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Prevention of criminal offences in the field of insurance in Ukraine

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■ **Abstract.** The purpose of the study is to explore the most common criminal offences in the field of insurance in Ukraine and to identify efficient measures to prevent criminal offences of this category to implement them in the legal reality of the country. Methodology. The methodological tools were chosen by the purpose, specifics of the object and subject of the study. In the course of the study, the results were generalised, processed and analysed. The specific research method used in the study is the method of system analysis. The scientific originality of the research is that based on the analysis of quantitative and qualitative characteristics of criminal offences in the field of insurance, the system of criminal offences that encroach on various objects of criminal law protection is determined. A particular place in it is occupied by various types of illegal possession of the property of the insurance company by professional participants of the insurance market and insurers. Conclusions. Considering the scale of criminal offences in the insurance sector, insurance companies should cooperate to prevent them. It requires the establishment of associations, and tandems of insurers, within which databases contain information about the insured, “black lists” of unscrupulous insurers, cooperative regional databases of potential fraudsters, etc. In addition, the priority area of preventing criminal offences in this segment is the established interaction of law enforcement agencies with the security services of insurance companies in detecting fraud and other illegal acts designed to illegally obtain insurance compensation. Thus, the implementation of the above measures will contribute to the development of the domestic insurance market and increase the efficiency of the insurance institution in general

■ **Keywords:** insurance; insurance risk; criminalisation; criminal offences; prevention; fraud

■ Introduction

The domestic insurance industry as an important part of the country's financial industry is developing inseparably from the national and global context. The international financial and, consequently, the insurance market is currently experiencing the impact of diverse trends. On the one hand, the explosive growth of new technologies contributes to the strengthening of financial interconnections and the

availability of services between countries, enterprises, and individuals. On the other hand, political interference results in the establishment of new trade barriers and financial protectionism [1].

The design of the insurance market – is a significant factor in the development of the national economy. Therewith, the growth of the shadow sector of the economy and criminalisation of almost

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all spheres of economic activity hinders the development of market relations in Ukraine, threatening the national interests and national security of the state, undermining the trust of citizens in democratic institutions and values, causing concern in society and critical assessments of international experts. Affordable insurance conditions establish the grounds for committing criminal offences to illegally obtain insurance payments, as a result of which this segment of the financial market has recently become one of the most attractive for fraudsters.

The purpose and objective of the research are to explore efficient measures to prevent criminal offences in the field of insurance in Ukraine.

The author, for the first time, attempted to solve the problem of implementing an integrated approach, which includes the development of collective tools and methods of counteracting illegal actions in insurance, maintaining a constant dialogue with public authorities, strengthening cooperation with law enforcement agencies, active outreach work with the population.

■ Outline of the Main Material

Criminal offences in the field of insurance are determined by several criminal acts that encroach on various objects of criminal law protection. Along with criminal offences in the field of economic activity, a particular place in this system is occupied by various types of misappropriation of other people's property, and primary fraud by professional participants of the insurance market (insurers) and insureds.

The insurance market in Ukraine is at the stage of establishment. Since independence, several stages have already passed, during which the legal, organisational and economic foundation of insurance relations has changed. Historically, the insurance industry in the former USSR was strictly centralised in a single insurance body - the State Insurance. In the minds of people, insurance was not fixed as a mandatory component of life organisation, and the way of life was that citizens did not even think about the necessity of life or property insurance against accidents and natural disasters. The profession of insurance agents was not attractive and profitable.

The situation has changed significantly due to the demonopolisation of the insurance industry, and legalisation of enterprises, which resulted in an increase in the number of alternative non-state commercial insurance organisations, whose activities covered, in addition to conventional types of insurance, insurance of commercial, financial, economic risks, risks of liability for damage in other countries, export credits and foreign investments, which have become an everyday reality for tens of thousands of people.

According to experts, a new insurance industry has been established in Ukraine, designed to provide a wide range of services to both legal entities of various forms of ownership and citizens individually [2].

The potential possibility of natural disasters and accidents is the essence of insurance risk. The term "risk" has several meanings. It is identified with the danger that threatens a particular subject or object. In fact, not every danger is a risk from the insurance standpoint. Insurance risks include only such cases of danger, the occurrence of which can be predicted and evaluated based on historical experience and using mathematical and statistical methods.

Insurance as an economic category is in a subordinate relationship with the category of finance and is a complex of specific redistributive relations between its participants regarding the development of a target insurance fund, which is intended to compensate for possible damage [3; 4].

From a legal standpoint, insurance is a legal relationship (insurance relationship) between the insurer and the insured, which consists of the obligation of the first to pay the latter an insurance payment in the event of an insured event. The legal essence of insurance is defined in Art. 1 of the Law of Ukraine "On Insurance" – a type of civil law relations to protect the property interests of citizens and legal entities in the event of specific events (insured events) defined by the insurance contract or current legislation, at the expense of funds developed by paying insurance premiums by citizens and legal entities [5]. This Law covers the rights and obligations of insurance market participants: insurers and insureds, other individuals and legal entities: recipients of insurance compensation, insurance intermediaries, state regulators, etc.

The insurance market is a system of economic relations regarding the purchase and sale of a specific product – insurance coverage due to the occurrence of specific events (insured events) defined by the insurance contract or applicable law. In the territorial aspect, there are local (regional), national (internal) and world (external) insurance markets. By industry – personal and property insurance markets. Each of these units has its structure (segmentation) [3; 4].

Insurance can be voluntary and compulsory. Voluntary insurance - is insurance performed based on the contract between the insured and the insurer. The general conditions and procedure for voluntary insurance are determined by the insurance rules established by the insurer independently of the requirements of the legislation.

Varieties of voluntary insurance are: personal insurance (life, accident, health); insurance of vehicles (land, air, water); cargo and luggage insurance; insurance of other property; insurance of loans, investments, financial risks, etc. The subject of the insurance contract (Article 980 of the Civil Code of Ukraine) is property interests that do not contradict the law and are related to life, health, ability to work and pension (personal insurance); possession, use and disposal of property (property insurance); compensation for damage caused by the insured (liability insurance) [6].

Currently, the main segment of the insurance market of Ukraine is occupied by property insurance – a branch of insurance in which the object of insurance is property interests related to the possession, disposal and use of property, and cases where the risk is associated with the loss of property (90.5% of the total gross income from paid insurance premiums) [7].

The most popular motives for committing insurance fraud are: the desire to take advantage of the case to obtain the maximum compensation; the desire to return the money spent on insurance premiums; the benefit when obtaining compensation is the only source of income; an additional source of profit for the insurers themselves; other reasons of a material or moral nature [1].

The structure of criminal offences in the field of insurance is determined by several criminal acts that encroach on various objects of criminal law protection. A particular place in this system is occupied by various types of illegal appropriation of other people's property, and primary fraud by professional participants of the insurance market (insurers) and insureds.

The issue of financial fraud is highly relevant to the domestic insurance market. In Ukraine, insurance fraud accounts for 21% or UAH 1.5 billion of gross payments, in particular: 25 % for voluntary health insurance, 23 % for CASCO insurance, 18 % for MTPL insurance, 16 % for liability insurance, 14 % for travel insurance, 12 % for property insurance and 10 % for accident insurance [8].

In the current conditions in different countries, motor insurance premiums have the largest share in the structure of insurance premiums of general insurance. Considering the above, motor insurance is one of the most popular types of insurance in the European insurance market and the world in general [9].

Thus, the vast majority of frauds in the insurance market are committed in the field of motor vehicle insurance. According to expert estimates, up to 70% - falls on car insurance, and some large companies say that up to 10% of all car fees are spent on payments to fraudsters. The share of fraud in the motor insurance market in the overall structure of the insurance market, according to experts, is at least 60% [7; 10].

A definite decrease in the number of detected frauds in the field of auto insurance is explained primarily by the high level of their latency. Cases to receive insurance payments are registered only in single cases (24%) or not registered at all (69%). The high level of latency of criminal offences is influenced by objective factors, primarily general criminalisation of particular objects of the insurance business, in particular, the automotive market (19 %); negligence or personal interest of representatives of insurance companies (24 %); lack of proper interaction between insurers and law enforcement agencies (12 %); inadequate criminal prosecution for committing criminal offences (7 %); attempts of insurance organisations that have detected signs of fraud to resolve the issue

in pre-trial proceedings without applying to law enforcement agencies (20 %); availability of insurance terms and conditions and ease of obtaining insurance coverage (20 %).

According to the research, car insurance has become the most popular among fraudsters due to several factors. First, is accessibility. To conclude an insurance contract, it is necessary to purchase a car and have a relatively small amount of money (up to 10% of the cost of insurance) to pay the first instalment. Instead, insurance, for example, of means of production is performed only by large enterprises. Another aspect is mobility and ease of sale of the insured car. After staging an insurance case, it is much easier to hide or sell it than, for example, a railway train with cargo. Secondly, the general criminalisation of the motor vehicle market. A significant share of sales of new and used cars is under the “roof” of organised criminal groups, which involve law enforcement officers. They control the markets where stolen vehicles are sold. There are clandestine workshops that prepare for the sale of vehicles. There is a well-established industry of legalisation of cars obtained by criminal means (change of identification numbers, appearance, forgery of documents, etc.). These conditions are most favourable for criminals who have the opportunity to prepare a staged insurance case and rapidly sell the insured car. Indeed, according to the materials of operational and investigative cases, most fraudsters - are representatives of the “criminal car business”. Thirdly, negligence and self-interest of the insurer or third parties. At various stages of insurance relations, the possibility of criminal collusion of fraudsters with representatives of the insurance company to assess the value of the property, the degree of risk and other circumstances affecting the terms of the contract are not excluded. Illegal assistance to fraudsters is possible on the part of police officers, appraisal organisations, expert services, service stations, etc. Fourth, the absence of proper interaction and information exchange between the insurance companies and insurers with law enforcement agencies and banks.

The high profitability of fraud in the field of auto insurance contributed to the high pace of its development, which forced insurance companies to revise the general terms and conditions of vehicle insurance against illegal possession. Most insurers started to insure the risk of theft only in combination with other risks. In addition, the cost of such insurance has increased significantly, large unconditional deductibles have been introduced, and requirements for mandatory installation of protective devices on insured vehicles. The insurer reserved the right to periodically check the technical condition of the vehicle [11].

The term “insurance fraud” in the legal literature is understood ambiguously. Supporters of a broad interpretation include all types of illegal acts in the field of insurance fraud. The term “insurance fraud”,

according to N.A. Lopashenko is conditional and cannot be considered successful. It is more correct to refer to fraud committed in the field of insurance or the field of insurance activities [12]. Insurance fraud is defined as the unlawful behaviour of subjects of insurance relations designed to obtain insurance indemnity by the insured by deception or breach of trust; payment of insurance premium (insurance premium) less than necessary for a correct risk assessment; concealment of essential information during the conclusion or the term of the insurance contract; the refusal of the insurer to pay insurance indemnity without sufficient grounds [13; 14].

Thus, insurance fraud includes all types of illegal actions in the field of insurance regardless of their subjects, the presence of a criminal offence, etc. The main shortcoming of this position, in the authors' opinion, is the attempt of the authors to cover all possible offences despite their legal assessment. Consider this approach is not entirely justified, at least in the criminal law aspect. In addition, the study demonstrates that it is impossible to list in one definition the ways of committing insurance fraud due to the diversity of their manifestations and levels of distribution.

Other scientists consider insurance fraud to be an intentional crime designed to deceive the insurance company, which is committed by the insured for illegal enrichment at the expense of the insurer by misrepresenting information about the object of insurance, staging an insured event, artificially increasing the amount of insurance compensation, and committing other illegal actions [15]. The definition, in the author's opinion, is more successful.

In legal science, a third approach has been developed, according to which insurance fraud includes any fraud related to the insurance business [13]. In addition, the author's opinion, is not entirely correct, since this way, fictitious entrepreneurship and cases of establishing financial pyramids, which have no close connection with insurance legal relations, are unreasonably attributed to insurance fraud.

Based on the research sources of foreign countries, which have already accumulated considerable experience in determining the legal content, qualification and counteraction to offences in the field of insurance, consider it appropriate to propose to define "fraud in the field of insurance" as illegal behaviour of the subjects of the insurance contract, designed to obtain insurance compensation by the subject of insurance relations by deception or abuse of trust [16].

Therewith, scammers try to insure the cargo in containers in case of its transportation, by organising damage or breaking of seals from containers during the tracing, thus imitating the theft of cargo. The insurance company is forced to pay the sum insured for the loss of property that was not actually in the container. To counteract such fraud, insurance companies send their representatives who must control the correct loading of goods and sealing

of containers. But the salaries of such representatives are small, which simplifies their bribery for fraudsters. In addition, criminals falsify documents on the loss, and damage of products, overstate the value of cargo and resort to other types of fraud. Similarly, fraud is committed in the case of insurance of houses, valuable collections, paintings by famous artists, antiques and other properties [17].

The features of insurance fraud, in comparison with fraud in other areas of financial relations, are as follows: the object of insurance fraud is the funds of the insurance fund under the jurisdiction of the insurer; insurance fraud is associated with using the specifics of the insurance business (the perpetrator acts within the legal field regulated by civil and economic legislation); the perpetrator of insurance fraud violates relations to protect the property interests of individuals and legal entities in the event of specific events (insured events), which are artificially established (staged, provoked) or illegally used; as a rule, insurance fraud contains several other (subordinate) criminal offences.

Due to the classification of fraudulent actions in the field of insurance, the entire set of criminal attacks is divided into interconnected chains that are in hierarchical subordination. Consider the main classification series:

1. Depending on the purpose of fraudulent actions: committed for illegal receipt of insurance payments; to obtain insurance payments in a larger amount than is required for the specified insured event; designed to obtain insurance payments for damage caused to the object of insurance, which was not under insurance coverage.

2. Depending on the subject of fraud (according to the degree of participation of interested employees of insurance companies): committed by insurers; insurers together with employees of insurance companies; representatives of insurance organisations: heads of insurance companies or insurance intermediaries.

3. Depending on the stage of insurance legal relations: at the stage of concluding an insurance contract; during the validity of the insurance contract; at the stage of applying for insurance payment.

In the criminal law aspect, insurance fraud is a separate case of misappropriation of someone else's property. However, the mechanism of embezzlement (compared to the Soviet practice) has undergone significant changes. In the conditions of market relations, the main element of its originality was using for criminal purposes the organisational and legal status of business entities, and institutions of economic and financial law.

Fraud in the field of insurance as a criminal technology combines several criminal offences provided for in different sections of the Criminal Code of Ukraine [18] but is connected by a single purpose of illegal receipt of insurance compensation. It provides grounds to consider fraud as a system-forming com-

ponent of the relevant technology of criminal activity. A detailed criminal and legal classification are important for considering all the elements of the forensic characteristics of the relevant crimes. Three interrelated elements can be identified in fraud technology:

1. Criminal offences intended for obtaining insurance indemnity are the following: fraud (Art. 190 of the CC of Ukraine); misappropriation, embezzlement or possession of property by abuse of office (Art. 191 of the CC of Ukraine); causing property damage by deception or breach of trust (Art. 192 of the CC of Ukraine).

2. Actions that are a way or a necessary condition for committing insurance fraud: destruction, forgery or replacement of vehicle unit numbers (Article 290 of the CC of Ukraine); forgery of documents, seals, stamps and forms, their sale, use of forged documents (Article 358 of the CC of Ukraine); knowingly false report of a criminal offence (Article 383 of the CC of Ukraine); misleading a court or other authorised body (Article 384 of the CC of Ukraine), etc.

3. Actions designed to conceal the traces of criminal proceeds, the persons who received them, establishing the appearance of the legal origin of these proceeds: legalisation (laundering) of the proceeds of crime (Article 209 of the CC of Ukraine); theft, misappropriation, extortion of documents, stamps, seals, their acquisition by fraud or abuse of office or their damage (Article 357 of the CC of Ukraine).

4. Actions connected with illegal activities of officials: official criminal offences under Art. 364, 366-370 of the CC of Ukraine.

However, the necessity of efficient state regulation of the design of the national economy and the development of governance institutions in a market environment requires the establishment of an effective control system, the strategic purpose of which is to ensure the stability of economic growth by preventing crimes in the provision of financial services and inefficient use of financial resources. Solving the issues of fraud prevention in the insurance market requires the definition of specific actions at the legislative level and the use by law enforcement agencies of the entire arsenal of powers granted to them by law. The study of investigative and judicial practice proves that usually the employees of the security services of insurance companies are involved in the detection and prevention of criminal violations in the field of insurance, even though their activities to identify and document criminal acts (independently and in cooperation with law enforcement agencies) are exclusively organisational and are not regulated by law (only the obligation of financial institutions to protect the safety of customer funds is fixed), which, in the author's opinion, requires regulation both at the legislative level through the adoption of the long-awaited Law of Ukraine "On Private Detective Activity" [19], and at the subordinate level through the development and adoption, with the participation of the Ministry of Internal Affairs of Ukraine,

the Office of the Prosecutor General of Ukraine, the Bureau of Economic Security of Ukraine and other interested agencies, of interagency instructions on cooperation in the field of ensuring the security of insurance activities.

Thus, most of the tasks related to the prevention of criminal offences that infringe on the interests of insurance companies are the responsibility of non-state security services. Legislative prohibitions on the detection of these signs were not identified during this research, but there are no explicit provisions in the legislation that would acknowledge the authorised units of financial institutions of banks as subjects of the prevention of criminal offences.

The study of the "internal" instructions of some insurance companies demonstrates that most of them establish the following regulatory obligations of security services: detection of signs of insurance fraud and implementation of measures to prevent and stop them; preparation of materials for law enforcement agencies to resolve the issue of initiating criminal proceedings; participation in the pre-trial investigation of criminal offences; sending information related to the investigation to law enforcement agencies; implementation of measures within the competence to compensate for the damages caused.

Therefore, the obligations of employees of the security services of insurance companies are: the implementation of investigative activities; participation in scheduled and unscheduled internal inspections of the activities of insurance companies, conducted using administrative and financial control; conducting internal (official) investigations into the facts of damage to property and the order of the company; organisation and implementation of interaction with law enforcement agencies, assistance to them in performing investigative, search and organisational measures provided by law.

The efficiency of activities to prevent insurance fraud significantly depends on the interaction at the level of law enforcement and other state-controlling authorities and insurance organisations. Combining the efforts of the above-mentioned services and organisations in the fight against offences and crimes in the insurance market allows concentrating their forces, means, and technical capabilities, to cover the majority of objects, to better use the capabilities of each of the subjects to identify and expose criminals.

■ Conclusions

Thus, it should be noted that despite the established system of state regulation of the financial services market, the definition and distribution of powers to regulate, supervise and control the activities of financial services, state regulation of the financial sector of the economy at the current stage is not sufficiently effective, behind the current trends and requirements of market development, insufficiently considers international experience. The key problem of

regulating the financial services market is insufficient coordination of actions between financial regulators, which in the process of supervisory activities is manifested in the inconsistency of their actions in the adoption of regulations, insufficient coordination of actions in the conditions of systemic financial

crises, insufficient exchange of information and lack of interaction mechanisms in the supervision of financial conglomerates or related parties. In addition, Ukraine's further integration into the global structures that determine international policy in the field of financial services regulation is of great significance.

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Запобігання кримінальним правопорушенням у сфері страхування в Україні

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■ **Анотація.** Метою статті є дослідження найпоширеніших кримінальних правопорушень у сфері страхування в Україні та виявлення ефективних заходів запобігання кримінальним правопорушенням зазначеної категорії з метою імплементації їх у правову дійсність країни. Методологія. Методологічний інструментарій обрано відповідно до поставленої мети, специфіки об'єкта та предмета дослідження. У процесі дослідження здійснено узагальнення, обробку й аналіз отриманих результатів. Спеціальним методом дослідження, використаним у статті, є метод системного аналізу. Наукова новизна публікації полягає в тому, що на підставі аналізу кількісних і якісних характеристик кримінальних правопорушень у сфері страхування визначено систему кримінально караних діянь, які посягають на різні об'єкти кримінально-правової охорони. Окреме місце в ній посідають різні види незаконного заволодіння майном страхової компанії з боку професійних учасників страхового ринку та страхувальників. Висновки. Ураховуючи масштаби кримінальних правопорушень у сфері страхування, страховим компаніям слід об'єднувати зусилля з метою їх уникнення. Для цього необхідно створювати асоціації, тандеми страховиків, у межах яких об'єднувати бази даних, що містять відомості щодо застрахованих, «чорні списки» недобросовісних страхувальників, спільні регіональні банки даних потенційних шахраїв тощо. Крім того, пріоритетним напрямом запобігання кримінальним правопорушенням у цьому сегменті є налагоджена взаємодія правоохоронних органів зі службами безпеки страхових компаній у виявленні шахрайства, інших протиправних діянь, спрямованих на незаконне одержання страхового відшкодування. Вважаємо, що застосування на практиці перелічених вище заходів сприятиме розвитку вітчизняного ринку страхування та підвищенню ефективності інституту страхування загалом

■ **Ключові слова:** страхування; страховий ризик; криміналізація; кримінальні правопорушення; запобігання; шахрайство