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Standard and legal fixing of ecological insurance in the system of protection of the state interests of Russia

In this article the current state of standard and legal definition of ecological insurance is considered and a need of its legislative fixing for the system of protection of the state interests is proved. It is specified the purposes of ecological insurance (a guarantee of indemnification caused to the natural objects, life and health of natural persons; formation of insurance reserves) and on the purpose investment. The author analyzes the reasons for which ecological insurance still hasn't gained due the development. First of all, it, according to the author of this article, lack of the necessary legislative basis regulating a procedure of ecological insurance in the voluntary and obligatory forms and also the lack of standard and legal content of eco-insurance in the legislation. Analysis of the current state of the Russian legislation on ecological insurance for the purpose of definition of the directions of its high-quality reforming is given. The opinion is expressed that such reforming will allow solve successfully the main objective of this institute – to compensate the arising losses to the victims and in addition to finance the nature protection activity of economic entities, including on neutralization of techno-genic threats for the environment, at observance of public and private interests of all parties.

Keywords: ecological insurance, environmental risk, protection of interests.

Нормативно-правовое закрепление экологического страхования в системе защиты государственных интересов России

В статье рассматривается текущее состояние нормативно-правового определения экологического страхования и обосновывается необходимость его законодательного закрепления в системе защиты государственных интересов. Указывается на цели экологического страхования (гарантия возмещения вреда, причиненного природным объектам, жизни и здоровью физических лиц; формирование страховых резервов) и на цель инвестиционную. Автор анализирует причины, по которым экологическое страхование до сих пор не получило должного развития. Прежде всего, это, по мнению автора статьи, отсутствие необходимой законодательной основы, регламентирующей порядок осуществления экологического страхования в добровольной и обязательной формах, а также отсутствие нормативно-правового содержания экострахования в законодательстве.

Дается анализ современного состояния российского законодательства об экологическом страховании с целью определения направлений его качественного реформирования. Высказывается мнение, что такое реформирование позволит успешно решить основную задачу данного института – компенсировать возникающие убытки пострадавшим и дополнительно финансировать природоохранную деятельность хозяйствующих субъектов, в том числе по нейтрализации техногенных угроз для окружающей среды, при соблюдении публичных и частных интересов всех сторон.

Ключевые слова: экологическое страхование, экологический риск, защита интересов.

Protection of the state interests peculiar to the bodies of public power at providing them in cases approach of risks in the ecological sphere is possible by various means. At the same time it is important to consider that at the present stage of development "the interest protected by the right following from the civil legal relationship and vice versa – realization of public functions can result in a need to use civil constructions" can become public also [1, p. 14]. In particular, it takes place to be when ensuring public interests in the sphere of environmental management by the means of such civil institute as insurance which according to p. 1 of the art. 2 of the Law of RF "About the organization of insurance matter in the Russian Federation" [2] represents the relations on protection of interests of the natural and legal entities of the Russian Federation, territorial subjects of the Russian Federation and municipal units at an approach of certain insured events at the expense of the monetary funds formed by insurers of the paid insurance premiums (insurance premiums) and also at the expense of other means of insurers.

Representing one of new and potentially important methods of economic regulation in the field of environmental protection, ecological insurance in Russia pursues three aims:

- creation of the guaranteed sources of indemnification caused to the objects of environmental protection, life and health of natural persons in the course of economic and other activity and also as a result of natural disasters and accidents;
- formation of insurance reserves;
- investment, expressed in the expansion fields of activity of the insurer out of traditional framework, in direct or indirect participation in the enterprises of ecological orientation [3].

So far ecological insurance in Russia hasn't gained due development, the reason to what is, in addition, the lack of the necessary legislative basis regulating a procedure of ecological insurance in the voluntary and obligatory forms and also a lack of the standard and legal content of eco-insurance in the legislation.

Existence of the numerous industrial enterprises making the potential ecological danger and also emergence of different natural phenomena sometimes attracting the negative consequences causes a need of active introduction of insurance for the protection of ecological interests of the state and, respectively, ensuring ecological safety. At the moment still the statement stated by the certain

authors that the existing acts don't carry out legal regulation in the volume sufficient for practical introduction of ecological insurance [4] continues to remain relevant and fair.

The federal law "About Environmental Protection" [5] in the article 18 establishes that ecological insurance is carried out for protection of the property interests of legal entities and individuals on a case of environmental risks that obligatory state ecological insurance can be carried out. Ecological insurance acts as a tool combining the requirements of decrease in the environmental risk and maintaining the economic efficiency of functioning of the economic entity [6] and also the instrument of protection of ecological interests of the state and the other subjects.

Concerning a form of implementation of ecological insurance the above-stated law mentions only obligatory state insurance which conditions are determined by the law. This legal instruction doesn't exclude a possibility of signing of the contract of insurance at all that it is provided by p. 2 of the article 927 of the Civil Code of the Russian Federation. In this regard the statement that "at obligatory ecological insurance as a basis of legal relationship between the insurer and the insured serves the law" is submitted wrong [7, p. 148]. Besides the law, also the contract can form the basis of emergence of the insurance legal relationship that is applicable also to the ecological insurance realized both in the voluntary and obligatory forms.

In spite of the fact that implementation of ecological insurance in the forms of others, than obligatory state, directly isn't provided by the Federal law "About Environmental Protection in the Russian Federation", implementation of both the voluntary and the obligatory non-state insurance is represented lawful what follows from the legislative establishment of a possibility of the obligatory state ecological insurance and a lack of the ban of eco-insurance in other forms. Despite the legislative establishment of possibility of carrying out the eco-insurance not only in the form of obligatory state insurance, in the literature both before, and the position that for development of ecological insurance it is necessary to refuse the market dogmatic prevails to this day and to agree with the inevitability of the fact that the state regulation has to capture relationship of insurers concerning the decrease in environmental risk of functioning of the economic entities [6].

Some inconsistency of the legislator in a question of definition of a form and types of implementation of eco-insurance attracts attention. So, on the one hand, as it has been specified above, the law on environmental protection in essence as a priority form of implementation of the eco-insurance realized, mainly, by the means of insurance of civil liability considers the obligatory state insurance, but it won't be coordinated at all with the fact that carrying out ecological insurance of the civil liability isn't provided by p. 3 of the article 927 of the Civil Code of the Russian Federation in the form of obligatory state insurance.

The available problem of branch accessory of the insurance relations of ecological insurance is caused partly by absence in the Civil Code of the Russian Federation in the chapter 48 the norms on the obligation of ecological insurance, though it is necessary to recognize that its norms are a basis of its legal regulation.

Legislative fixing of a possibility of isolation and allocation of ecological insurance from the types of insurance specified in the Civil Code of the Russian Federation that should be made in two directions could become a solution of this problem:

- 1) from a position of an object of the insurance relations – insurance interest;
- 2) taking into account the features inherent in the insurance environmental risks.

Partly such approach can be supported, and it is in many respects similar to the offers to give "status" of a special type of insurance, for example, for the transport insurance. At the same time certain isolation of eco-insurance in itself in the Civil Code of the Russian Federation along with the other types of insurance is in essence senseless only for the sake of only its allocation in an independent type of insurance without definition of that purpose for which achievement it is necessary. Such isolation is represented justified and expedient in a case if the acts for ecological insurance contradict the standards of the Civil Code of the Russian Federation on insurance and a need to give a priority in regulation of this insurance to the acts of ecological legislation. The available inconsistency of the ecological and civil legislation regarding the eco-insurance regulation shown on this example demonstrates that legal regulation of the institute of insurance in the sphere of ensuring environment protection in many respects comes in a separation from the civil legislation on insurance that finally doesn't promote efficiency of the civil institute of insurance in the system of protection of public interests at the approach of environmental risks. Undoubtedly, reduction in compliance among themselves of the legal instructions about insurance for protection of the property interests on a case of approach of environmental risks in such branches of the legislation as civil and ecological is required.

The inter-parliamentary Assembly of the State Parties of the CIS has adopted the model law "About Ecological Insurance" [8] in which art. 2 ecological insurance is determined as a system of types of insurance in the sphere of protection of the objects of environment directed to the protection of property interests of the state, legal entities and individuals. In the similar model law [9] which is earlier adopted in 2003 ecological insurance was understood in a bit different, narrower, a format namely as an obligatory insurance of civil liability of the persons whose activity is a source of the increased danger to the surrounding environment. As we see over time the model law has departed from the limited approach to eco-insurance only as to the obligatory insurance and the insurance only of civil liability that, undoubtedly, correctly, but, alas, in present understanding eco-insurance in the model law is determined far not in the best way and in the essence allows unfairly broad interpretation.

In the literature it is indicated that now the Law on industrial safety [10] while the draft of the absent Federal law "About Obligatory Ecological Insurance" is discussed carries out a role of the fundamental act for eco-insurance [11] what it is impossible to agree with as the specified law mentions only obligatory insurance of the civil liability for infliction of harm as a result of accident or an incident on

hazardous production facility which is partly possible to recognize as ecological insurance.

One of the main problems arising when determining the concept "ecological insurance" consists that now substitution of that is observed by the concept "insurance of the risk of environmental pollution (environmental risk)".

In the domestic legal science there were various ideas of ecological insurance which uniting beginning can be considered recognition as the task of ecological insurance accumulation and the direction of funds for the nature protection actions through the special funds, or indemnification caused to the surrounding environment, health of the population as a result of deterioration or change of its quality.

Ecological insurance, according to the certain authors, includes "... insurance of natural objects as a property and insurance of the civil owner liability of hazardous production facility" [12, p. 209-210]. G.A. Motkin considering ecological insurance "... insurance of responsibility of the objects – potential responsible for emergency, volley pollution of the environment and insurance of the own losses arising at a source of such pollution adheres to a little narrower understanding" [13, p. 125]. In turn, S.A. Bogolyubov including in this concept not only insurance of responsibility for the done ecological harm and insurance of the property, but also personal insurance of the citizens on a case of ecological natural disaster, accidents [14] acts as the adherent of broad understanding of the term "ecological insurance".

M.M. Brinchuk who is also carrying the property interests connected with the life and health (personal insurance) [15] to the objects of eco-insurance adheres to a similar approach. Actually in this case eco-insurance includes insurance of any objects of users of nature upon the action of natural phenomena.

Normative legal acts of the current period have quite vaguely reacted to the outlined objective need to formulate a uniform concept of ecological insurance that is partly caused by the existence of its diverse concepts of the doctrine.

Existence of environmental risks, on which case of approach the eco-insurance is carried out acts as a condition of carrying out eco-insurance. In the Federal law "About Environmental Protection" as defining one sign of environmental risk, namely probability of approach of the event having adverse effects for the environment is marked out. The extent of possible harm at the same time has no legal value for evaluation of the risk assuming establishment of the legally significant facts – establishment of the danger and volume of danger that partly contradicts compensation orientation of ecological insurance. In spite of the fact that evaluation of the risk is recognized according to the article 945 of the Civil Code of the Russian Federation as the right of insurer and on the basis of the art. 944 of the Civil Code of the Russian Federation the insurer is obliged to tell the insurer the circumstances known to the insurer having essential value for determination of probability of a loss occurrence and a size of possible losses from its approach (insurance risk) it doesn't exclude a need of fixing for the legislation of criteria for evaluation of a degree of the risk. Though evaluation of probability of a loss occurrence is traditionally carried out from the positions of general idea

about an opportunity or impossibility of approach of this or that event, nevertheless we believe that in relation to protection of the interests on a case of approach of environmental risks reasonably in the acts of ecological legislation establishment of increased requirements to the implementation of dangerous kinds of activity. It assumes introduction of the special principle of evaluation of the environmental risk consisting in the need of evaluating environmental insurance risk from the positions of special subject having professional knowledge and skills in the field of implementation of a dangerous kind of activity of the corresponding look.

Safety of the person and the society can quite be considered as one of the legal criteria of environmental risk. Observance of the standards of quality of the environment undoubtedly characterizes a state of environment as safe for the person as at observance of the corresponding standards in the usual mode the danger of negative change of quality of the environment and respectively negative impact on life and health of the person is mainly excluded. In turn, violations of the standards and technical regulations attract emergence of the relations concerning ensuring the ecological safety which are directed to environment protection and the person from excessive ecological danger that it is quite feasible within the ecological insurance which development, in fair opinion of N.A. Vasilyev, not only will allow resolve indemnification problems, but also will create conditions for additional control of activity of the unfair organizations putting the anthropogenic pressure upon the environment surrounding of the person [16].

Thus, high-quality reforming of the legislation on ecological insurance in many respects will allow solve successfully the main objective of this institute – to compensate the arising losses to the victims and in addition to finance the nature protection activity of the economic entities, including on neutralization of the techno-genic threats for the environment at observance of public and private interests of all parties. Then ecological insurance will become an effective factor of influence on the current situation in fight against the potentially possible and existing negative impact on the environment that will allow reduce ecological damage. At the same time ecological insurance will be able to protect the interests of the state and to solve the problems of environmental protection in combination with the economic and administrative methods and also the measures of tax incentives and privileges.

Active and consecutive full legislative fixing and introduction of insurance in the sphere of environmental protection for protection, first of all, of the public interests of the state, will allow realize the measures directed to decrease in the risk of harming the environment, creation of the legal mechanism of regulation of the processes of insurance answering to the modern realities in the considered sphere, to increase and use along with the budgetary funds the off-budget insurance reserves for financing of precautionary and recovery actions and also to provide insurance protection to the users of nature whose activity makes danger to the environment.

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