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ESSENCE OF INSURANCE ACTIVITY: ECONOMIC AND LEGAL ANALYSIS

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У статті досліджуються актуальні питання економіко-правової сутності страхової діяльності як системоутворювальної категорії страхових правовідносин у сфері господарювання. Місце та види страхової діяльності у системі сучасних економічних відносин. Досліджені ознаки та правові засади здійснення страхової діяльності.

Для глибшого розуміння сутності страхової діяльності необхідно розглянути питання про те, до якої категорії потрібно відносити страхову діяльність — до фінансової чи кредитної. Варто зазначити, що вказане питання є дискусійним, яке переважно розвивається в контексті економічної науки, проте має і певне юридичне забарвлення. Категорії фінансів і кредиту, хоча й різні за своїм змістом, проте взаємопов'язані. Процес вартісного розподілу суспільного продукту здійснюється за допомогою вказаних економічних категорій, кожна з яких виконує специфічну, тільки їй притаманну роль.

З метою з'ясувати питання до якої категорії потрібно віднести страхування (категорії фінансів чи кредиту) науковий аналіз слід проводити спираючись на правову доктрину нормативізму, що розглядає об'єктивну логічну абстраговану форму будь-якого явища.

Поняття фінансової діяльності в наведених нормативно-правових актах є спеціальним і застосовується виключно для цілей вказаних актів законодавства та не відображає особливостей і специфіки фінансової діяльності у сфері страхування, тобто діяльності у сфері надання страхових послуг.

Можна казати про те, що страхування є фінансовою діяльністю у сфері надання специфічних послуг. При цьому, якщо звернутися до змісту чинного законодавства України, що встановлює порядок, умови та розміри кредитів страхувальникам, які уклали договори страхування життя, визначає чітку регламентацію вказаних особливих правовідносин, дає підстави стверджувати, що страхова діяльність із страхування життя за своєю природою є фінансово-кредитною.

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

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Problem Formulation. 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.

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).

The **purpose** of the publication is explore topical issues of economic and legal essence of insurance activity as a system of insurance category relations in the sphere of management, and its place in the modern forms of economic relations, as well as the essence and the legal framework of the insurance business.

The main material presentation. For a deeper understanding of the essence of insurance activity, it is necessary to consider the matter of classifying the insurance activity, whether it is a financial or a credit category. It should be noted that the said issue is a controversial one, which mostly takes place in the context of economic science [1], but it also possesses a certain legal connotation. Though the categories of finance

and credit are different in content, they are interrelated. The process of cost allocation of the social product is carried out by means of these economic categories, each of which performs a specific role attributed only to it.

Finance (from the Latin *Financia* — cash, income) is a set of economic relations, arising in the process of formation, distribution and use of the centralized and decentralized funds of cash flow [2, 12]. The credit is largely similar to the finances. The scientists define credit as a set of special economic relations between the subjects of the market when placing a certain share of ownership in a loan on the basis of compulsory recover, repayment, maturity, target use [3, 5]. The common features inherent to the two specified categories show their proximity and relatedness of the economic nature. However, the nature of their functions varies greatly: credit, unlike finance, operates based on credit repayment. This is the most important feature and attribute of a credit. The credit resources are formed in the process of the redistribution at the expense of temporarily free funds of economic entities; the financial ones are formed by income and savings generated at the stage of cost allocation. The credit resources are provided to borrowers for a certain period in terms of repayment and payment; the financial resources are given for free and without specifying the conditions for their return. Finally, unlike finance a credit has a closer connection with monetary circulation, by means of which the needs of business entities in payments required for its circulation can be satisfied. The existence of the common features in finance and credit leads to their close relationship and interaction in the allocation process; this is especially true in the integrated use of financial and credit resources [4, 212]. These relationships are so closely interconnected and interdependent, that they are defined as a financial and credit mechanism.



The financial and credit mechanism acts as constituent part of the single financial and credit system, which covers the areas of financial and credit relations (the object of the financial and credit system), a complex of financial and credit institutions (the subject of the financial and credit system). This mechanism provides financial and credit institutions with the possibility to influence the financial and credit relations and create the necessary preconditions for the redistribution of money through: the budget system; the banking system; the circulation of securities; the insurance system [5].

In order to clarify the matter as in which category insurance should be included (finance category or credit category), in our opinion, it is necessary to conduct the scientific analysis based on legal doctrine of normativism that considers the objective logic abstracted form of any phenomenon.

According to Art. 333 of Economic Code of Ukraine insurance, as well as support activities in the sphere of finance and insurance, refers to the financial activity of economic entities. The notion of financial activities is not included into the Economic Code of Ukraine, while the concept of financial activities is defined and / or was defined in some regulations of the current legislation of Ukraine. The Instruction on the procedure of composition and publication of financial reports of banks of Ukraine, approved by Resolution of the Board of the National Bank of Ukraine dated 27.12.2007 № 480 [6], and the Instruction on the procedure of composition and publication of financial reports of banks of Ukraine, approved by Resolution of the Board of the National Bank of Ukraine dated 7.12.2004 № 598 [7], recognize the financial activity as activity that cause changes in the size and composition of the bank's equity and borrowed capital. According to Decree of the Ministry of Finance of Ukraine dated 28.12.2009 № 1541 «On

Approval of the Regulation (Standard) for Accounting in the Public Sector 101 "Presentation of Financial Statements"» [8] the financial activity is the activity that leads to changes in the size and composition of equity and debt capital.

According to Decree of the Ministry of Economy and on Issues of European Integration of Ukraine dated June 17, 2003 № 157 «On Approval of Methods Recommendations as to the Implementation of the National Regulations (Standards) of Accounting in the Sphere of Catering and Personal Services, Harmonized with the International Standards» [9] and Order of the Ministry of Finance of Ukraine dated 07.02.2013 № 73 «On Approval of the National Policy (Standard) of Accounting 1 General Requirements for Financial Reporting" [10] a financial activity is an activity that leads to changes in the size and composition of equity and borrowed capital of the enterprise.

In the light of the foregoing the concept of the financial activity in the above legal acts is a special one and is used exclusively for the purposes of these instruments of legislation and does not reflect the peculiarities and specifics of the financial activity in the field of insurance, that is an activity in the sphere of provision of insurance services.

In accordance with paragraph 9 Article 4 of the Law of Ukraine «On Financial Services and State Regulation of Financial Services Markets» [11] the services in the sphere of insurance and pension savings are recognized as financial services, which, according to p. 5, Art. 1 of the said Law, are transactions with financial assets carried out in the interest of the third parties for their own account or the account of these persons and in cases provided by law, at the expense of financial assets raised by other people with the aim to get profit or maintain the real value of financial assets.



Thus, we can say that insurance is a financial activity in the sphere of providing specific services. In addition, if we look at the content of ch. 4. Art. 333 of the Economic Code of Ukraine, insurance in the economic sphere is an activity aimed to cover long-term and short-term risks of the entities using the savings via the credit and financial system or without such usage. However, Art. 2 of the Law of Ukraine «On insurance» stipulates that the insurers engaged in life insurance may provide loans to insurants who have concluded life insurance contracts. Part 20 of Article 31 of the law that defines the procedure for the placement of insurance reserves as a separate asset category to which insurance reserves funds can be invested, determines the loans to insurants — individuals who have concluded life insurance contracts within the redemption amount at the moment of the loan granting and on the security of redemption amount. In this case, the loan cannot be granted earlier than one year after the entry into force of the insurance contract and for the term that exceeds the period remaining prior to the expiry of the term of the insurance contract. The procedure, the terms of loans granting and loans size, the reserve formation order to cover possible losses are set by the authorized body in coordination with the National Bank of Ukraine (ch. 11, Art. 2 of the Law of Ukraine «On insurance»). The Resolution of the State Commission for Regulation of Financial Services Markets of Ukraine dated 3.12.2004 2883 «On Approval of the Provision on the Order, Terms of Granting and the Size of Loans to the Insurants who Have Concluded Life Insurance Contracts» [12] (hereinafter — the Regulation № 2883) sets forth that a lender (the insurer that provides an insurant with a credit) may extend credit to the borrower (the insurant that concluded the life insurance contract and received a loan on condition of repayment, pay-

ment, maturity) within the redemption amount at the moment of the loan granting and for the term that does not exceed the period remaining prior to the expiry of the term of the insurance contract. If the insurance contract provides regular, consistent payments (annuity), a loan agreement can be concluded within the period of waiting for such a life insurance contract (para. 2.5).

According to p. 3.5 of the Provision № 2883 credit relationships are regulated by a loan agreement concluded between the creditor and the borrower that defines the mutual obligations and liabilities of the parties and cannot be changed unilaterally without the consent of both parties. However, according to p. 3.11 credit cannot be granting earlier than one year after the entry into force of the insurance contract.

There is a perception that insurance is a separate economic category, along with finance and credit, which to some extent combines features of both financial and credit relations [13, 44]. However, the above consideration points out to the fallacy of the specified scientific position.

The analysis of the current legislation of Ukraine, which establishes the procedures, conditions and size of loans granting to insurants who have concluded life insurance contracts, defines a clear regulation of these special legal relations, gives reasons to assert that the insurance activity on life insurance is a finance and credit one by its nature.

In our view, the systematic analysis of the category «insurance activity» requires an integrated approach to the study of a wide range of occurrences, processes, and concepts associated with this phenomenon. This refers to the individual elements that collectively characterize the insurance activity as a complex integrated subsystem in the general system of insurance relations in the economic sphere, namely: insurance fund, insurance service, insurance service market, State supervision over insurance activity.



It should be noted that each of the above elements of the system of insurance relations is a backbone category in relation to other elements that are the systems of a lower level or subsystems [14, 20]. Amid the synergetic paradigm it can be stated that the insurance relations in the sphere of economy is a complex open system that is constantly changing (evolving) and contains a number of independent subsystems that are still developing in accordance with their internal laws among other laws [15, 9].

These categories are in the direct interrelation with each other, influence each other, but to ascertain their specificity they require a clear distinction. These dependencies allows detecting the general system of insurance relations in economy, so, the need for the protection of property interests of business entities from the negative impact of hazards of various kinds and forms of manifestation (insurance claims), which can cause damage to business entities and individuals, gives rise to insurable interest. Such interest has become the content of the insurance need of a business entity and it is characterized as a social relation, which has a social character that is reflected in the realization and implementation of goals [16]. To pursue this goal the interested persons create an insurance fund (that can be different in their organizational forms) by means of the gradual payment of regular premiums, at the expense of which it is formed. However, to ensure the proper functioning of the insurance fund (its formation, spending and investing the insurance fund) is possible due to business insurance activity. In its turn, the proper functioning of economic insurance activity creates preconditions for the full development of the insurance market of Ukraine, which provides: development of insurance intermediary, reinsurance, formation of relations between insurers (beneficiaries, insured and other third parties in insurance liabilities); formation of the professional

infrastructure of the institutions of independent expert appraisers, actuaries, underwriters, auditors; the proper functioning of associations of insurers and self-regulatory organizations; implementation of an effective mechanism of the state regulation of insurance activity and improving public policy in the sphere of insurance services.

We have mentioned that the need for insurance protection of property interests of the interested persons in a market environment can be met mainly through the professional activity of the insurance organizations (companies), which is aimed at creating the insurance fund raised at the expense of a great circle of participants.

As noted, the category of insurance fund is a crucial one in the process of formation and direct implementation of the insurance business relations and it is an compulsory component of insurance activity, which in its turn mediates the formation, registration, placement and spending the insurance fund (insurance reserves). The economic doctrine has different approaches to the problem related to what an insurance fund of an insurer is and what kind of structure it has. Thus, L. M. Gorbach, in our view, incorrectly indicates that the insurance fund of an insurer comprises of the authorized capital, insurance reserves, guarantee fund and free reserves of an insurer [17, 56]. In our opinion, L. Gorbach has too broad understanding of the insurance fund structure, besides this is the mistake to include insurance of the authorized capital into the insurance fund. The authorized capital of the insurer, like of any other business entity, according to O. Yankova's theory, defines only: 1) the legal preconditions to recognize it as an independent legal personality and a participant of legal relations; 2) the economic preconditions for the independent property participation in commercial turnover, because the essence of this participation remained



unchanged in the changing social and economic conditions; 3) the possibility of implementing liability measures for the obligations; 4) the conditions for implementing the principle of individual responsibility of a founder and of a company established by the founder [18, 5].

The modern economic and legal doctrine provides that the authorized capital shall not perform the function of protecting the interests of creditors. As Yu. Hort rightly states, the analysis of each of the elements of capital maintenance doctrine gives grounds to assert that it not only protects the interests of creditors in the company's solvency, but also adversely affects the ability of the authorized capital to be a mechanism for attracting investments to the company. The pro-creditor concept of the authorized capital does not correspond to the present state regulation of the economic relations, and therefore subject to cancellation [19, 330].

On the other hand, economists A. Godin and S. Furmina rightly point out that the theory of the insurance fund is based on the amount of financial resources that are necessary for an insurer to perform insurance liabilities, and recognize the insurance fund as one that equals to the scope of insurance reserves [20, 28].

The current legislation of Ukraine does not contain the concept of insurance fund. However, Art. 1 of the Law of Ukraine "On insurance" states that it is due to money funds generated by insurance payments made by individuals and legal entities the property interests of individuals and legal entities is protected. While analyzing the current legislation of Ukraine, in particular Art. 31 of the Law of Ukraine «On insurance», it is clear that it refers to the insurance reserves, because they are formed by insurers with the aim to ensure future payments of insurance premiums and insurance compensation depending on the types of insurance (reinsurance), for which insurance premiums is the source of formation.

The insurance reserves are included into special funds of an insurance company, and they provide financial reliability of an insurance company and indicate the scope of its insurance liabilities under insurance agreements. High efficiency of funds use is achieved within the insurance fund of an insurance company (companies). Losses in this case are distributed to all participants in the insurance fund, and significant redistribution of funds takes place [21, 12]. Under this insurance, an insurer's aim is to obtain monetary compensation, the amount of which should exaggerate the size of the paid insurance premium. This interest encourages the insurant to participate in the insurance relationship that determines establishment of a special legal regime for insurance reserves of the insurer.

In our opinion, the term «an insurer's insurance fund» can provide the following understanding: they are the insurance reserves that are formed at the expense of monetary contributions made by insurants and reflect the amount of the insurance liabilities under insurance agreements and are created to ensure future payments of insurance premiums and insurance claims depending on the types of insurance (reinsurance).

Conclusions. The above basic components that make up the insurance activity and characterize it as a special kind of economic activity, lead to formulate the concept of insurance activity.

The insurance activity is regulated by law, is carried out under license for economic activity of business entities (insurers), relates to the provision of insurance services to legal entities or natural persons (insurants) due to money funds (insurance reserves), which are formed by payments of insurants to protect their property interests in case of occurrence of the events (insurance cases) stipulated by law or insurance contract.

It is clear that the development of insurance activity mainly depends on the state of the legislation regulating



insurance relations. To meet the challenges facing the insurance activity by means of regulation, it is necessary to work out the approaches to insurance activity as to the form of business activity on providing insurance services.

In view of the aforementioned, the conclusions concerning the economic activity made by O. Vinnyk are expedient [22, 26].

Bearing in mind the concept, it should be emphasized that the insurance activity as a separate specific type of economic activity is carried out on the certain principles that, on the one hand, take into account the market orientation of the national economy and therefore pro-

vide considerable freedom for the subjects of such activity, and, on the other hand, the social tendency of the insurance sector that leads to the establishment of the certain limitations for the economic subjects with the aim of taking into consideration the public interest in the respect of the public economic order established by the State. It involves compliance with the different requirements from the part of the subjects of insurance activity that relates to: quality insurance services; fair competitive behavior at the market of insurance services; protection of the property interests of insurance consumers. ♦

Список використаних джерел

1. Фурман В. М. *Страховий ринок в Україні: проблеми становлення та стратегія розвитку* : дис. ... доктора екон. наук : 08.04.01 / В. М. Фурман. — К., 2006. — 421 с.
2. Мальцев В. А. *Финансовое право* : учеб. [для студ. проф. науч. заведений] / В. А. Мальцев. — 3-е изд., испр. и доп. — М. : Академия, 2008. — 256 с.
3. Поченчук Г. М. *Кредит в системі чинників економічного зростання України* : автореф. дис... канд. екон. наук : спец. 08.00.01 «Економічна теорія та історія економічної думки» / Г. М. Поченчук. — К., 2007. — 19 с.
4. Терещенко О. О. *Фінансова діяльність суб'єктів господарювання* : навч. посіб. / О. О. Терещенко. — К. : КНЕУ, 2003. — 554 с.
5. Бектенова Д. Ч. *Формирование рыночной денежно-финансовой системы [Электронный ресурс]* / Д. Ч. Бектенова // *Вестник Кыргызско-Российского Славянского ун-та*. 2002. — Т. 2. — № 3. — Режим доступа : <http://www.krsu.edu.kg/vestnik/2002/v3/index.html>
6. Інструкція «Про порядок складання та оприлюднення фінансової звітності банків України», затверджена Постановою Правління Національного банку України від 27.12.2007 р. № 480 / *Офіційний вісник України*. — 2008. — № 5. — Ст. 125.
7. Інструкція «Про порядок складання та оприлюднення фінансової звітності банків України», затверджена Постановою Правління Національного банку України від 07.12.2004 р. № 598 // *Офіційний вісник України*. — 2004. — № 52. — Ст. 3456.
8. Наказ Міністерства фінансів України «Про затвердження Положення (стандарту) бухгалтерського обліку в державному секторі 101 «Подання фінансової звітності» від 28.12.2009 р. № 1541 // *Офіційний вісник України*. — 2010. — № 7. — Ст. 352.
9. Про затвердження Методичних рекомендацій щодо впровадження національних положень (стандартів) бухгалтерського обліку у сфері громадського харчування і побутових послуг, гармонізованих з міжнародними стандартами [Електронний ресурс]. — Режим доступу : http://search.ligazakon.ua/l_doc2.nsf/link1/ME03298.html
10. Наказ Міністерства фінансів України «Про затвердження Національного положення (стандарту) бухгалтерського обліку 1 «Загальні вимоги до фінансової звітності» від 07.02.2013 р. № 73 // *Офіційний вісник України*. — 2013. — № 19. — Ст. 665.



11. Закон України «Про фінансові послуги та державне регулювання ринків фінансових послуг» від 12.07.2001 р. № 2664-III // Відомості Верховної Ради України. — 2002. — № 1. — Ст. 1.
12. Розпорядження Державної комісії з регулювання ринків фінансових послуг України «Про затвердження Положення про порядок, умови видачі та розміри кредитів страхувальникам, які уклали договори страхування життя» від 03.12.2004 р. № 2883 // Офіційний вісник України. — 2004. — № 51. — Ст. 3400.
13. Науменкова С. В. Ринок фінансових послуг : навч. посіб. / С. В. Науменкова, С. В. Міщенко. — К. : Знання, 2010. — 532 с.
14. Дубов Г. Застосування основних принципів і категорій синергетичної теорії при дослідженні держави та права / Г. Дубов // Юридична Україна. — 2005. — № 9. — С. 18—23.
15. Хакен Г. Синергетика: Иерархии неустойчивостей в самоорганизующихся системах и устройствах : пер. с англ. / Г. Хакен. — М. : Мир, 1985. — 423 с.
16. Пацурківський П. С. Юридична категорія «інтерес» у цивільному праві [Електронний ресурс] / П. С. Пацурківський, Ю. П. Пацурківський // Науковий вісник Чернівецького ун-ту : зб. наук. пр. Вип. 200: Правознавство. — Чернівці : Рута, 2003. — С. 45–50. — Режим доступу : <http://lawreview.chnu.edu.ua/article.php?lang=ua&visnik=18&article=395>.
17. Горбач Л. М. Страхова справа : навч. посіб. / Л. М. Горбач. — К. : Кондор, 2003. — 252 с.
18. Янкова О. С. Правове регулювання статутного фонду комерційних організацій : автореф. дис... канд. юрид. наук : 12.00.04 «Господарське право; арбітражний процес» / О. С. Янкова ; НАНУ Ін-т економіко-правових досліджень. — Донецьк, 2000. — 20 с.
19. Хорт Ю. В. Функції статутного капіталу за законодавством України / Ю. В. Хорт // Держава і право. — 2009. — Вип. 46. — С. 326–332.
20. Годин А. М. Страхование : учеб. / А. М. Годин, С. В. Фурмина. — М. : Дашков и Ко, 2009. — 480 с.
21. Стеценко В. Ю. Адміністративно-правове забезпечення запровадження в Україні обов'язкового медичного страхування : автореф. дис... доктора юрид. наук : спец. 12.00.07 «Адміністративне право і процес; фінансове право; інформаційне право» / В. Ю. Стеценко ; Харківський національний університет внутрішніх справ. — Х., 2010. — 40 с.
22. Вінник О. М. Господарське право : навч. посіб. [для студ. вищ. навч. закл.] / О. М. Вінник. — 2-ге вид., змін. та допов. — К. : Правова єдність, 2009. — 766 с.

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Пацурія Н., Резнікова В. сущность страховой деятельности: экономико-правовой анализ. В статье исследуются актуальные вопросы экономико-правовой сущности страховой деятельности как системообразующей категории страховых правоотношений в сфере хозяйствования. 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. Essence of insurance activity: economic and legal analysis. The article concerns current issues of economic and legal essence of the insurance activity as a system of insurance category relations in the sphere of management. Location and types of insurance activity in the system of modern economic relations. Abstract signs and the legal framework of the insurance business.

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