

THE PROSPECTS FOR LEGAL EXPENSES INSURANCE AS A MECHANISM OF ENSURING AVAILABILITY OF LEGAL SERVICES IN RUSSIA

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The subject. Nowadays a variety of civil law studies actively discusses the issues of insurance regulation. However, legal expenses insurance is unknown to Russian legal doctrine and practice. The research focuses on legal expenses insurance.

The purpose of the article is to reveal a potential that legal and economic instruments have in comparison to other guarantees of unobstructed enjoyment of the rights and legitimate interests.

The methodology. It is a comparative law approach that allows to describe the peculiarities of legal expenses insurance in foreign countries, outline the criteria to match the existing models, determine their similarities and differences as well as benefits and drawbacks. Economic analysis of law is helpful to evaluate the convenience of a new tool for citizens and its influence on the level of their legal expenses.

The results, scope of it's application. As a result, the article argues that legal expenses insurance improves the financial accessibility of qualified legal assistance and stimulates legal activity, since it does not impose any formal restrictions on the clients, the content of the contract or the sphere of its application. Meanwhile, the research formulates and characterizes some difficulties that may occur in the course of introduction of this institution to Russian law. Primarily, such obstacles include the low level of insurance culture, the need of significant amendments to legislation in force and the lack of professional expertise in this field. Despite different political and legal obstacles, it is necessary to create an effective model of legal expenses insurance in Russia in order to improve Russian legal system and form the culture of getting legal services in time.

Conclusion. The insurance mechanisms provide citizens with an opportunity to minimize their legal and financial risks connected to unforeseeable situations, which require covering costs of professional legal assistance. The authors conclude that legal expenses insurance is able to become an additional guarantee to the right to qualified legal assistance in case of appropriate adaptation to current conditions of Russian legal life and legal mechanisms.

Key words: insurance, legal aid, legal services, legal assistance, legal obstacles, enjoyment of the rights and legitimate interests, legal regulation, legal life.

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Introduction. In conditions of modern life the opportunity to seek qualified legal support in case of questions of a legal nature is one of the most important guarantees of rights and lawful interests of individuals [1, 2, 3]. However, legal assistance a priori cannot be free (in the case of free provision it is paid from the budget), and it has a relatively high cost (for example, according to the Decision of the Council of the Chamber of Lawyers of the Krasnoyarsk Territory only a lawyer to intervene as a defender costs at least 25 000 rub.), which often becomes almost insurmountable obstacle in obtaining legal assistance to many who need it.

Most states have created a system of free legal aid [4] represented through grants under a special law; at the same time, the person with an average income (most of the citizens) are left without any protection from incurring unforeseen risks costs for payment. Due to the constant increase of the volume of financing of free legal aid (eg, 453 million Euros the budget allocation in

2008 in the Netherlands [5, p. 589]), its small efficiency (which manifests itself in not always appropriate quality of services), do not apply market-based instruments to stimulate and pricing, as well as the fact that such an obligation imposes heavy burden on the state budget, which is particularly felt in recessions or instability, etc.) there was a need for more effective and modern legal and economic mechanisms to guarantee the right of qualified juridical assistance.

General characteristics of the legal expenses insurance in the practice of foreign countries. One of the alternative systems of financial support not only of costly trials, but also obtaining legal advice, preparation of legal documents in the course of the normal development of relations is the legal expenses insurance.

According to the EU 1987 Directive, legal expenses insurance refers to the obligation assumed by the insurer in exchange for payment of the counterparty of a certain amount of the insurance premium, consisting in the reimbursement of the insured (the insured person) costs incurred in the proceedings of the particular case and the provision of other services, including ensuring the compensation of damages caused to the insured person by harm through pre-trial settlement of the conflict or protection or representation of the insured's interests in civil, criminal or administrative proceedings¹.

At the same time abroad formed several models that are significantly different from each other, have been formed abroad. They are different depending on the fact, whose interests and benefits are of utmost importance - both insurers and lawyers (when included in the insurance contract conditions of a limited list of entities providing legal services [6, p. 33]), only insurers (if the insurance policy on legal aid acts as an additional component of a treaty [7, p. 5]) or the customer (at maximum autonomy and independence and the consumer, a high awareness of the product).

The new way to protect customers against unforeseen financial and legal risks is widespread both in Europe and beyond (eg in Germany², the Netherlands, France, UK, Sweden, Australia, USA and others. [8, 9]). Thus, in Germany in 2008 it has developed quite an impressive market of this type of insurance - insurers received premiums from customers in the amount of 3.2 bn. Euros [7, p. 22]. According to the 2010 insurance services expenses for legal assistance provided 50 German insurance companies, which is clearly evidenced by the significant profit business, and hence the demand for services among citizens [10, p. 40].

Advantages of insurance in terms of ensuring the availability of qualified legal services.

It seems that legal expenses insurance is a very promising direction for the development of a system of guarantees for the realization of the rights and legitimate interests of the individual, and is not provided by the state, but left to the discretion of citizens, which is most consistent with the principle of healthy individualism, giving maximal freedom of choice and independence in resolving this issue. Either way, the popularity of legal insurance is due to favorable impact on its legal climate in the society, the functioning of the legal system in general, the presence of a number of advantages compared to legal aid, which are as follows.

Firstly, legal expenses insurance significantly increases the affordability of legal services [11, 12, 13] for the middle class, which is not rich enough to cover all the costs of their own costs, but is not poor enough to receive assistance free of charge. Payment of approximately 157 euros a year in insurance premiums [7, p. 22] (a and somewhere less amount of from 30 to 100 dollars³) allows citizens to avoid more significant costs in the event of a serious legal problem (the average cost of maintaining a single case are about 872 Euro [5, p. 591]). Accordingly, due to the

¹ Council Directive 87/344/EEC of 22 June 1987. URL: <http://www.expertasig.ro/legi/directive-ee-c-asigurari/CouncilDirective-87.344.php> (дата обращения: 20.03.2017).

² Legal Aid Monitor 2008 (Monitor Gesubsidieerde Rechtsbijstand 2008). URL: http://www.rvr.org/binaries/over-rvr/monitor/monitor_2008_web_kl.pdf (дата обращения: 20.03.2017).

³ How much does legal expense insurance cost? URL: <http://www.legalinsurancebarreau.com/faq/> (дата обращения: 20.03.2017).

acquisition of the insurance policy, the insured can rely on the help of competent specialists in solving their legal problems, without risking to go bankrupt in payment for their services.

Secondly, the conclusion of insurance contract law is based on the freedom of will of the parties, ie, unlike the system of subsidized legal assistance (for which you must meet certain criteria), any restrictions on the purchase of the policy with respect to citizens does not set camping - anyone can contact the insurance company and take out insurance, regardless of their status.

However, it must be borne in mind that insurers usually have some statistics or customer base, i.e. depending on the frequency of the preceding claims for compensation, on factors such as age, occupation, marital status, etc., determine the probability of occurrence of the insured event in respect of a particular customer, its financial risks, which is taken establishing a basis for a larger or smaller insurance premium [14, p. 15].

Thirdly, the legal insurance system can increase public awareness of the legal services market. Insured persons have the opportunity to make an informed choice of the subject of legal aid, insurers, seeking a lower cost to fulfill obligation to compensate for the cost of legal services, provide customers with the recommendations of [14, p.15], have a list of trustworthy firms and lawyers who work most effectively.

In addition, some insurance organizations also help to increase the overall level of legal culture and education of clients, offer them specially designed brochures, which clearly state the main content of certain regulatory legal acts and their applicability in the most common life situations. For example, these services are available in the United States under the terms of the group insurance is issued by the employer [15, p. 259].

Fourth, more independence and freedom of the clients provided in the insurance contract. This is manifested, first of all, in the right of the insured person to apply to any specialist of interest (this principle found its consolidation, for example, in a number of legislative acts and judgments of the United Kingdom⁴), which should be clearly reflected in the conditions of insurance.

Fifth, the scope of the funding of legal services provided by the insurance policy costs is much broader. These cases include, for example, of consumer protection issues, employment, taxation and others. [7, p. 21].

Sixthly, the legal expenses insurance determines the activity of subjects in the legal sphere and motivates them to use legal tools to resolve certain issues. The presence of the possibility to seek professional advice in case of any legal problems can help to discharge the situation before its escalation through the procedure of pre-trial settlement of the conflict.

Prospects of introducing legal expenses insurance in Russia. However, despite all the positive aspects of the legal expense insurance, similar institutions are hardly known in domestic legal system: the only example of such policy is today a tourist insurance, which in some versions meets the conditions of the cost of compensation to a lawyer who goes abroad, however, due attention is paid neither to the theoretical, nor to the applied aspect. At the same time the issue of accessibility of legal services is sharp enough. So, according to sociological research, about 95 % of Russians believe that they somehow need help of a professional lawyer, the 28 % respondents agree completely, and 52.9 % agree partly because the services of lawyers are very expensive⁵.

It seems that legal expense insurance can change the situation in a favorable direction. However, the following conditions are important for the successful implementation of innovations in the domestic law.

First, careful preliminary work is required to establish the most suitable model for the Russian legal system of legal expense insurance.

⁴ Freedom to choose your lawyer. July 2014. URL: <http://www.pinsentmasons.com/pdf/freedomtochooseyourlawyer.pdf> (дата обращения: 20.03.2017).

⁵ Аналитический отчет. Рынок юридических услуг населению в Российской Федерации (апрель-июнь 2010). URL: <http://legalprograms.ru/analytics/47.html> (дата обращения: 20.03.2017).

Secondly, much attention should be paid to monitoring public opinion, analyzing the attitudes of potential consumers of insurance services to certain problems. For example, in determining the insurance cases included in the insurance conditions, it should be borne in mind that most Russians are interested in the assistance of a lawyer in housing and property matters (39.3%), hereditary disputes (14.7%), preparation of contracts and powers of attorney (11.8%), labor protection (10.6 %) etc.

Thirdly, a special legal framework for the regulation of this issue is probably necessary (similar to Germany, UK, USA), fixing limitations and restrictions in the provision of insurance services (prevention of conflict of interests, freedom of choice of lawyer, etc.).

It is also necessary to ensure the client's choice of a lawyer in accordance with his subjective views and wishes. The basis of this thesis is, on the one hand, the fact that at the moment domestic insurers objectively do not have the infrastructure necessary for independent provision of legal services. On the other hand, an approach that does not limit the client's ability to address any specialist is more progressive, as it increases competition between representatives of the professional legal community, so that lawyers are personally interested in providing services at the highest level.

Fourthly, a significant factor is the consideration of objective social conditions, is the correct definition of the most appropriate time for presenting a new service to the population, i.e. period of relative stability, high development indicators.

Fifth, distribution and promotion of insurance policies should take place at all levels - with the assistance of government agencies, lawyers, insurers [18, 19, 20].

Sixth, the problem of the lack of necessary experience among Russian insurers providing services in this area, can be solved through the use of special measures of minimization undertaken by an insurance undertaking legal and economic risks.

Conclusion. The foregoing suggests that the legal insurance can become an actionable mean of increasing the availability of qualified legal assistance, ensuring the rights and legitimate interests of the majority of citizens. At the same time implementation of foreign experience is necessary to adapt the mechanism of insurance costs for legal assistance to the realities of the Russian legal life.

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