

Property insurance as a type of economic activity: providing a balance of interests of insurance business participants

*Irina K. Kuzmina*¹, *Vasily A. Egupov*², *Roman V. Vishnyakov*³, and *Aryuvseit A. Artemyeva*⁴

¹Ulyanovsk state University Ulyanovsk, Department of Civil and Business Law, Ulyanovsk, Russia

²Moscow Region State University, Department of Civil Law, Moscow, Russia

³Moscow City Pedagogical University, Department of Civil Law Disciplines, Moscow, Russia

⁴Moscow University for Industry and Finance “Synergy”, Department of Legal Disciplines, Moscow, Russia

Abstract. Background of the study: The economic activity of business entities is almost always associated with a particular turnover of property, assets. By making such transactions, entrepreneurs can be exposed to dangers. Therefore, today, in times of not only large man-made disasters, pandemics, the main tasks of any subject of the economic market include not only making a profit, but also preserving property and capital in integrity.

Purpose of the study: To define property insurance as a type of economic activity, establish a balance of interests of insurance business participants, identify unresolved issues and propose ways to improve legislation in the sphere of insurance.

Methods: The methodological basis of the research is a set of general scientific and private scientific methods of research activity, including historical, formal logic, the method of system analysis, scientific research, comparative legal, statistical, functional and structural, methods of analysis and synthesis, as well as empirical and theoretical-analogy and deduction.

Results and novelty: As a result of the research, the authors formulated the provisions and conclusions that contribute to the effective regulation of insurance relations and ensure the balance of interests of insurance business participants. The article substantiates the need to qualify a reinsurance contract as a property insurance contract along with other types named in Article 929 of the Civil Code of the Russian Federation.

1 Introduction

The nature of insurance as a type of economic activity is that the burden of compensation for damage that could be incurred by the affected party in the event of harm to its interests is distributed among several persons. This result is achieved through the implementation of the persons who have insured their interests, advance monetary deductions that form an

* Corresponding author: kuzminaik@bk.ru

economic fund, from which they will subsequently be paid compensation upon the occurrence of a particular event, in the event of which the insurance was carried out [1].

Today, property insurance, as a type of insurance in general, plays an important, multilateral role in economic turnover. It not only acts as an important element of the functioning of the entire financial system of the state, ensuring the continuity of social production, depending on unfavorable phenomena and events, but also guarantees social protection of the population and stabilizes the process of investment in the economy [2].

If, however, an unfavorable event occurs, and damage to the property of the owner (user) is caused, often the injured party to restore its former economic situation decides to apply to the court with a statement of claim to the guilty party with a claim to compensate for the caused losses. However, obtaining compensation in such cases is not always possible due to economic bankruptcy.

Legal regulation: The relations that arise within the framework of insurance business processes have features of duality of legal regulation. On the one hand, the result of the expression of the will of the insurer and the policyholder is the conclusion of a property insurance contract, the provisions of which are regulated by the dispositive method, that is, first of all, we are talking about the application of the norms of civil law (Chapter 48 of the Civil Code of the Russian Federation). On the other hand, the economic relations arising under the contract related to the protection of property interests are subject to the regulation of special legislation – the rules of insurance law that are mandatory, in particular, the Law on the Organization of Insurance Business, which is more aimed at regulating public relations. Such a duality of legal regulation of economic relations arising between the insurer and the policyholder as a result of the conclusion of a property insurance contract expresses the peculiarity of this contract, aimed at ensuring a balance of interests of participants in the insurance business.

The norms of insurance law can be divided into two groups: the norms aimed at regulating only insurance relations; the norms aimed at regulating relations that by their nature are not actually economic and insurance. The regulations of Chapter 48 of the Civil Code of the Russian Federation and the Law on the Organization of Insurance Business are an example of the rules governing the insurance relations themselves. The Law of the Russian Federation of 27.11.1992 No. 4015-1 "On Insurance" was the first act enacted at the legislative level regulating insurance as an economic and legal phenomenon. Its enactment contributed to the creation of a legal basis for insurance activities in the Russian Federation and the definition of conditions for the development of the insurance market. Further, taking into account the amendments made to it by Federal Law No. 157-FZ of 31.12.97, its name was changed to the Law of the Russian Federation "On the Organization of Insurance Business in the Russian Federation". The specified normative act contains the basic concepts of insurance, regulates relations between persons engaged in certain types of insurance, establishes the principles of providing the financial stability of insurers, discloses aspects of state regulation and licensing of insurance activities, and also contains provisions regulating other relations generally related to the organization of insurance business.

2 Results

The fulfillment of insurance business obligations is important for the stability of economic activity, civil and business turnover [3]. Property insurance, as a type of economic activity, is organized on a contractual basis and is aimed at providing a balance of interests of participants in the insurance business. In the course of the reform of the legislation regulating civil, business and commercial relations, there were rules on several new special contractual structures in the sphere of insurance [4]. We should pay attention to the

initiative nature of liability insurance, the lack of unity and universality of this type of insurance [5], which raises questions in the field of law enforcement in the economy.

Russian legislation clearly refers to insurance as a financial service, meaning that, along with banking services, services provided on the securities market and related to the attraction and placement of funds, insurance services are also understood as a financial service. In the literature, property insurance related to entrepreneurial activity is often called production insurance, used in business practice, contrasting it with consumer insurance [6].

Using the property criterion to separate personal and property types of insurance, it is important to understand that the object of economic insurance protection in civil liability insurance contracts is not the life or health of a person who may be harmed by the actions of the policyholder or a third party, but the property interests of the policyholder (insured person) related to his financial situation, the deterioration of which is possible if he harms the interests of third parties. By entering into a civil liability insurance contract, whether it is liability insurance for damage or liability insurance under the contract, the policyholder wants to shift the burden of making monetary payments to a third party from himself to the insurer upon the occurrence of one of the insured events stated in the insurance contract.

We suppose that in order to ensure a balance of interests of participants in the insurance business, the legislator refers to the essential terms of the property insurance contract, the approval of which is necessary for the recognition of the contract concluded, the terms of the object of insurance, the characteristics of the insured event, the amount of the insurance premium and the term of the contract itself. However, it seems that it is necessary to resolve the contradiction with the definition of the insurance amount at the conclusion of the contract. It is more reasonable to change the formulation of the content of Article 947 of the Civil Code of the Russian Federation, since it allows the parties to independently determine the amount of the insured amount without taking into account the actual cost of the object of insurance protection itself. Therefore, the content of paragraph 2 of Article 947 of the Civil Code of the Russian Federation should be stated in the following language, excluding the phrase "unless otherwise provided by the insurance contract": "when insuring property and business risk, the insurance amount should not exceed their actual value." Only when using this exact formulation will there be no contradiction between clause 1 of Article 951 of the Civil Code and Clause 2 of Article 947 of the Civil Code.

The legislator in the provisions of Article 951 of the Civil Code of the Russian Federation, protecting the economic and financial interests of insurance companies, prohibits insuring property (business risks) in excess of the actual value, recognizing the contract as null and void in terms of the insured amount exceeding the insured value. But the regulations of Article 947 of the Civil Code of the Russian Federation interpret the determination of the amount of the insured amount in a more dispositive way, allowing the parties to independently calculate the insured amount. To eliminate this conflict, it is more appropriate to refine the formulation of Article 947 of the Civil Code of the Russian Federation, which allows the parties to set the amount of the insured amount in the insurance contract, not based on the actual amount of the property, which will help to achieve a balance of interests of insurance business participants.

The improvement of the legal mechanism for the provision of insurance services is highly relevant and significant, as it opens the way for further study of related categories and identification of practical problems as a rapidly developing and promising branch of insurance law [7]. Despite the fact that the Russian insurance market is actively developing, today, the insurance institute is still in the stage of formation and progressive development. In the conditions of a market economy, not only the need of economic entities to implement insurance protection of their interests has increased, but also the disadvantages of the existing mechanism of legal regulation of insurance, as a complex legal institution, as a

whole. So, the property insurance contract, as a generic concept, includes not only the contracts named in the Civil Code of the Russian Federation, combined on the basis of insurance of property interests.

3 Discussion

As it is known, the occurrence of an insured event should not depend on the actions of the policyholder, otherwise the payment of insurance compensation will not be made, since the fact of the occurrence of an adverse event is important. But even despite the above factors, the nature of the relations that arise between the insurer and the policyholder is beneficial to both parties to the insurance contract [8].

The feature of insurance as a financial service is also the isolation of the movement of damage within the framework of the created insurance fund. That is, the policyholders, paying the insurance premium, form an insurance fund. The funds of this fund are spent to compensate for the damage that occurs only for its participants and only in the event of insured events.

Russian legislation clearly refers to insurance as a financial service, meaning that, along with banking services, services provided on the securities market and related to the attraction and placement of funds, insurance services are also understood as a financial service. The provisions of this article do not define the concept of "financial service" as such, but only highlight its characteristic feature—the connection with the attraction and subsequent placement of other people's funds ("financial intermediation").

The property insurance contract is characterized by the possibility of its conclusion in favor of a third party who is not the policyholder – the beneficiary, who must also have an interest in the preservation of the insured property. The peculiarity of its legal position is that, without being a party to the concluded contract, it acquires the rights of the policyholder. In this case, the policyholder in the content of the insurance contract can specify both a specific person as a beneficiary, and not specify his name or name, that is, to carry out insurance "at the expense of whom it should be". The conclusion of this contract implies the issuance of a bearer insurance policy, which the beneficiary can present to the insurer upon the occurrence of an insured event. But the beneficiary in this case should be, if not exactly a certain person, then the person whose definition is possible at the time of the occurrence of the insured event.

An enterprise risk insurance contract is also a type of property insurance contract. The specific feature of this contract is its subject structure and the object of insurance itself. In particular, under this contract, it is possible to insure the risk of losses or non-receipt of expected income from the implementation of business activities only. The policyholders at the conclusion of this contract can only be individual entrepreneurs or commercial organizations operating in the specified status legally.

In practice, the question of the ratio of financial and business risks is acute. From the point of view of the Law on the Organization of Insurance Business, these types of risks, of course, differ. The legislator himself divided these contracts, without equating financial risk with business risk. In our opinion, the main difference between these types of insurance is, firstly, the subject composition on the side of the policyholder, and secondly, the nature of the insured risk. Financial risks may have nothing to do with business activities: financial risks can only be incurred in the areas of certain commercial activities and business activities for profit. Moreover, business risk is an immanent feature of business activity, while financial risk concerns the income and expenses (finances) of individuals, regardless of their status [9].

Property interest in property insurance contracts is of legal and economic importance, since in its absence, the concluded insurance contract will be considered invalid. If there is

a relevant dispute about the validity of the insurance contract concluded due to the lack of insurance interest of the policyholder (beneficiary), the burden of proof of the lack of interest will lie on the person who submitted this claim [10]. More often, such person is an insurance organization, and as it is exactly which, while concluding the contract, is obliged to certify the existence of an insurance interest in the policyholder (insured person), she will prove the fact of its absence.

It is important, the civil legislation contains a direct reference to the prohibition of insurance in relation to certain interests: the terms of contracts containing such provisions are null and void. An important feature of the insurance contract is the fact that the event for which the insurance was carried out must occur regardless of the actions of the policyholder and the persons for whom he is responsible. Otherwise, if the occurrence of the insured event was unavoidably or intentionally provoked by both the policyholder and the insured person and the beneficiary, the insurer is released from the obligation to make the insurance payment.

4 Conclusion

The characteristic features of insurance as a financial service and a type of economic activity are defined: the formation of a risk community; the obligation of the insurer to pay insurance compensation directly depends on the probability of an insured event, and it is the accidental, unforeseen nature of the event that is important; only those risks are subject to insurance, the damage from the occurrence of which is subject to monetary assessment.

Property insurance, as a type of economic activity, is a type of paid provision of services. It is established that in the Russian Federation, entrepreneurship, deprived of state support for insurance and special legislative regulation, will not be able to perform economic and legal functions in the national business model [11].

The doctrine rightly states that «it is necessary to achieve a balance in the legal regulation of civil, family and business relations, private and public business interests» [6]. In this regard, financial risk insurance is an independent type of property insurance. Financial risk insurance cannot be considered as a type of business risk insurance, because these are two different categories by their nature. To form a uniform practice and eliminate confusion in the interpretation of these terms, the provisions of Article 929 of the Civil Code of the Russian Federation should include rules on financial risk insurance and classify them as a type of property insurance contract along with property insurance contracts, civil liability and business risk.

References

1. J.B. Fogelson, Insurance law: theoretical foundations and practical application: monograph. (Norma, Moscow, 2012).
2. N.N. Bykova, Vestnik NGIEI, 12 (67), 140 (2016).
3. A.N. Levushkin, I.K. Kuzmina, Bulletin of the Moscow State Regional University. Series: Jurisprudence, 3, 112–122 (2020) DOI: 10.18384/2310-6794-2020-3-112-122
4. V.G. Golyshev, A.V. Golysheva, O.V. Efimova, E.V. Pitko, A.N. Levushkin, Revista Inclusiones 7, 229–239 (2020).
5. A.A. Mokhov, Medical Law 1, 12–18 (2020).
6. A.N. Levushkin, Civil law, 2, 3 - 7. (2020) DOI: 10.18572/2070-2140-2020-2-3-7
7. A.N. Levushkin, I.V. Zaikina, M.A. Bulavina, G.A. Kozlitin, V.V. Zaikin, PalArch's J. Archaeol. Egypt/Egyptol. 17(6), 6964–6973 (2020).

8. L.S. Larina , S.V. Sergeev, Property insurance against fire and other hazards. (2007) // URL: <http://www.vedco.ru/faq/detail.php?ID=1601064>
9. Kh. V. Peshkova, E. S. Bondareva, T. I. Lysenko, I. A. Mitrichev, Commentary on the Federal Law «About compulsory health insurance in the Russian Federation» // SPS «Consultant Plus». (2017).
10. P.V. Krashennikov, Article-by-article commentary to the Civil Code of the Russian Federation, Part Two (volume 3). (Statut, Moscow, 2011).
11. Y.G. Leskova, A.N. Levushkin, S.Yu. Morozov, V.V. Romanov, S.G. Poberezhny, L.E. Rakhmatullina, *Int. J. Econ. Bus. Adm.* 8(4), 700–709 (2020).