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## LEGAL STATUS OF THE CONSUMER OF INSURANCE SERVICES UNDER THE LAW OF UKRAINE

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### SUMMARY

In the scientific article the content of the civil-legal status of the consumer of insurance services as one of the participants in contractual insurance relations is researched, its concept and features are revealed. It is established that the main elements of the legal status of the consumer of insurance services, the specificity of which manifests itself in the moment when a person has such a status and in empowering the consumer with additional legal opportunities, are his rights and duties, fixed in special laws and normative legal acts. Classification of the rights of consumers of insurance services is carried out, and features of their realization are determined.

**Key words:** insurance contract, insurance service, consumer, insured, insurer, insured person, beneficiary, legal status, conditions of the contract.

### АНОТАЦІЯ

У науковій статті досліджується зміст цивільно-правового статусу споживача страхових послуг як одного з учасників договірних страхових правовідносин, розкривається його поняття та особливості. Установлено, що основними елементами правового статусу споживача страхових послуг, специфіка якого проявляється в момент виникнення у особи такого статусу і в наділенні споживача додатковими правовими можливостями, є його права і обов'язки, закріплені в спеціальних законах і нормативно-правових актах. Здійснюється класифікація прав споживачів страхових послуг, і визначаються особливості їх реалізації.

**Ключові слова:** договір страхування, страхова послуга, споживач, страховик, страхувальник, застрахована особа, вигодонабувач, правовий статус, умови договору.

**Formulation of the problem.** The development of a market economy in Ukraine leads to an increase in consumer demand for a variety of goods and services, as a result of which there is an increase in the number of obligations to provide services, including those provided for the realization of insurance activity. However, some of the types of insurance services have a rather complex content and procedure of providing, and the consumer of these services, as a rule, objectively lacks the knowledge necessary to evaluate contracts for their acquisition, which often have the form of a formularies or other standard form, thereby, there is objective need to provide special protection for a weaker subject of legal relations, which is the consumer of insurance services.

To date, insurance legal relations remain the object of research of many domestic and foreign scientists. However, despite the considerable number of scientific works devoted to the study of various aspects of the legal regulation of insurance relations, the protection of consumer rights in general, it is necessary to recognize the incompleteness of civil researches on the legal status of consumers namely insurance services, the absence of a clear systematization of all participants in insurance relations, as well as the existence of contradictions in current legislation and judicial practice in this area.

The modern period of development of legal thought in the study of insurance legal relations is characterized by the attention for a certain types of insurance, or various aspects of insurance. Among such works should be distinguished scientific works by T.V. Blashchuk, O.V. Grynyuk, V.V. Elbrekht, O.S. Krasilnikova, V.M. Nykyforak, N.B. Patsuriya, R.B. Sabodash, R.V. Sobotnyk, O.S. Udalov, O.A. Fayer, I.B. Chaikin, V.M. Yurakh, V.P. Yanishen and others. Insurance relations with the participation of consumers of insurance services were investigated in the works of Zh.O. Andriychenko, S.Yu. Bugaeva, P.M. Gushchyn, G.O. Ilchenko, L.M. Sokil, O.Yu. Chernyak, Ye.G. Shablova.

**Relevance of the topic.** The absence for today of fundamental research in the legal plane, directly devoted to the rights of consumers of insurance services, confirms the relevance of conducting an appropriate civil-law scientific study. After all, the insufficient certainty of the legal status of the consumer of insurance services creates obstacles to the protection of their rights, which is confirmed by the judicial practice of considering civil cases in the field of contractual insurance obligations [1].

**The purpose of the article** is to define the concept of the consumer of insurance services, the peculiarities of his civil-law status under the legislation of Ukraine, as well as the classification of the rights of the consumers of insurance services and the identification of the features of their realization.

**The main research material.** As follows from the content of Article 984 of the Civil Code of Ukraine (hereinafter – CC of Ukraine) [2], the insurer and the insured are the parties of the insurance contract. However, the circle of participants in insurance relations is much broader. For example, V.P. Yanyshen notes that two categories of persons can participate in insurance legal relations other than the insurer and the insured: the insured person and the person appointed by the insured to receive insurance payments (the beneficiary) [3, p. 519]. Thus, the insured and the insurer are the main participants of insurance legal relations, as they take a direct part in their occurrence, change or termination. Participation of all other participants depends on the will of the insurer and / or the insured.

According to Part 1 of Article 3 of the Law of Ukraine “On Insurance” [4] insureds are recognized legal entities and capable individuals who have concluded insurance contracts with insurers, or are insureds in accordance with the legislation of Ukraine. Moreover, foreigners, stateless persons and foreign legal entities on the territory of Ukraine enjoy the right to insurance protection on a par with citizens and legal entities of Ukraine.

O.A. Shergunova identifies the following signs of the insured as a special participant in insurance relations: 1) the insured is a person, who is always interested in insurance (has an insurance interest – N.M.); 2) the insured is a person insuring a certain interest (his or a third person – N.M.) as the object of insurance; 3) the insured is always a party of the insurance contract; 4) in the insurance obligation, the insured acts as a creditor in the case of occurrence of an insurance event, regardless of whether he is a beneficiary or not 5) the insured carries the burden of non-occurrence of the insurance event during the all term of the insurance contract [5, p. 23].

Some scientists consider insurers, who are a “weak” party in contractual insurance legal relations, as consumers of insurance services and accordingly combine issues of realization and protecting their rights with the realization and protection of consumers’ rights. To a certain extent, this was facilitated by the adoption by the Cabinet of Ministers of Ukraine of the Concept of the Protection of the Consumer’s Rights of Non-Bank Financial Services [6], which include insurance services.

As for the spread of the Law of Ukraine “On Protection of Consumer Rights” [7] to insurance relations, in particular, in clause 2 of the Resolution of the Plenum of the Supreme Court of Ukraine “On the Practice of Consideration of Civil Cases on Claims for Protection of Consumer Rights”, it is noted that as the Law of Ukraine “On Protection of Consumer Rights” does not define certain limits, the courts should bear in mind that the relations that are regulated by them include, in particular, those arising from insurance contracts [8]. In addition, in the letter of the Supreme Court of Ukraine dated February 1, 2013, analyzing the judicial practice of considering civil cases on the protection of consumers’ rights, it is indicated that if the insurance contract is aimed at satisfying the personal needs of an individual, such legal relations are regulated by the Law “On Protection of Rights Consumers” in the part not regulated by a special law. Moreover, this conclusion also applies to property insurance contracts, where the insureds are physical persons and the relevant relations are aimed at protecting the personal property interests of the insured or another person specified in the contract by satisfying the insured’s property requirement that arises or may arise after the occurrence of certain events. At the same time, the Supreme Court of Ukraine in its letter dated July 19, 2011 [9], indicated that the Law of Ukraine “On Protection of Consumer Rights” can not apply to legal relations arising from the provisions of the Law “On Compulsory Insurance of Civil Liability of Owners of Land Vehicles”, since it is aimed at protecting the life, health and property of third parties, while the Law “On Protection of Consumer Rights” regulates relations arising from contracts aimed at satisfying exclusively personal needs.

Consumer protection issue is regulated by a number of international legal documents, among which the Consumer Protection Charter adopted by the Consultative Assembly of the European Union on May 17, 1973 (resolution 543) [10, p. 39] and the Guiding Principles for the Protection of Consumer Interests approved by the United Nations General Assembly on April 9, 1985 (resolution 39/248) [11].

The provisions of these international documents are reflected in the Law of Ukraine “On Protection of Consumer Rights”. According to clause 22 of Article 1 of this Law, a consumer is an individual who purchases, orders, uses or intends to purchase or order products for personal needs that are not directly related to entrepreneurial activity or the performance of the duties of a hired employee.

Thus, the distinctive features of the consumer as a special subject of civil legal relations are:

- the consumer is only an individual (this can be both Ukrainian citizens, foreigners and stateless persons – N.M.);
- the person purchases, orders, uses or intends to purchase or order products (has the right to purchase or order, but is not obliged to do so – N.M.);

– the specific purpose of purchasing products – to meet personal needs that are not directly related to the business activity or the performance of the duties of a hired employee.

O.Yu. Chernyak, exploring the civil legal status of the consumer in the context of adaptation of Ukrainian legislation to the EU legislation, notes that in the legislation of a number of states the concept of “consumer” is used without specifying any definitions, in other states this concept is introduced into legal terminology by the judicial practice and / or legal doctrine. Within the EU there is a separate concept of consumer rights protection, which can operate without reference to the right of the EU member states. Taking into account the established judicial practice, the consumer is considered from the standpoint of protecting the weaker party to the contract, he is recognized by the person who purchases the goods (services) for use, but not for the purpose of his commercial or professional activity [12, p. 7].

The interpretation of the concept of “consumer” solely as an individual is not only Ukrainian specificity, but corresponds to the widespread European practice in this matter. So, according to Article 2 Council Directive 93/13 / EEC of April 5, 1993 on unfair terms of consumer contracts, the consumer is any individual who, in contracts governed by this Directive, acts for purposes that are outside his professional activities, business, profession [13]. When comparing this definition with the definition of the Law of Ukraine “On the Protection of Consumers’ Rights”, there is clearly a significant difference. Firstly, according to the Directive on granting a person a consumer status does not depend on the nature of the actions performed by him, and in the Law the consumer must necessarily order something, acquire, use or have an intention to do it. Secondly, the Directive, unlike the Law, allocates a limited number of non-consumptive purposes, while all others are considered consumer purposes. Therefore, by definition of the Directive, a significantly larger number of persons will fall under consumer protection.

Not only the insured – an individual who acquires or orders a service may be a consumer of insurance services, but also an individual who uses insurance to meet his personal needs (as it follows from clause 22 of Article 1 of the Law of Ukraine “On Protection of Consumer Rights” – N.M.), as this individual consumes it, uses this service (for example, the insured person or the beneficiary – N.M.).

When concluding an insurance contract in favor of a third person, the insured person is the user (consumer) of the insurance service, provided that the insurance contract is aimed at satisfying her personal needs. Moreover, according to the letter of the Supreme Court of Ukraine of July 19, 2011, the insurance contract provides a third party the right to require the insurer to make an insurance payment in his favor, that is, it grants the beneficiary the rights of the insured, but does not impose on him the obligations of the latter [9, p. 21].

Thus, on the basis of an analysis of scientific views and provisions of normative legal acts, concept of a consumer of the insurance service should be understood as an legal capable physical person who concludes an insurance contract with the insurer, as well as an physical person, in the interests and in favor of whom the insurance contract is concluded, and which receives insurance services necessary to meet personal needs that are not directly related to the entrepreneurial activities of this individual or the performance of duties as a hired employee.

To the set of features that characterize the civil law status of the consumer of insurance services, it is possible to include:

1) the consumer of insurance service is always a legal capable physical person, because in the case when the insured is a legal entity, it can not be recognized as a consumer in the civil legal sense of this concept;

2) the scope of rights and obligations characterizing the civil status of the consumer of insurance services is determined taking into account the provisions of the insurance contract, Insurance

Rules, previously developed by the insurer and acts of the current legislation of Ukraine;

3) the majority of the rights owned by the consumer of insurance service have a contractual basis for its origin;

4) the right of an individual to receive an insurance service and the amount of its provision, including the occurrence of the right to receive an insurance payment or compensation, depends on the insurance risk determined in the contract and the actual occurrence / non-occurrence of the insurance event during the term of the contract. In the event of non-occurrence an insurance event, the consumer is unable to exercise his right to receive insurance compensation or payment in connection with his non-occurrence;

5) the object of consumer rights is an insurance service related to the satisfaction of the person's personal needs, which are not directly related to entrepreneurial activity or the performance of the duties of a hired employee.

One can add to these features that in most cases the consumer of insurance services does not have special knowledge in the sphere of providing this type of services. Therefore, as L.M. Sokil notes, it is the unprofessional status of the consumer and the asymmetry of the parties to the insurance contract that are those additional arguments that determine the need for an additional mechanism for the protection of this category of insured persons [14, p. 183]. And this mechanism should be based, first of all, on the rights and duties of the parties of the contract.

Specificity of the civil-legal status of the consumer is manifested in two features: the moment of occurrence of such status of a person and in empowering the consumer with additional legal possibilities within the framework of a special legal status. With this in mind, O.Yu. Chernyak defines the structure of a special civil-legal status of the consumer, which includes the following elements: special civil legal personality, which consists in the unity of special legal capacity and capacity, as well as his rights and duties [12, p. 8].

Thus, the main elements of the legal status of the consumer of insurance services are his rights and duties, which are enshrined in special laws and regulations. Consumers as subjects of civil rights can enter into contractual relations, thereby realizing their legal personality. Entering into the legal relationship of a consumer nature, they acquire the corresponding subjective civil rights and duties.

The rights of consumers of insurance services can be divided into two groups. At the heart of one is the legislation on the protection of consumer rights, at the base of others - insurance legislation and insurance contract. The universal (general) rights of consumers of insurance services belong to the consumer rights, which are enshrined in Section II of the Law of Ukraine "On Protection of Consumer Rights", but with a number of reservations. The general rights of consumers are enshrined in part 1 of Article 4 of the Law of Ukraine "On Protection of Consumer Rights": the right to protection of rights by the state (Article 5); the right to proper quality of products and services (Article 6); the right to product safety (Article 14); the right to necessary, accessible, reliable and timely information about the product, its quantity, quality, assortment, as well as its manufacturer (performer, seller) (Article 15); the right to compensation for property and moral damage caused by defects in production (defect in products), in accordance with the law (Article 16); the right to appeal to the court and other authorized state bodies for the protection of breach rights (Article 22); the right to association in public organizations of consumers (associations of consumers) (Article 24). However, when concluding an insurance contract outside commercial or office premises and / or at a distance, consumers of insurance services can not exercise the rights that are enshrined in Articles 12 and 13 of the Law of Ukraine "On Protection of Consumer Rights".

In addition to the general rights of consumers of insurance services, can be added: the rights in case of violation of the terms of the agreement on the performance of work (provision of servic-

es - N.M.), rights in case that defects in the service are discovered (Article 10), rights in the field of trade and other services (Article 17), the right to invalidate the conditions of the contract that infringe on the consumer rights (Article 18), the right to freedom of choice of products (services), the right to freedom of expression (Article 21).

Special rights of consumers of insurance services include rights that are fixed in the normative legal acts regulating insurance relations and in the insurance contract. It should be noted that in the Civil Code of Ukraine and the Law of Ukraine "On Insurance" does not contain a list of neither the insurer's rights, nor the insured's rights. In them only their duties are specified (Article 988 and Article 989 of CC of Ukraine, Article 20 and Article 21 of the Law of Ukraine "On Insurance"). Therefore, taking into account the fact that each respective right is corresponded a respective duty, it can be concluded that in this case the insured's rights stem from the insurer's duties.

Analyzing the insurer's duties, provided in Article 20 of this Law, the following insured's rights can be distinguished: the insured's right to familiarize himself with the conditions and rules of insurance; the right to timely make insurance payment or insurance compensation; the right to receive forfeits (fines, penalties), in case of late insurance payment; the right to compensation of expenses incurred by the insured at the occurrence of an insurance event in order to prevent or reduce losses, if this is provided by the conditions of the contract; the insured's right in the event of carrying out activities that have reduced the insurance risk, or an increase in the value of the property, to renew the insurance contract; the insured's right to non-disclosure of information about him and his property status, except in cases established by law.

This list is not exhaustive, since the conditions of the insurance contract may provide for other insurer's duties. Traditionally, to the insured's rights in insurance contracts are added: the insured's right to initiate the introduction of amendments and additions to this contract; the right to receive a duplicate of the insurance contract in case of its loss; the right to terminate the contract ahead of schedule in accordance with the conditions specified in the contract and the insurance rules; the right to appoint beneficiaries to receive insurance payments or change them before the occurrence of an insurance event and the like.

In addition, each insurer for each type of insurance separately develops Insurance Rules [15], which are subject to registration with the authorized body when issuing a license to carry out an appropriate type of activity. These Insurance Rules must also contain the rights and duties of the parties. Taking into account the local nature of the operation of the Insurance Rules, the rights of consumers of a certain type of insurance service can differ substantially in different insurers.

Consequently, the rights of consumers of insurance services, based on sources of legal regulation, can be classified into:

- 1) rights, enshrined in laws (the CC of Ukraine, the Law of Ukraine "On Insurance", etc. - N.M.);
- 2) rights, enshrined in sublegal regulatory acts (Decrees and Order of the Cabinet of Ministers of Ukraine, Order of the National Financial Services Commission - N.M.);
- 3) rights, enshrined in local acts (Insurance Rules - N.M.)
- 4) rights, enshrined in the insurance contract.

Taking into account the dynamics of insurance legal relations, the rights and duties of consumers of insurance services can be divided into:

- 1) the rights and duties that arise at the stage of contract conclusion;
- 2) the rights and duties that arise during the validity of the contract;
- 3) the rights and duties that arise after the occurrence of an insurance event;
- 4) the rights and duties arising from improper performance of the insurance contract.

At the first stage of the conclusion of the contract, the consumer of insurance services has the right to the necessary, accessible, reliable and timely information about the insurance service, which provides the possibility of its conscious and competent choice. Information must be provided before the purchase of the service. Along with this, the right of the consumer of insurance services to information does not disappear after the conclusion of the insurance contract; it exists for the entire duration of the contract.

During the validity of insurance contract, the consumer of insurance services has the right to: the proper quality of service; the right to non-disclosure of information about him and his property status, except in cases established by law; the right to renew the contract in case of implementation of a reduction in the insurance risk or an increase of the value of the property; the insured's right to initiate the introduction of amendments and additions to the contract; the right to receive a duplicate of the insurance contract in case of its loss; the right to terminate the contract ahead of schedule in accordance with the terms and conditions specified in the contract and the insurance rules; the right to appoint beneficiaries to receive insurance payments or change them before the occurrence of an insurance event and the like.

After the occurrence of the insurance event, the consumer of insurance service has the right to: timely implementation of the insurance payment or insurance compensation, the right to reimbursement of expenses incurred by the insured in the event of occurrence an insurance case in order to prevent or reduce losses, if this is stipulated by the conditions of the contract. If the insurance contract is not properly implemented, the consumer of the insurance service has the right to judicial protection of his / her violated, unrecognized or disputed rights or interests; the right to receive a forfeit (fine, penalty), in case of untimely implementation of insurance payment, and the like.

Since the conclusion of the insurance contract, consumers of insurance services have the right to protect their rights by the state, the right to judicial protection and the right to unite in public organizations of consumers. But the reason for the implementation of these rights is, as a rule, the failure of the second party of the insurance contract their duties. Given that most of the duties of the insurer arise after the occurrence of the insurance event, then the above-mentioned rights of consumer of insurance services are most often realized at this stage.

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

1. The consumer of insurance services can be considered an legal capable physical person who concludes an insurance contract with the insurer, as well as an physical person, in the interests and in favor of whom the insurance contract is concluded, and which receives insurance services necessary to meet personal needs that are not directly related to the entrepreneurial activities of this individual or the performance of duties as a hired employee.

2. The features that characterize the civil legal status of the consumer of insurance services, is: a) the consumer of insurance service is always a legal capable physical person; b) the scope of rights and obligations characterizing the civil status of the consumer of insurance services is determined taking into account the provisions of the insurance contract, Insurance Rules, previously developed by the insurer and acts of the current legislation of Ukraine; c) the majority of the rights owned by the consumer of insurance service have a contractual basis for its origin; d) the right of an individual to receive an insurance service and the amount of its provision, including the occurrence of the right to receive an insurance payment or compensation, depends on the insurance risk determined in the contract and the actual occurrence / non-occurrence of the insurance event during the term of the contract; e) the object of consumer rights is an insurance service related to the satisfaction of the person's personal needs, which are not directly related to entrepreneurial activity or the performance of the duties of a hired employee.

3. The main elements of the legal status of the consumer of insurance services are his rights and duties, which are enshrined in special laws and regulations. Consumers as subjects of civil rights can enter into contractual relations, thereby realizing their legal personality. Entering into the legal relationship of a consumer nature, they acquire the corresponding subjective civil rights and duties.

4. Taking into account the dynamics of insurance legal relations, the rights and duties of consumers of insurance services can be divided into: 1) the rights and duties that arise at the stage of contract conclusion; 2) the rights and duties that arise during the validity of the contract; 3) the rights and duties that arise after the occurrence of an insurance event; 4) the rights and duties arising from improper performance of the insurance contract.

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