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THE INSURANCE SERVICE AS AN OBJECT OF CIVIL RIGHTS

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Summary

In a scientific article on the basis of theoretical provisions and analysis of the norms of the current legislation of Ukraine, which regulates relations in the sphere of insurance, a civil-law research of insurance services as an object of civil rights is conducted, its definition is formulated. The characteristic features of the insurance service as one of the types of financial services are singled out, and their classification is given. Specifics of the realization of the insurance service before the occurrence of the insured event and after its occurrence are established. The ways of establishing the proper quality of the insurance services provided are determined.

Key words: insurance, insurance service, insurance contract, service contracts, insurer, insured, conditions of the contract, quality of insurance services.

СТРАХОВАЯ УСЛУГА КАК ОБЪЕКТ ГРАЖДАНСКИХ ПРАВ

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Аннотация

В научной статье на основании теоретических положений и анализа норм действующего законодательства Украины, которое регулирует отношения в сфере страхования, проводится гражданско-правовое исследование страховой услуги как объекта гражданских прав, формулируется ее определение. Выделяются характерные признаки страховой услуги как одного из видов финансовых услуг, а также приводится их классификация. Устанавливаются особенности реализации страховой услуги до наступления страхового случая и после его наступления. Определяются способы установления надлежащего качества предоставляемых страховых услуг.

Ключевые слова: страхование, страховая услуга, договор страхования, договоры о предоставлении услуг, страховщик, страхователь, условия договора, качество страховой услуги.

Introduction. In the modern society, the importance of insurance is gaining high paces. If more recently, most people did not know about insurance, practically nothing or very little, now one can not ignore the changes associated with insurance, which is an integral attribute of a developed society.

According to Article 1 of the Law of Ukraine «On Insurance» [1], insurance is a form of civil law relations for the protection of property interests of physical and legal persons in the event of occurrence of certain events (insurance cases), specified in the insurance contract or current legislation, at the expense of cash funds created by paying physical and legal persons of insurance payments (insurance premiums) and proceeds from the placement of means of these funds.

That is, from the point of view of the law, the purpose of insurance is protection, and it is realized regardless of whether the insurer had to make insurance compensation or not. The process of pro-

viding a service (insurance protection), but not the result (payment of insurance compensation) has a legal value. Hence the consumers feature of insurance is composed in protection, that is, in maintaining a sense of certainty in the recoverability of a property interest in the occurrence of certain adverse events [2, p. 10]. Despite this, for the majority of consumers who face insurance for the first time, the importance is not so much protection, but rather – payment (result), so in the absence of an insurance event during the insurance contract period, the insurance service acquires for the consumer some abstract and even useless character. In reality, the utility of insurance is associated with the protection of risk, transferring it from the property sphere of the insured to the property sphere of the insurer. Therefore, insurance legal relations are formed not about the visible result (insurance payment), but about services that are expressed in protecting the interests of the consumer for the entire period of the in-

urance contract, both before and after the insurance event.

Insurance, as a necessary element of the social and economic system of society, is not only an institution guaranteeing the renewal of property interests of physical and legal persons, due to certain life circumstances associated with sudden dangers, but also one of the most stable sources of long-term investments. This is due to the fact that today in insurance services, along with other types of services, there is a significant need of society. In this regard, the need to research the concept of «insurance service», its features and content, taking into account the lack of an unambiguous understanding of this concept in the doctrine and legislation is objective.

Literature review. The works of many domestic and foreign scientists are devoted to the study of issues in the sphere of obligations to provide services, including insurance services, in particular, Braginskyy M.I., Vitryansky V.V., Drozdova A.V.,



Yemelyanchyk S.Ye., Ilchenko G.O., Indyukov M.P., Ioffe O.S., Kabalkin A.Yu., Krasavchykov O.O., Krotov M.V., Pat-suriya N.B., Pidoprygora O.A., Reznikova V.V., Sannikova L.V., Stepanov D.I., Trofimenko A.V., Fedorchenko N.V., Shablov Ye.G., Sheshenin Ye.D. and other scientists.

The concept of «insurance services» was also researched by scientists-economists, among which, in particular, it should be recalled Gamankova O.O., Govorushko T.A., Osadets S.S., Yuldashv R.T., Yavorska T.V. 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 concept of the insurance service as an object of civil rights.

The purpose of the article is the research of civil-law aspects of the definition of the concept of an insurance service as an object of civil rights, the establishment of its characteristics features and types of insurance services on the basis of a scientific analysis of the relevant norms of the current legislation of Ukraine and doctrinal approaches to their understanding.

Main body of the article. A characteristic feature of the insurance contract is that it belongs to a group of civil-law contracts for the provision of financial services. Common features that unite all contractual obligations to provide services in a single group are the features of the object: these are services of an intangible nature, in addition, services that are inextricably linked with the performer's personality [3, p. 318] (in our case, the provision of insurance services is inseparably linked with the activities of the insurer), and the beneficial effect of such an activity does not appear in the form of a certain foreseeable material result, as is the case in contract on perform works, but consists in the process of providing the service [4, p. 336].

Services, as a rule, are the result of non-productive activities and are provided on the basis of a relevant civil law contract between the person providing the service (the performer) and the person to whom the service is provided (by the consumer) [5, p. 464]. According to A.A. Telestakova [6, p. 51], N.V. Fedorchenko, the subject of the contract for the provision of services is the service itself, that is, the activity consisting in committing the performer of certain actions or activity, as well as

the useful effect of performing actions or activity of the performer which never acquires the form of a new thing [7, p. 160].

According to Article 177 of the Civil Code of Ukraine (hereinafter – the CC of Ukraine) [8] services are one of the types of objects of civil rights. However, to date, there is no legal definition of the service, and especially of the insurance service, neither in the CC of Ukraine nor in the Law of Ukraine «On Insurance».

Services, as like work, things, serve the satisfaction of human life needs and, in this capacity, have a common property – the consumer value. However, the services also have certain specific features, which determine the independent legal regulation of the obligation relations, within which these services are provided [9, p. 558]. The content of the service is actions aimed at satisfying the subjective needs of its recipient. In this case, the actions themselves are objective. They are filled with certain content and are performed in the volume, according to the purpose of the service. The subjective need of the recipient of the service will be satisfied insofar as the stated goal can be achieved by actions carried out in the required volume. The content of such actions determines the type of service, and their volume – the cost (price) of the service [9, p. 562].

Taking into account the provisions of Article 901 of the CC of Ukraine a service can be considered a certain action or activity that one party (the performer) undertakes to provide on the instructions of the other party (the customer), and the customer undertakes to pay the specified service the performer, unless otherwise stipulated by the contract. However, this definition is not perfect, since it does not contain the main features of the service, and does not distinguish the service from other actions, for example, the works. So, according to D. I. Stepanov, the features of the service are: 1) a set of actions that successively change or supplement each other; 2) the service has no substantiated result, it possesses the property of intangibility; 3) inseparability from the executing person; 4) the service provided by a specific person, is individualized, becomes to a certain extent unique, exclusive, although it continues to belong to a particular type of activity [10, p. 16].

Among the legal acts regulating relations in the provision of services in gen-

eral, the Law of Ukraine «On Protection of Consumer Rights» deserves special attention [11]. According to point 17 of Part 1 of Article 1 of this law, the service is the activity of the performer in providing the consumer with a material or non-material benefit specified in the contract, carried out on the individual order of the consumer to meet his personal needs.

Taking into account that insurance services in accordance with the Law of Ukraine «On Financial Services and State Regulation of Financial Services Markets» [12] are classified as types of financial services, their realization becomes possible provided that the requirements of the said legislative act are met. So, according to Part 5 of Article 1 of this Law, the service is a transaction with financial assets carried out in the interests of third parties for their own account or at the expense of these persons, and in cases stipulated by law – and at the expense of finances attracted from other persons, for the purpose of profit or maintain the real value of financial assets.

The classification of insurance services as financial services corresponds to international standards. Thus, in the General Agreement on Trade in Services (GATS) of 15/04/1994, adopted in the framework of the World Trade Organization, of which Ukraine is a member, there is a Financial Services Annex [13]. For the purposes of this Annex, a financial service is any financial service offered by a financial service provider of any member state. Financial services include all insurance services, as well as services related to insurance, banking and other financial services (except insurance).

According to the Annex to the General Agreement on Trade in Services, insurance services are: 1) direct insurance: life; insurance not related to life insurance; 2) reinsurance; 3) insurance intermediation, such as brokerage and agency services; 4) additional insurance services, such as consulting, actuarial, risk assessment and claims settlement services.

For the consumer of insurance services, the main ones in this list are direct insurance services. In Ukraine, these services are provided on the basis of an insurance contract. Other services provide quality and guaranteed provision of insurance protection and to some extent serve this process, that is, they form the insurance market.



In Article 125 of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, [14] which Ukraine ratified on September 16, 2014, the normative legal principles for all financial services, that are subject to liberalization, are established. It should be noted that in this Agreement, insurance services and their types are fixed in the same form as in the Annex to the General Agreement on Trade in Services. In connection with the above, there is a need for harmonization of domestic and international normative legal acts regulating the sphere of insurance, first of all, this concerns the CC of Ukraine and the Law of Ukraine «On Insurance», which do not contain the list of insurance services, specified in the Agreement.

In the scientific literature, an insurance service is understood as a contractual service, which consists in the implementation of compensation for material losses incurred by a person who is a party to contractual relations [15, p. 123]. As noted by G. A. Ilchenko, the insurance service is a set of actions of the debtor (insurer), aimed at satisfying of property and non-property interests of consumers of insurance services in a case of occurrence of certain events (insured cases), determined by the insurance contract, at the expense of cash means, collected in the insurer's funds by payment of insurance payments by the insured and receipt by the insurer of other income from the placement, investment or other use of means in these funds [16, p. 10].

From an economic point of view, according to A. A. Gamankova, insurance service is a financial service in the form of selling legally issued obligations for the provision of insurance protection, which is offered by insurers to potential insureds in the market [17, p. 79]. S. S. Osadets, identifying the insurance service and the insurance product, defines them as a complex of civil legal relations for the protection of property interests of individuals and legal entities in the event of occurrence of certain events (insurance cases), established by the insurance contract or the current legislation [18, p. 12].

In the civil-law literature, much less attention has been devoted to the problem of legal regulation of relations in the provision of financial services in general

and insurance in particular. Therefore, it is necessary to establish the characteristic features of the insurance service and its separation from other financial services.

Insurance services are characterized by those features that characterize services in civil law in general and financial services in particular. Most scientists distinguish the following features of services: non-material character, inseparability of production and consumption of services, inability of services to storage, variability (inconstancy), lack of ownership [19, p. 549-550, 20, 10]. So, the non-material nature of insurance services means that in the obligations to provide this type of service, the result of the performer's activity does not have a substantial content that could be seen, touched and so on. This is especially noticeable when the insurance case provided for in the contract has not come. In this case, the issue of payment of insurance compensation is not even raised. If the insurance case has occurred, the result of the insurer's activity will not be payment of insurance compensation, but compensation of damages within the limits of the amount of the insurance object necessary for returning to the status in which it was at the time of the conclusion of the insurance contract.

Inseparability of production and consumption of insurance services means that the creation, sale and consumption of insurance services occur simultaneously. The inability of insurance services for storage is connected with the impossible to make insurance services in advance and store for the purpose of subsequent sale. In turn, the variability (inconsistency of quality) of insurance services means that, like other services, the insurance service does not have guaranteed quality standards; therefore they have a high degree of uncertainty or changeability.

The next sign is the lack of ownership of the insurance service, which means that the insurer does not immediately have all the components of the property right (the right to own, use, and dispose of). The insured owns the insurance service, after the occurrence of the insurance event can take advantage of it, but can not dispose of (sell, give, etc.).

The presence of useful effect (utility) as a sign of insurance service is the ability to provide insurance protection of the insured's property interests against accidental and potential dangers that threaten

his life, health, property. In turn, the exclusivity of the insurance service depends on many factors: the level of innovation of this service in the insurance market, the availability of additional services, as well as the level of qualification of the specialists who provide it, and so on.

The inexhaustibility of the insurance service is that with proper risk assessment, with proper formation of insurance reserves, with use of the reinsurance and retrocession mechanism, compliance with the rules of the conduct of insurance activities in general, the possibility of providing insurance services will remain as long as there is demand.

As one of the signs of service, A. A. Telestakova calls the absence of a guaranteed positive result. In her opinion, the performer can not (and should not) guarantee a certain positive result, because in the services «sell» actions or activity that led to the result. The result lies outside the service and can be positive, negative or completely absent [20, p. 126].

In Part 1 of Article 902 of the CC of Ukraine another important feature of the service is fixed, this is namely personal fulfilment. Since in the obligations for the provision of services, the result of the performer's activity does not have material content, the main attention is paid to the activity of the performer, which must be performed personally. It is the personal character of the service that sets it apart from contract on perform works.

In turn, in Part 3 of Article 1 of the General Agreement on Trade in Services [13] for the purposes of this agreement, «services» include any type of service in any sector, excluding services provided in the exercise of public authority functions (that is, provided not on a commercial basis, not on a competitive basis by one or more service providers). From this definition, one more feature of services can be singled out (with the exception of services supplied in the performance of functions of state power), namely, the service is an activity that is carried out by the performer on a commercial basis, that is, in order to profit (although Part 1, Article 901 of the CC of Ukraine leaves the possibility to establish another in the contract).

In addition, qualitative characteristics of the insurance service should be determined and in the rules of insurance, which, in accordance with Article 17 of the Law of Ukraine «On Insurance» are



developed by the insurer for each type of insurance separately and are subject to registration in the authorized body when issuing a license to carry out the corresponding type of insurance.

The process of providing insurance services combines the unity, confrontation and dependence of the interests of the parties «insurer-insured». This is explained by the need for a balance between ensuring the financial stability of the insurer on the one hand and providing insurance protection to the insured. It is in the interests of insurer – to minimize costs, including by reducing the insurance compensation, and in the interests of insured – to receive insurance coverage in full.

Payment of insurance services precedes their provision. According to Article 983 of the CC of Ukraine the insurance contract comes into force from the moment the insured makes the first insurance payment, unless otherwise stipulated by the contract. The insurance service has time limits, that is, insurance protection is effective for a certain period of time. The insurance contract is concluded for a clearly defined period. In addition to temporary borders, the territorial limits of the contract may be established in the insurance contract.

Insurance services are the result of activities of a clearly defined range of subjects (insurers). According to Article 2 of the Law of Ukraine «On Insurance», insurers can only be financial institutions that are created in the form of joint-stock, full, limited partnerships or societies with additional responsibility, and who have received a license to carry out insurance activities. The subject of the insurer's direct activity can only be insurance, reinsurance and financial activities associated with the formation, placement of insurance reserves and their management.

As for the types of insurance services, then depending on the subject of the insurance contract, defined by Article 980 of the CC of Ukraine and Article 4 of the Law of Ukraine «On Insurance», insurance services can be classified into three groups:

1) insurance services in the field of personal insurance covering the property interests of individuals related to life, health, disability and pension provision;

2) insurance services in the field of property insurance, where the property in-

terest of the insured is connected with the possession, use and disposal of property;

3) insurance services in the field of liability insurance, providing insurance protection of property interests, both physical and legal persons, connected with the probability of causing damage to a person or his property, as well as damage, caused to a legal entity.

Classification, depending on the conditions for the provision of insurance services, is based on voluntary and compulsory conditions. As provided in Part 1 of Article 5 of the Law of Ukraine «On Insurance» at the form the insurance can be voluntary or mandatory. Types of voluntary and compulsory insurance are listed in Article 6 and Article 7 of the Law of Ukraine «On Insurance», respectively.

Recently, with the expansion of both offers on the insurance services market and an increase in the number of transactions actually concluded, the question arises as to the proper quality of the insurance services provided.

Since the insurance service is realized before the occurrence of the insurance event and after its occurrence, both at the first and second stage it is possible to raise the question of its quality [2, p. 10]. Naturally, the evaluation of the quality of the insurance service at the first stage is unique, since before the insurance event the insurer, except for assessing the insurance risk and issuing the policy, does nothing. But for the consumer, the influence of the corporate name of the insurance organization and its business reputation is important. In other words, the reputation, reliability, and credibility of the insurer determine the quality of the insurance service before the occurrence of the insurance event. At the same time, licensing and certification allow us to assess the prerequisites for the quality work of the performer, and not the quality of the service provided to a particular person.

At the second stage of the service implementation, the real actions of the insurer take place. If the insurer makes an insurance payment in the required amount and in the proper time, then it should be said about the compliance of the insurance service with the quality requirements. If there are claims to the payment term or its size, then the insurance service is substandard. If the insurer reasonably denied the insurance payment, then this does not

mean that the insurance service itself is substandard; it will be substandard if the insurer denied it unreasonably.

In our opinion, at the second stage of realization of the insurance service, the issue of quality of maintenance, rather than the quality of service, acquires great urgency. In particular, the most characteristic example of insurance maintenance is the correct informing the consumer (the insured) about the basic consumer properties of the insurance service. So, the insured, by virtue of the requirements of the law and the contract, must represent the difference between the conditional and unconditional franchise in insurance relations, must know the method and term for notifying the insurer about the insurance event. The receipt or non receipt of this information by the insured depends on the insurer. This is the quality of insurance maintenance. To date, there is no motivation for the insurer, perhaps because no one makes demands on the quality of the insurance service.

Thus, the quality of insurance service can be understood as the presence of appropriate properties that can meet the needs of individuals and legal entities in protecting their interests, as well as the appropriate level of insurance maintenance that is relevant not only throughout the performance of the insurance contract, but also at the conclusion of the contract before coming its into force.

It seems that the formation of criteria for the quality of insurance services should be undertaken by a specially authorized central executive body for insurance supervision, which is the National Commission that carries out state regulation in the sphere of financial services markets.

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

1. The insurance service is a set of actions of the debtor (insurer), aimed at satisfying of property and non-property interests of consumers of insurance services in a case of occurrence of certain events (insured cases), determined by the insurance contract, at the expense of cash means, collected to the insurer's funds by payment of insurance payments by the insured and receipt by the insurer of other incomes from the placement, investment or other use of means of these funds.

2. Characteristic features of insurance service as one of the types of financial ser-



vices are: 1) is accompanied by the movement of financial assets (cash), which provides for the execution by the executor (insurer) of the relevant financial transactions, contemplated by Article 31 of the Law of Ukraine «On Insurance»; 2) is carried out in the interests of third parties; 3) is carried out on a paid basis (payment precedes the provision) 4) is provided on the basis of the insurance contract; 5) is a set of financial and related (consulting, actuarial services, services for the settlement of claims, etc.).

3. The totality of actions, of which the insurance service consists, is disclosed in the course of its provision. However, the stages of providing insurance services are not considered in the law literature and remain outside of the legislator's attention; therefore it negatively affects the quality of the insurance service, and most importantly – the ability to protect the rights of consumers of insurance services in the event of their breach.

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