ukraine "On Insurance" made the domestic insurance market more civilized. The main transformation was the increase in the size of the minimum authorized fund of an insurance company and its binding to the euro currency (current to the official rate). The law increased the requirements for insurance reserve funds of companies, and also regulated in detail all types of insurance. However, due to the inability of this Law to regulate a number of provisions, in 2001 the Law of Ukraine "On Amendments to the Law of Ukraine "On Insurance" was adopted. The main achievement of this Law was that foreign insurers acquired the right to create joint ventures in Ukraine only with its Ukrainian partners.

It follows that insurance can be defined as an economic relationship under which the insured, by paying a monetary contribution, ensures for himself or a third party (in the event of an insured event stipulated by the contract or law) the amount of payment by the insurer, which retains a certain amount of liability and, to ensure it, replenishes and effectively places reserves, carries out preventive measures to reduce risk, and, if necessary, reinsures part of the latter.

A. S. Adamov, based on the analysis of the experience of foreign countries in the field of mutual insurance, studied the development of the so-called mutual insurance of shipowners[3]. As the author noted, until recently this insurance was carried out almost exclusively in mutual insurance clubs of shipowners [3].

In domestic literature, instead of the term "club", which is characteristic of the foreign name of this type of insurance organization, the concept of "mutual insurance company" [4] is used, less often - "insurance cooperative" [5]. The first concept ("mutual insurance company" - TVS) is also used by the legislator as a term. TVS, as A. S. Adamov writes, "...by tradition, in the EU countries are called Protecting and Indemnity Clubs or abbreviated P & I Clubs, which is explained by historical reasons. The primary reason for the formation of such companies was the fact that under the marine insurance contract in Great Britain, the insurer's liability in the event of a collision of ships (in order to stimulate careful treatment of ships) was limited to three quarters of the losses incurred by the shipowner - the insured. 25% of the loss remained

unreimbursed. This prompted shipowners, interested in the most comprehensive insurance protection of their property, to organize an association in order to distribute the specified losses that have befallen any of them among all members of the association. Thus, mutual hull insurance companies, or hull insurance companies (The Mutual Hull Underwriting Associations), arose, which served as the prototype of modern P & I Clubs" [3].

Insurance can be considered as a type of economic relations. Today, there are the following features that characterize the category of insurance:

- in a market economy, commodity-money relations prevail. Therefore, almost every result of economic activity is necessarily sold and bought, that is, it goes through the exchange stage. The parties to certain relations conclude relevant agreements (in our case, an insurance contract), carry out sales and purchases of goods or provide intermediary and other services;

- in insurance, as in any economic relationship, there are always two parties: the insured and the insurer, whose obligations and responsibilities are regulated by the insurance contract;

- insurance is characterized by redistributive relations, associated with the joint and several distribution of the amount of loss of one or more participants in these relations to all participants;

- insurance funds created by the insurance method are used exclusively for the purpose of compensation for losses resulting from the occurrence of insured events; insurance ensures the distribution of losses from the occurrence of events to the insurer both in space and time.

The main principles of insurance as a type of economic relationship in Ukraine are:

- the principle of insurance interest (the contract provides for compensation for specific losses of a specific person);

- the principle of maximum good faith of the parties (insurance is possible only under conditions of high trust between the parties);

- the principle of causality between the loss and the event that led to it (the basis of the insurance contract is the cause of the loss);

- the principle of compensation for losses within the limits of the losses actually caused (the insurer, having paid the insurance indemnity to the insured, must return him to the financial condition in which he was before the insured event occurred);

- the principle of subrogation (the insurer who paid the insurance indemnity transfers the right of claim that the insured has against the person guilty of the losses).

The term “insurance”, according to Western philologists, is of Latin origin. At its core are the words “securus” and “sine cura”, which mean “carefree”. Thus, insurance reflects the idea of caution, protection and security. In many Slavic languages, including Ukrainian, the origin of the term “insurance” is associated with the word “fear” [6, p.23]. In the professional literature, the etymology of the word “insurance” has also received considerable attention. However, there is no consensus on this issue. An analysis of the definitions of the concept of “insurance” shows that each of them clarifies or supplements the previous ones, leaving their basis unchanged.

The official interpretation of this term is given in the Law “On Insurance”: “Insurance is a legal relationship regarding the protection of the insurance interests of individuals and legal entities (insurance protection) in the insurance of risks related to life, health, work capacity and pension provision, with ownership, use and disposal of property, with compensation by the insured for damage caused by him to a person or his property, as well as damage caused to a legal entity, in the event of insured events specified in the insurance contract, at the expense of funds formed by the payment of insurance premiums (payments, contributions) by the insured, income from the placement of funds of such funds and other income of the insurer received in accordance with the legislation” [7].

According to the specified Law, the object of insurance may be property interests that do not contradict the legislation of Ukraine. Within the framework of the Law, the following components of the legal definition of the concept of “insurance activity” [7] should be distinguished:

- type of economic, civil-law relations;
- protection of property interests of legal entities and individuals;
- protection of property interests in the event of an insured event;
- monetary funds formed through the payment of insurance premiums by individuals and legal entities and income from the placement of these funds.

In the professional literature, the concept of “insurance activity” is interpreted as:

- a system of economic relations;
- a special sphere and form of activity;
- a type of human activity;
- a socio-economic means of protection[8].

Analysis of the concept of insurance and comparison of its various interpretations contained in scientific works show that the official definition of the term is somewhat overloaded with legal aspects. Insurance is, first of all, a system of economic relations between specific economic entities (where, on the one hand, policyholders, and on the other hand - insurers). An important prerequisite for the application of insurance is the property independence of business entities and their interest in transferring responsibility for the consequences of the risk to specialized formations. The greater this interest, the higher the need for insurance. It is in this plane that insurance is considered in the works of scientists from many market-oriented countries. The concept of insurance is incomplete even when it does not provide for reliability and preventive direction of protection [9 p.23].

Thus, insurance is a bilateral economic relationship, which consists in the fact that the insured, by paying a monetary contribution, provides himself (or a third party) in the event of an event stipulated by the contract or law, the amount of payment from the insurer, which retains a certain amount of liability and, to ensure it, replenishes and effectively places reserves, takes preventive measures aimed at reducing risk, and, if necessary, reinsures part of his liability.

Revealing the essence and content of insurance, it is necessary to proceed from the fact that insurance is a system of specific relations, which includes a set of forms

and methods of forming target funds, their use for the purpose of compensation for losses in the event of unforeseen events, as well as for providing assistance to citizens in the event of certain events in their lives.

It should be noted that in the special scientific literature the following features are determined that characterize the category of insurance. First, in insurance there are always two parties: the insured and the insurer, whose obligations and responsibilities are regulated by the insurance contract. Secondly, insurance is characterized by closed redistributive relations associated with the joint and several distribution the amount of loss of one or more participants in these relations to all participants. Thirdly, insurance funds created by the insurance method are used exclusively for the purpose of compensation for losses resulting from the occurrence of insured events. Fourthly, insurance ensures the distribution of losses from the occurrence of insured events both in space and in time [10].

Given these features, insurance can be defined as an economic, economic and financial relationship in which the insured, by paying a monetary contribution, ensures for himself or a third party in the event of an insured event stipulated by the contract or law, the amount of payment by the insurer, who retains a certain amount of liability - to ensure it, replenishes and effectively places reserves, carries out preventive measures to reduce risk, and, if necessary, reinsures part of the latter.

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