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INSURANCE ACTIVITY AS ECONOMIC AND LEGAL PHENOMENON

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Місце, роль і значення страхування як правової категорії, його суттєві ознаки, види, функції та принципи здійснення досліджуються, зазвичай, в межах галузевих юридичних наук. При цьому варто звернути увагу, що в сучасних наукових дослідженнях переважно розглядається проблематика певних видів страхових правовідносин.

Найбільш усталеним у науковій літературі є погляд на суспільні відносини як на стабільні, стійкі, такі, що повторюються, моменти спільної діяльності людей у найрізноманітніших проявах. Саме тому предметом правового регулювання є закріплена в нормах права стабільна структура людської діяльності. Результатом такої діяльності є формування різноманітних суспільних відносин, в основі яких реалізуються потреби, інтереси та цілі учасників людської діяльності, неоднорідність складу учасників, специфічність предмета й засобів діяльності, інші характерні особливості та прояви соціальних зв'язків між членами суспільства. Страхові відносини у сфері господарювання знаходять свій безпосередній прояв через страхову діяльність, яка характеризується специфікою мети здійснення, особливістю суб'єктного складу та специфічністю умов її реалізації.

Суспільні відносини щодо захисту майнових інтересів зацікавлених осіб шляхом формування страхових фондів, які забезпечують захист майнових інтересів суб'єктів господарювання та фізичних осіб, можуть бути забезпечені виключно за рахунок нормального функціонування господарської страхової діяльності, що упорядковує процес соціального регулювання страхових відносин, який здійснюється суспільством як органічною системою за допомогою соціальних норм (і норм права також).

Теорія страхової діяльності є однією з і концепцій, що визначають сутність страхування як діяльність страхових організацій щодо компенсації збитку, який виникає у страхувальників при настанні певних обставин (страхових випадків), передбачених законом або договором, шляхом здійснення виплат з страхового фонду, сформованого з внесків останніх.

Питання щодо необхідності визначення поняття страхової діяльності, передусім його співвідношення з такою науковою категорією, як страхування, є давньою науковою дискусією, котра й сьогодні не втратила своєї актуальності. Необхідно звернути увагу, що фахівцями були здійснені спроби визначити межі страхової діяльності, ті елементи, з яких вона складається, та надати цьому явищу загального визначення.

Ключові слова: страхування, страхова діяльність, види страхової діяльності, форми здійснення страхової діяльності

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Problem Formulation. The problems of rationalizing the social burden on the economy are particularly important for modern Ukraine. Our state faces the challenge of creating the system of the effective business development that will lead to the rapid rise of the level of economic growth of Ukraine. The solution of this problem lies in the sphere of insurance and in ensuring its possibilities as a means for guaranteeing the development and social and economic standards of wellbeing of the population in the country.

Unfortunately, at the present stage of development the insurance in Ukraine is in the state of formation and its development is accompanied by the problems of regulatory, legal, organizational and methods, information and analytical nature and of imperfections of the state regulation of the insurance activities.

The review of the recent research and publications. The thesis researches of scientists of Ukraine — both economists and lawyers — are of significant importance for understanding the peculiarities of operation of the modern insurance system, namely of: Yu. Bahliuk (2008), V. Bazilevych (1998), A. Boiko (2011), O. Hamankova (2011), Yu. Yevchenko (2000), O. Zhuravka (2010), I. Zyskind (2011), D. Maruzhenko (2010), M. Mnich (2007), N. Patsuriia (2014), S. Osadets (2002), E. Stas (2012), T. Tatarina (2003), V. Furman (2006).

However, it should be noted that the studies in the economic and legal aspects of insurance activities are considerable in number. Those available ones are not always of comprehensive nature. There are still lots of problems remained that have not been fully researched, including the concept, types, features and peculiarities of insurance activity in modern conditions of economy of the transformation type.

Therefore, to define the economic and legal essence of insurance activity as an objective attribute of the market

economy requires comprehensive research.

The purpose of the publication is to research the topical issues of economic and legal phenomenon of insurance activity as an objective attribute of market economy both in terms of its economic and legal nature, and from the standpoint of the economic and legal doctrine, and to establish the possible forms of insurance business in Ukraine as well as the functions and the principles of its implementation and to define the insurable interest as the system creating insurance category.

The main material presentation. According to K. G. Voblyi «insurance is an important institution of national economy that holds a special place in the social sector and has a significant impact on various aspects of economic life» [1, 20].

In modern conditions insurance as a general scientific category is a subject of interest for different social sciences, in the light of the fact that it belongs to the essential institutions of the economy, the role and importance of which in recent years are increasing. Despite the above, there is hardly any other institution, the real significance of which has been assessed so insufficient. Actually, it is this factor that affects the lack of comprehensive scientific research and the wide explanation of the fundamental principles of insurance [2, 3]. The statement, expressed by V. Raikher in 1947 has not lost its relevance nowadays.

The place, the role and the importance of insurance as a legal category, its essential features, types, functions and principles of implementation are researched as a rule within the sectoral legal sciences. It should be mentioned that the contemporary scientific studies in most cases consider the issues of the certain types of insurance relationships.

In the scientific literature the most well established standpoint is the view on the social relations as on the stable, sustainable, recurrent moments of joint activities of people in a variety of



forms. That is why the existing stable structure of human activity is the subject of legal regulation established in law. This activity results in the formation of different kinds of social relations, on the basis of which the needs, the interests and the goals of the participants of human activity, the heterogeneity of participants, the specific nature of the subject and the means of activity, other characteristics and manifestation of social relations between members of society are accomplished [3, 62]. In the sphere of business the insurance relations find their direct expression through the insurance activity, which is characterized by the specific character of the goal of implementation, by the peculiarity of the subject composition and specific conditions for its implementation.

The public relations related to the protection of property interests of the interested persons by forming the insurance funds that protect the property interests of business entities and individuals, can be provided solely by the proper functioning of economic insurance activity, which regularizes the process of social regulation of insurance relations undertaken by the society as the organic system through the social rules (including rules of law).

The theory of insurance activity is one of the existing concepts in scientific literature that defines the essence of insurance as an activity of insurance organizations related to compensation payments for the damage the insured persons incur upon the occurrence of certain circumstances (insurance cases) specified by law or agreement at the expense of the insurance fund formed by contributions made by the latter.

To meet the needs of business entities, in basis of which there is the protection of property interests from the negative impact of risks at the expense of cash (insurance) funds generated by insurance payments (insurance fees, insurance premiums) of the interested

persons (individuals, business entities) can be defined as the purpose of business insurance activity.

Despite the existence of the institution of insurance in the legal array of Ukraine [4, 42], the greater part of the rules of which relate to issues of conducting this type of business by the subjects of the insurance activity, the lack of the notion of insurance activity is still the gap and attention has already been drawn to this fact in the scientific legal literature [5, 27–39]. For this reason there have been long debates among scholars as to what constitutes the insurance activities (business) [6, 79].

The issue of necessity to define the notion of insurance activity, and especially its correlation with the scientific category as insurance is a long-standing scientific debate [7, 47], and this problem has not lost its relevance at present. It should be noted that experts had attempted to define the limits of insurance activity and the elements of its composition, as well as to provide a common understanding of this phenomenon [8, 27].

Since the first quarter of the twentieth century the scientists-economists have tried to define the concept of «insurance» that was the only one at that time as an economic category, and have provided the definitions with some elements that display characteristics of insurance as a form of economic activity. The scientists — both lawyers and economists — realize the relevance of the problem of defining the scientifically proved concept of insurance and propose to define the concept of «insurance» legally more precisely and in its various meanings (senses): in economic terms, from business and legal and civil and legal positions, in terms of financial and legal science, etc. [9, 36].

The current insurance legislation of Ukraine generates the said theoretical and practical problem in many respects. Currently the concept of insurance is included in two regulatory legal acts. In the Law of Ukraine «On Insurance» in-



insurance is defined exclusively as a form of civil law relations in respect of protection of property interests of individuals and legal entities in case of occurrence of the certain events (insurance cases) specified by an insurance contract or applicable law, at the expense of funds raised by insurance payments of natural persons and legal entities (insurance fees, insurance premiums) and income gained from the allocation of these funds. Article 352 of the Commercial Code of Ukraine «Insurance in Economic Activity» (hereinafter — the Civil Code of Ukraine) [10] defines insurance as an activity of the specifically authorized state organizations and business entities (insurers) related to the provision of insurance services to legal entities or citizens (insurants) to protect their property interests in case of occurrence of the insurance events (insurance cases) specified by law or agreement at the expense of money funds, which are formed by insurance payments made by insurants.

Thus, in part 1 Art. 352 of the Civil Code of Ukraine [11] insurance is defined as a special kind of economic activity on rendering insurance services by means of protecting property interests of insurants (individuals or entities) at the expense of specially created funds (insurance reserves).

The previously mentioned articles of the national legislation under the term «insurance» represent different aspects of the phenomenon. The only common element in the definitions mentioned above is the purpose of insurance to protect the participants' property interests and the protection is ensured due to the societal availability of the special type of business as a professional insurance activity that performs the important social functions [12, 93]. It is a special kind of economic activity, in the process of which the above relations are implemented immediately.

According to Art. 3 of the Civil Code of Ukraine the economic activity refers

to the activity of business entities in the field of social production, aimed at producing and realizing products, performing works or services of value character that have price certainty.

Thus, the economic activity that is carried out to achieve the economic and social benefits and to gain profit is a business activity. The economic activity that is carried out without the aim of gaining profit is a non-profit economic activity. In view of the foregoing it must be emphasized that the insurance activity, depending on the purpose of its implementation, can be classified into two types: 1) the economic commercial insurance activity (business), which is carried out to achieve the economic and social benefits and the aim of which is to gain profit, and 2) the economic non-commercial insurance activity that can be carried out without pursuing this goal.

To identify the nature of the economic commercial insurance activity, its place and role in the economy of the country it is necessary to apply to Art. 42 of the Civil Code of Ukraine, that defines business activity as an independent, initiative, systematic, economic activity at its own risk that is carried out by economic entities (entrepreneurs) to achieve economic and social benefits and to gain profit. Certainly, the previously mentioned indicates the basic principles of insurance activity as a form of business, but it specifies neither the content nor the legal mechanism nor guarantees for proper conducting the insurance activity in Ukraine.

The specificity of the insurance activity proves that it is a special kind of economic activity and its results are sold as a commodity at the insurance market. Insurance organizations (insurance companies, reinsurance companies) carry out the specified activities continuously and on the professional basis to meet the property interests of other members of society with the main purpose to gain profit from the transac-



tions that they conduct, i.e. from rendering insurance services.

The world experience shows that any service, including an insurance one, achieves the greatest effect in society only upon availability of supply and demand, that is, if the market of certain services exists. Taking into account the fact that according to the implementation method this type of insurance activity is a business one, its subjects have to keep to the principles and conditions, which the legislation in the sphere of business (general principles) and the theory of insurance law and the legislation in the sphere of insurance (specific principles) impose on the individuals who intend to implement it.

The general principles (specified by Art. 44 of the Civil Code of Ukraine) are as follows: the principle of free choice of types of business by an entrepreneur; independent formation of the program of activities by an entrepreneur; choice of suppliers and consumers of products; involvement of material and technical, financial and other resources, the use of which is not restricted by law; pricing of products and services in accordance with the law; free employment of employees by an employer; commercial calculation and own commercial risk; free disposal of profit that remains with the entrepreneur after paying taxes, fees and other payments provided by law; independent implementation of foreign economic activity by an entrepreneur; the use of the share of foreign currency earnings that belong to an entrepreneur at his own discretion.

The principles below can be defined as special ones: the principle of availability of property (insurance) interest; the principle of the utmost trust of the parties; the principle of availability of cause-and-effect relationships between the damage and the action caused this damage; the principle of payment of compensation in the amount of actual damages (compensation for actual loss).

In addition, the provisions of the Civil Code of Ukraine on freedom of running business (Art. 43), on the determination of the organizational forms of business (Art. 45), on the general guarantees of entrepreneurs' rights (Art. 47) and on liability of business entities (Art. 49) entirely extend to persons who intend to carry out the insurance commercial activity, taking into account provisions of the special legislation of Ukraine.

The possibility of carrying out the economic not-for-profit insurance business in Ukraine is stipulated by Art. 14 of the Law of Ukraine «On insurance» [13], according to which for the purpose of insurance protection of their property interests citizens and legal entities can form mutual insurance companies in the manner and on the terms determined by the legislation of Ukraine. The basic principles of the legal status of mutual insurance companies are specified by the Temporary Provision «On Mutual Insurance Company», approved by the Cabinet of Ministers of Ukraine dated February 1, 1997 № 132 (hereinafter — the Temporary Provision).

In accordance with paragraph 2 of the Temporary Provision a mutual insurance company is a legal entity — an insurer that is created under the Law of Ukraine «On Insurance» with the aim of insuring risks of the members of the company. The legislative framework of the provision that a mutual insurance company is recognized as a legal entity, an insurer, indicates that the requirements of the current legislation of Ukraine on the establishment, registration, licensing, reorganization and liquidation of insurance companies fully extend to the said companies [14, 121]. In view of this, not a single mutual insurance company operates in Ukraine at present time.

The distinguishing feature of insurance organizations of this type lies in the fact that they do not intend to gain profit from operations they carry out



since they insure only the property interests of those who are members of these organizations. However, a mutual insurance company can be engaged in business activities insofar as it serves the purpose, for which they have been created.

It is considered that the main purpose of creating mutual insurance companies is in supporting the members when the occurrence of a certain accidental hazard take place and in striving to provide them with insurance services, if possible, with better and cheaper ones [15, 62]. The members of a mutual insurance company, which can be both legal entities and legally capable physical persons, may become its insurers.

Unlike the traditional companies that operate for profit (Art. 79 of Economic Code of Ukraine, Art. 84 of Civil Code of Ukraine, Art. 1 of the Law of Ukraine «On Business Associations»), a mutual insurance company «is created ... with the aim to insure a company's members against risks» (paragraph 2 of the Temporary Provision), so, they are non-profit organizations, which, in our opinion, by its nature are corporative

associations of the consumer non-commercial type, based on membership, and according to the legal and organizational structure they are closer to consumer cooperatives than to business partnerships...

Conclusions. The peculiarity of insurance activity of any kind (commercial insurance and non-commercial insurance) is a combination of private and public features, implemented directly while conducting this activity, and it is revealed in particular: 1) while concluding voluntary insurance agreements and conducting compulsory insurance based on the direct instructions of the law; 2) in the procedure of state registration of insurers, which is a binding action, and as the result they acquire the rights of a legal entity; 3) in the procedure of licensing the insurance activity; 4) at availability of the system of state insurance supervision in the state. ♦

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Пацурія Н., Резнікова В. Страхование как экономико-правовое явление. В статье исследуются актуальные вопросы экономико-правового феномена страховой деятельности как объективного атрибута рыночной экономики. Место и виды страховой деятельности в системе современных экономических отношений. Исследованы признаки и правовые основы осуществления страховой деятельности.

Ключевые слова: страхование, страховая деятельность, виды страховой деятельности, формы осуществления страховой деятельности

Patsuriia N., Reznikova V. Insurance activity as economic and legal phenomenon. The article deals with the current issues of economic and legal phenomenon of insurance activity as an objective attribute of the market economy. The place and the types of insurance activity of the system of modern economic relations have been highlighted. The features and the legal basis for implementation of insurance activity have been researched.

Keywords: insurance, insurance activity, types of insurance, forms of implementation of insurance activity