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THE LEGAL CONSEQUENCES OF BREACH OF THE INSURANCE CONTRACT OBLIGATIONS

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Summary

In the scientific article the legal consequences of breach by the parties of the insurance contract of their obligations, and doctrinal approaches to their definition and understanding are researched. The classification of the appropriate legal consequences is given, depending on different classification criteria. The features of unilateral refusal of the contract as one of the legal consequences of breach of contractual obligations of insurance are established. The possibility of changing or terminating an insurance contract as a legal consequence of its breach is determined, including cases in connection with a significant change in external circumstances and a substantial breach of the conditions of the insurance contract by the other party. Specific features of the use of operative sanctions for breach of the conditions of the insurance contract are established.

Key words: insurance contract, breach of contract, legal consequences, insurer, insured, conditions of the contract, unilateral refusal from the contract, contract change, breach of contract, termination obligations, operative sanctions.

Аннотация

В научной статье исследуются правовые последствия нарушения сторонами договора страхования взятых на себя обязательств, а также доктринальные подходы к их определению и пониманию. Приводится классификация соответствующих правовых последствий в зависимости от различных классификационных критериев. Устанавливаются особенности одностороннего отказа от договора как одного из правовых последствий нарушения договорных обязательств по страхованию. Определяется возможность изменения или расторжения договора страхования как правового последствия его нарушения, в том числе в связи с существенным изменением внешних обстоятельств и существенным нарушением условий договора страхования второй стороной. Устанавливаются особенности применения оперативных санкций за нарушение условий договора страхования.

Ключевые слова: договор страхования, нарушение договора, правовые последствия, страховщик, страхователь, условия договора, односторонний отказ от договора, изменение договора, расторжение договора, прекращение обязательства, оперативные санкции.

Introduction. Any civil legal obligation is performed by executing of the parties complex duties properly, which were conferred on them by law or contract. That means the insurance obligation does not differ from other civil obligations. The provisions of the Law of Ukraine «On Insurance» [1] are aimed at stimulating of the parties to fulfil their obligations properly.

The legislator in Article 611 of the Civil Code of Ukraine (hereinafter – CC of Ukraine) [2] predicted that in the event of a breach of an obligation shall come the legal consequences established by the contract or law, in particular: 1) termination of the obligation as a result of unilateral refusal of the obligation, if it is established by the contract or law or cancellation of the contract; 2) change of conditions of the obligation; 3) payment of forfeit; 4) compensation for losses and moral damage. The legal nature of these consequences (actions) is different. So, for example, compensation for losses and moral damage are measures of civil liability, unilateral refusal of the contract is the measure of operative impact, etc [3, p. 310].

Depending on the different classification grounds, the legal consequences of a breach of contractual insurance obligations can be divided into: a) legal (established by the CC of Ukraine and other acts of civil law) and contractual (provided by specific contractual conditions); b) those that are always such (payment of forfeit, compensation of losses) and those that may be legal consequences of other legal facts (change conditions of the insurance contract); c) those for the onset of which is enough of the very fact of a breach of a contractual obligation and those that arise only under certain conditions (civil liability); d) those that depend on the will of only one party of the contract (debt forgiveness, unilateral refusal) and those that come as agreed by the parties.

Undoubtedly, the legal consequences of a breach of the insurance contract are different due to their purpose, characteristics and manifestations of the object, but they exhibit both common and distinctive properties. In any case, the entire variety of legal consequences that may occur in breach of contractual insurance obligations, aimed at encouraging the potential parties of these relations, when concluding a specific contract and the details define these provisions more clearly.

The application of the measures of civil liability to the offender is, although the most common, but not the only legal consequence of a breach of conditions of the insurance contract. Nowadays, questions regarding other legal consequences of breach of contractual obligations of insurance also require a detailed study.

Literature review. The theoretical basis of the research is the work of such domestic and foreign scientists as Alekseev S.S., Belov V.A., Bobrova D.V., Braginskyy M.I., Vasyleva V.A., Vinnyk O.M., Vitryanskyy V.V., Grybanov O.V., Dzera O.V., Kanzafarova I.S., Krasavchykov O.O., Kuznetsova N.S., Kulyna Yu.A., Kulchiy O.O., Lutts V.V., Maydanyk R.A., Matveev G.K.,

Nykyforak V.M., Patsuriya N.B., Pendyaga G.L., Sobotnyka R.V., Spasibo-Fateeva I.V., Sidil'ov M.M., Suhanov E.O., Tolstoy Yu.K., Fursa S.Ya., Kharytonov E.O., Shevchenko Ya.M., Shyshka R.B. and other scientists. However, today, despite the existence of several studies in the field of the contractual obligations of insurance, there is a need in the comprehensive reviewing the question of the legal consequences of a breach by the parties of the insurance contract undertaken obligations.

The purpose of the article is a scientific analysis of the norms of the current legislation on the legal consequences of breach of insurance obligations, the classification of such legal consequences, the characteristics of certain legal consequences of breach by the parties of their obligations, the establishment of doctrinal approaches regarding them.

Main body of the article. In the CC of Ukraine, an insurance contract is understood as such an agreement under which one party (the insurer) undertakes to pay to the second party (the insured) or to another person, specified in the contract, a sum of money (insurance payment) in case of occurrence of a certain event (insured event), and the insurer undertakes to pay insurance premiums and fulfill other conditions of the contract (Article 979).

One of the legal consequences of a breach of this contract is unilateral refusal to contractual obligations. The issue of unilateral refusal of the contract is actively investigated by scientists. It is believed that the rule on the refusal of the transaction arose on the development of the provision on the refusal of the right: after all, persons can act at their own discretion – and this is their right. If it concerns the execution of transactions by them (that is, actions to acquire, change and termination of rights), it is subject to a separate legal regulation. Perhaps, this is intended to streamline the actions of a person who is in various legal relationships (property relation, obligatory relation, corporate, exclusive hereditary relation), then the waiver of these rights must take into account the relevant features of each legal relationships and, above all, the rights of others, on whom this refusal will affect [4, p. 5].

Spasibo-Fateeva I.V. delineates the refusal and termination of the contract. As the researcher notes, in some cases these concepts differ, in others – they are identified, in the third – it is difficult to draw a conclusion about this or that variant. So, in the Article 611 CC of Ukraine it is said about the termination of obligations as a result of unilateral refusal of the obligation or termination of the contract. Part 3 of Article 651 CC of Ukraine states that in the case of a unilateral refusal in full or in part, the contract is, accordingly, terminated or amended. In its turn, the circumstance of the termination (and not the cancellation of the contract), due to the refusal of the contract, is said, in particular, in Article 997 CC of Ukraine «Termination of the insurance contract» [4, p. 103].

Obviously, the legislator uses different concepts regarding different legal categories: regarding a transaction – it is a refusal (regardless of whether it is a one-, two- or multi-party transaction), regarding the contract – cancellation, and regarding the obligation – it is a termination. Considering this issue in the context of connection with the insurance contract, we believe that it is not necessary to distinguish between the refusal of the transaction and the termination of the contract, because in this context these concepts do not differ, they build a logical sequence. In case of refusal from the insurance contract, the parties pass through the following stages: refusal (from the transaction); cancellation (of the contract); termination (of the obligation).

The grounds for unilateral a refusal of the insurance contract may be different circumstances, which in some cases derive from the properties of the obligation, in others – are conditioned by a breach of the other party of the transaction. The legislator in the CC of Ukraine provided the following main types of unilateral refusal of the insurance contract: a) as a sanction for breach of the conditions of the insurance contract by the other party; b) as a right to commit unilateral refusal without applying measures of civil liability; c) as an unfounded refusal of the contract in the absence of violations of the contractual conditions by the other party with laying of the negative legal consequences, provided by the contract or law, to the party of contract, that refused.

In the opinion of T.V. Bodnar, since not all unilateral refusal of the contract is a way of self-defence of civil rights and interests, the following prerequisites are necessary for recognition of a unilateral refusal as a way of protection of civil rights: first, the violation, unadmittance or contestation of a person's civil rights; secondly, a unilateral refusal must come from a person whose right is violated, contested or is not recognized; thirdly, the consequence of the application of a unilateral refusal is the protection of the violated, non-recognized or challenged person's right in the manner, established by the contract or law [5, p. 39]. In addition, the researcher draws attention to the fact that the CC of Ukraine (Part 3 Article 651) provides different legal consequences of unilateral refusal of the contract in the event of its breach: in the event of refusal of a contract in part – change the conditions of the contract; in case of refusal of the contract in full – cancellation of the contract.

At the same time, it is advisable to note that in researched legal relations, the self-defence of civil rights and interests in the case of unilateral refusal of the insurance contract is not limited in only these two ways. The ways of self-protection in this case may be: a) termination of the action, which violates the right (clause 3, Part 2, Article 16 CC); b) restoration of the situation that existed before the breach (clause 4, Part 2, Article 16 CC); c) compulsory performance of duties in kind (clause 5, Part 2, Article 16 CC).

Thus, the refusal of the insurance contract, by its legal nature, in some cases can be regarded as a measure of the operative impact, which the subject of the contractual relationship can apply without resorting to the competent authorities, that is, as a measure of self-defense, in other cases (when a mutual refusal of parties from the insurance contract occurs, by concluding of right-changed or right-terminated transaction) the refusal of the contract will be one of means of changing or terminating the contractual obligation.

One of the legal consequences of a breach of an insurance contract is the possibility of changing or cancellation of the contract. In the insurance contracts specify the term of its validity, that is, the period of time for which the parties undertake to fulfil their obligations, after which the contract terminates, or may be prolonged for any other period, when making changes.

The insurance contract from the moment of its conclusion and to the moment of termination of its validity may not pass the stage of execution, since the execution stage of the contract will be considered the implementation by the insurer of the insurance payment (insurance compensation) for the insured event. So, if no insurance event occurred during the validity period of the insurance contract, then the execution stage for it does not occur, but it can be terminated prematurely, or it can be changed. Regarding to the execution of the contract, in the literature there is an opinion that the insurance contract is a conditional contract, since the insurer's duty to carry out an insurance payment (that is, to fulfill the conditions of the contract) arises from the moment of occurrence of the insured event [6, p. 58]. That is, the «condition» and the «insured event» are equally the circumstances, which can not be predicted: they will come or not.

Change and cancellation of the insurance contract are possible by agreement of the parties, unless otherwise provided by law. However, from this rule, there are two exceptions that allow change or terminate of the insurance contract in court at the request of one party: 1) when the other party significantly is violated conditions of the contract; 2) other cases, provided by law or contract.

Note that the legislator in the CC of Ukraine provided the general rules, governing the grounds, legal consequences, the form of change and termination of the contract, the change or termination of the contract in connection with a significant change in circumstances, which the parties were guided by when signing the contract (Article 651 – 654 CC of Ukraine). Given the general rules, given in Chapter 51 CC of Ukraine, we come to the conclusion that in the case of a change the conditions of the signed contract, the type of insurance contract does not change that is, the legal model of the contract remains the same as it was before the changes took effect.

According to Article 651 CC of Ukraine, a change of the contract is possible, particularly, in the case of consent of the parties, unless otherwise provided by law or by contract. The contract will be deemed changed or terminated from the moment, when the parties conclude the transaction about its changing or termination, unless otherwise provided by the transaction itself.

In the absence of consent (agreement) of the parties to change the conditions of the insurance contract, it may be changed or terminated at the request of one of the parties only by a court decision, if certain grounds are provided by the contract or law. For example, an untimely notification by an insurer to an insurer without valid reasons on the occurrence of an insured event (clause 5, Part 1, Article 989, clause 5, Part 1, Article 991 CC of Ukraine) may be grounds for refusal to pay insurance compensation in that case, if it is deprived the insurer of the opportunity to find out whether this event is an insurance event. That is, this is seen as change of conditions of the contract by a court decision in the part of paying insurance compensations (reducing their size or refusing to pay).

A special case is the possibility of changing and terminating the insurance contract in connection with a significant change in external circumstances. So, in accordance with Article 652 CC of Ukraine, changing of circumstances is essential if they are changed so much that if the parties could predict this, they would not have concluded a contract or concluded it on other conditions. During the validity period of the contract, the insured must immediately inform the insurer in writing about all circumstances known to him that are of significant importance for assessing insurance risk, and further to inform him of any changes of insurance risk (clause 2, Part 1, Article 989 CC of Ukraine). Upon receipt of information from the insured about changes of the information, specified in the application for the conclusion of the compulsory insurance contract and (or) presented at the conclusion of the compulsory insurance contract, the insurer has the right to require from the insured to pay an additional insurance premium, if necessary, in proportion to the increase of the risk level and to re-arrange the compulsory insurance policy, based on insurance rates for compulsory insurance.

The insurer's decision to change the conditions of the contract and the information specified in the insurance application can be both voluntary and necessary due to a number of legal factors. The voluntary decision of the insured is indicated, for example, by the desire to extend the term of the insurance contract (if the contract was concluded for a period of less than 1 year) or, for example, to supplement the list of persons admitted to driving a vehicle and the like. Therefore, respectively, about all changes that directly or indirectly can affect the occurrence of insurance risk, the insured must report to the insurer. In this case, the insurer is obliged to make changes in the insurance contract.

Also, one of the grounds for changing or terminating of the contract is a significant breach of conditions of the contract by the other party. The category of a significant breach of the contract is formulated in the CC of Ukraine in general form without detailing – a breach of the contract by one party is considered a significant, when, due to the damage caused by this, the second party is largely deprived of what she expected at the conclusion of the contract.

According to Part 2 of Article 651 CC of Ukraine, a significant breach is the ground for applying to the court with a demand for cancellation of the contract, that is, the issue of the signification of breach of the insurance contract's conditions is referred to the discretion of the court. Unlike Ukrainian legislation, the general trend of Western European contract law is the establishment of additional circumstances that should be considered into account when qualifying a breach of the contract as significant. According to the UNIDROIT Principles (Article 7.3.1), the following is taken into account in determining the signification: first, whether the creditor 's significant breach deprives him of what he expected at the conclusion of the contract, unless the debtor foresaw and could reasonably foresee such a result; secondly, whether the compliance of the contract in this case is of a principled nature; thirdly, whether the breach is intentional or committed by gross negligence; fourth, whether does the breach give the creditor grounds for not believing in further implementation; fifthly, whether the debtor will incur irrelevant losses in the event of cancellation [7].

Analysis of the definition of a significant breach, enshrined in Part 2 of Article 651 CC of Ukraine indicates that the legislator as a ground for termination of the contract provides not only the fact

of breach of the contract's conditions by the other party, but also the presence of damage caused by this breach by the other party. Indeed, a breach of a contractual obligation should result in causing damage. However, it should be borne in mind that the damage may already have been caused or conditions may arise for possible of causing damage to the other party.

Thus, in assessing the materiality of a breach of the insurance contract, two interrelated factors must be taken into account. First, it is necessary to highlight the factor of materiality of the breach itself, which indicates how seriously the contractual obligations were breached. Secondly, one should take into account the factor of the materiality of the negative consequences of this breach for the creditor (the presence of damage, the inability to achieve a certain result, the loss of interest in the performance of the contract, etc.). Only considering both factors, it is possible to talk about the materiality of the breach and the permissibility of termination the insurance contract.

Based on the interpretation of Part 2 of Article 651 CC of Ukraine, in the Ukrainian legislation the fault of the offender in committing the breach does not affect the occurrence of grounds for termination of contractual obligations in this way. The approach to the cancellation of the contract regardless of the offender's fault, fixed in the legislation, is also maintained in the literature. It is believed that if the purpose of the contract as a result of such unlawful actions is not achieved, then the extension of the obligatory relations between the parties of the contract loses its meaning. The fact of presence or absence of a fault can not influence the usefulness of conservation the contract. The creditor has the right to terminate the contract, even if the debtor is not fault of breach, in order to avoid further losses.

At the request of one of the parties, the insurance contract can be terminated ahead of schedule. The initiating party must notify the other party in writing a few days before the intended termination [8, p. 65]. The number of these days and the fate of the rest of the insurance premium should be determined by the insurance contract.

The operation of the insurance contract prematurely terminates in the following cases: death of a citizen – insured, if his rights and duties under the insurance contract are not transferred to other persons; liquidation of a legal entity – the insured; cancellation of the insurer's license in accordance with the procedure established by law, and (or) liquidation of the insurer; termination of the insurance contract on the initiative of the insurer in connection with the failure of the insured to pay the insurance premium in the prescribed time when extending the validity period of the compulsory insurance contract; the insurer's refusal to extend the compulsory insurance contract with the insurer with whom the contract was concluded; provision of false or incomplete data by the insurer to the insurer when concluding an insurance contract that are essential for determining the degree of insurance risk; other cases provided by the legislation of Ukraine.

In order to protect the interests of insurance companies, there are several provisions that exempt insurers from liability in certain circumstances. According to Part 1 of Article 991 of CC of Ukraine, the insurer has the right to refuse to pay the insurance compensation if the insured has not timely reported the occurrence of the insured event for any reason. Also a special case of exemption from payment of insurance compensation may be a situation in which the occurrence of an insured event occurred as a result of the intent of the insured, the beneficiary or the insured person.

In our opinion, it is important to single out possible cases of termination of the insurance obligation: 1) expiration of the contract; 2) performance by the insurer in full of obligations to the insured; 3) non-payment by the insured of the insurance premium in the period established by the contract; 4) liquidation of the insured who is a legal entity or the death of the insured who is an individual, except for the case where the rights and duties of the insured pass to the person who has accepted the property as inheritance or is his legal representative (concerns an individual); 5) liquidation of the insurance company in accordance with the established procedure; 6) a court decision to declare the insurance contract invalid; 7) in other cases provided for by the legislation of Ukraine; 8) requirement of the insured or the insurer for early termination of the insurance contract.

Among the legal consequences of breach of the insurance contract are the operative sanctions. It should be noted that the issue of applying such sanctions is one of the most controversial in the legal literature. The opinions of scientists on this issue are quite different: from the recognition of sanctions and responsibility by types of protection of rights [9, p. 143], to the recognition of measures of protection as a form of responsibility [10, p. 4]. There is a similar variety of opinions on the issue of the relationship between the concepts of «sanction» and «responsibility». Several authors identify these concepts, proposing to consider sanctions as such consequences of the offense, which are forms of responsibility for this breach [11, p. 14]. Others believe that responsibility is the applying of sanctions [12, p. 221]. In the third opinion, responsibility is a specific type of sanction [13, p. 120].

In our opinion, in civil law the term «sanction» should be used in the sense in which it is used in the general theory, that is, to indicate the element of the norm, indicating the legal consequences of its breach, and to describe these consequences. According to this opinion, under the sanction in the civil law it should be understood a legal consequence which the norm establishes or admits in case of breach of civil rights. As for the relationship between the concepts of «sanction» and «responsibility», then «responsibility» should be viewed as a form of sanction.

Distinctive features of operative sanctions from liability are: firstly, for the application of liability, fault is of great importance. Responsibility comes when there is fault. Liability without fault is considered an exception to the general rule. When applying operative sanctions, the presence of fault is optional. Fault can be either available or not, operative sanctions are applied regardless of fault, it is sufficient to have objective grounds: wrongfulness and causality; Secondly, the measures of liability are applied in a jurisdictional order. Operative sanctions also in some cases require the use of state coercion (for example, the award of duties in kind). But many types of operative sanctions are applied by the parties independently without going to court (for example, refusal to execute the contract, non-fulfillment of the

counter obligation, withholding). In this connection, they refer to the concept of self-protection.

Thirdly, the measures of responsibility assume the imposition of penalty on the offender, imposition on him an additional obligation, which was not in the content of the primary obligation until its breach. Operative sanctions are aimed at restoring the property status of the authorized person; the latter does not impose an additional obligation on the offender, but tries to return what is legally his.

Conclusions. Summing up, we can formulate the following conclusions.

1. Under the breach of insurance contractual conditions it should be understood the deviations of the insurer or the insured (and in some cases, a third person to whom the insurer is charged with performing the obligation for reinsurance) when they perform actions (or refrain from committing them) from the rules according to which the insurance contractual obligation must be fulfilled, that is, from the conditions of performance for any of the elements of proper performance of the contractual obligation.

2. In assessing the materiality of a breach of the insurance contract, two interrelated factors must be taken into account. First, it is necessary to highlight the factor of materiality of the breach itself, which indicates how seriously the contractual obligations were breached. Secondly, one should take into account the factor of the materiality of the negative consequences of this breach for the creditor (the presence of damage, the inability to achieve a certain result, the loss of interest in the performance of the contract, etc.). Only considering both factors, it is possible to talk about the materiality of the breach and the permissibility of termination the insurance contract.

3. Depending on the different classification grounds, the legal consequences of a breach of contractual insurance obligations can be divided into: legal (established by the CC of Ukraine and other acts of civil law) and contractual (provided by specific contractual conditions); those are always such (payment of forfeit, compensation of losses) and those that may be legal consequences of other legal facts (change conditions of the insurance contract); those for the onset of which is enough of the very fact of a breach of a contractual obligation and those that arise only under certain conditions (civil liability); those that depend on the will of only one party of the contract (debt forgiveness, unilateral refusal) and those that come as agreed by the parties.

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