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Zubkova Lyubov – Advanced student of
the Department of Civil Law and Process
National Academy of Internal Affairs

IDENTIFICATION OF SUBJECTS OF CIVIL LIABILITY INSURANCE IN RESPECT OF THE MOTOR VEHICLE OWNERS UNDER UKRAINIAN LAW

This article explores the issues of identification of subjects of civil liability insurance in respect of the motor vehicle owners under Ukrainian law. In particular, the legal definitions of the «insurer», «owner of the motor vehicle», «authorized holder» notions are considered and analyzed in the context of relevant international acts. Conclusions on the necessity of reforms concerning legislative approach to determination of the insured status in the Ukrainian legislation are made. Author's definitions of «insurer», «owner of the motor vehicle», «authorized holder» are provided.

Keywords: subject of civil liability insurance; motor vehicle owner; authorized holder of the motor vehicle; insured person.

Within the context of the Ukrainian integration in the European Union the issue of civil liability insurance in respect of the motor vehicle owners is of great current interest taking into account the expansion in the number of road accidents and adapt the Ukrainian legislation to the EU international legal acts and norms and improvement of the defence and reimbursement mechanisms for the road accident victims.

At the same time the separate questions arise during the initial stage of the analysis of civil liability insurance in respect of the motor vehicle owners concerning identification and correlation of «insurer», «owner of the motor vehicle», «authorized holder» notions.

Answers to the abovementioned questions will not only provide the improvements of statutory regulation and law enforcement, but also the opportunities to harmonize and give correct interpretation for the legal acts on civil liability insurance in respect of the motor vehicle owners.

As theoretical background for the research we have referred to the works by L. Baranova, T. Biegova, V. Borisova, P. Golub, Y. Zaika, N. Kopylkova, O. Krasynnikova, K. Maslova, L. Melnykova, V. Nykyforak,

O. Posokh, S. Pylypenko, T. Rassolova, I. Spasibo-Fateeva, O. Fayer, V. Yarotsky and others.

The research of the «insurer» notion was indirectly studied in the dissertation by O. Kulchiy «Statutory regulation of contractual relationship concerning mandatory civil liability insurance in respect of the motor vehicle owners»; also this notion was mentioned in the textbook by L. Kinashchuk «Insurance law» and other references devoted to issues on civil liability insurance in respect of the motor vehicle owners. However, no complex research has been conducted so far along with the legal definition of the «insurer», «owner of the motor vehicle», «authorized holder» notions.

The title of the Law of Ukraine «On mandatory civil liability insurance in respect of the motor vehicle owners» takes notice of the person identified as motor vehicle owner as the key subject of legal relationship originating from civil liability insurance procedure which resulted from endamage caused by road accident. Still various inconsistencies arise during the process of identification of the «insurer» and «owner of the motor vehicle» notions.

Clear definition of «motor vehicle owner» notion in the context of insurance issues is provided by Section 1.5 of Article 1 of the Law of Ukraine «On mandatory civil liability insurance in respect of the motor vehicle owners» stating that “motor vehicle owners are individuals and legal persons who are identified as proprietors or authorized holders (users) of the motor vehicles on the basis of the right of economic management, operative management, rental agreement or other legitimate grounds authorized to use the motor vehicle».

At the same time this definition is not completely satisfactory as it does not fully articulate the «motor vehicle owner» notion but also contradicts the logic and the concept of the law itself.

Generally the owner is identified as person who uses the right to possess, take and dispose property at one's own discretion. Right of motor vehicle ownership may be exercised solely or shared (collective ownership).

According to Section 1.10 of the Traffic Regulations motor vehicle owner is defined as individual or legal person exercising right of vehicle ownership authorized with the relevant documents. But this definition may not be taken as unobjectionable taking into account the polemical and disputable «property right» notion. Article 2 of the Law of Ukraine «On discharge of creditors' claims and registration of fixed charges» defines rights and obligations as movable property, and according to the content of Article 3 of the Law of Ukraine «On assessment of property, property rights

and professional adjusters' activity in Ukraine» property right is defined as «any right concerning property issues apart from the right of ownership including rights which are essential elements of the right of ownership (rights to possession, right of disposal and right of enjoyment)» and other special rights (right on activity performance, use of natural resources etc.) and right to claim. Still Civil Code of Ukraine defines property right as essential element of person's property (Article 190) and puts it equal to proprietary right.

Right of ownership and property right are not equal concepts – accordingly, definition of motor vehicle owner as a person who exercises the property right is completely unacceptable.

Another definition of individuals-motor vehicle owners is provided in Regulations on customs control and registration of motor vehicles transposed through the customs border of Ukraine approved by the Order of the State Customs Service of Ukraine № 1118 signed on November 17, 2005. The abovementioned regulations contain provisions which clearly define citizen of Ukraine possessing documents authorizing the right of ownership on motor vehicle as the motor vehicle owner. Also it contains a list of authorizing documents [8].

It must be mentioned that the previous edition of the defined order (Regulations on customs registration of motor vehicles and numbered vehicle units transposed through customs border of Ukraine approved with Order of the State Customs Service of Ukraine № 393 signed on June 25, 1999) contained the same list of authorizing documents for verification of eligibility of the motor vehicle ownership. This edition stated that motor vehicle insurance policies registered in the country of purchase and titled in owner's name, shipping documentation verified by the relevant authorities (customs service, police etc.) and titled in owner's name may be taken as additional documents for verification of the ownership [7].

In our opinion, specification and substitution of the «legal ownership» and «right of ownership» notions in the abovementioned provisions is completely acceptable in the context of rights as the object of statutory regulation and reflects the factual character of relationship between the object and its owner or holder. The same approach for distinction of «motor vehicle owner» and «authorized holder» notions must be applied to civil liability insurance relationship.

Taking the abovementioned into account, we identify the motor vehicle owner as individual or legal person who owns, uses and disposes the motor

vehicle as his/her property with the right verified by the relevant documents according to the Ukrainian legislation.

We must also mention that international legal acts regulating the civil liability insurance in respect of the motor vehicle owners usually do not contain the notion of «motor vehicle owner» so even the literal translation of these documents does not include it (e.g. European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles; Directive 2009/103/EC of the European Parliament and of The Council of September 16, 2009 relating to insurance against civil liability in respect of the motor vehicles use and the enforcement of the obligation to insure against this liability type). Both the titles and the contents provide no direct references to the motor vehicle owner as essential element of the liability insurance. We consider this approach to be more correct.

We also admit the importance and complexity of the «authorized holder» notion which may be defined as a person who exercises outright ownership of the motor vehicle legally or illegally.

According to the latest interpretation ownership may be identified as 1) owner's authority; 2) proprietary right for other people's property (actual possession); 3) contract-based right (contractual possession of the property). Possession may also be actual, legal or illegal and lawful as well as unlawful.

Authorized possession of the motor vehicle is defined as legally based possession exercised by the owner or authorized holders.

One of the main characteristics of the possession as a legal concept is the ability to hold and control the property which distinguishes the holder from the owner who may be incapable of using his property (e.g. the lease out property) or from the users (passengers) present in the motor vehicle responsible for the road accident who have right for compensation (the driver who owns and controls the motor vehicle is deprived of it).

According to Section 1.10 of the Traffic Regulations driver is identified as a person who is responsible for vehicle control and possesses a driver's license (tractor driver's license, temporary permit or temporary driver's license) of the required category. Instructor who is present in the car during the training session also falls under this definition.

Taking into account that literally possession as a concept may be interpreted through ability to control the motor vehicle directly, we conclude that driver is always an actual holder of the vehicle. At the same time the purpose of the civil liability insurance stipulates the possession to be authorized with the identification documents issued by the relevant authorities.

According to Section 2.1 of the Traffic Regulations, possession of the motor vehicle may be authorized with the following identification documents: a) driver's license which empowers the driver to use the vehicle; b) vehicle registration document (for vehicles under authority of the Armed Forces of Ukraine, National Guard, State Border Service, State Special Transport Service, State Communication Service, Life Saving Service – inspection stickers); c) in case if warning lights and/or special signaling devices are installed on the vehicle – permission issued by Motor Vehicle Inspection Department of MIA; d) for commuter vehicles – route plan and schedule; for full-size vehicles and vehicles with hazardous cargo – documents required by the special regulations; e) compulsory civil liability insurance policy (certificate) for owners of the motor vehicles. Drivers who are excused from the compulsory insurance against civil liability in respect of the motor vehicle owners according to the Ukrainian legislation within the territory of Ukraine must carry the appropriate documentary evidence (driver's license).

At the same time according to the Section 2.2 of the Traffic Regulations owner and legitimate holder of the motor vehicle are authorized to pass the right for vehicle control to other person who owns a driver's license of the required category.

Taking the abovementioned into account, the proprietor of the motor vehicle is identified as person who is authorized to control the motor vehicle (as driver) and use it.

Another important notion is the «user of the motor vehicle». In general the right of use is defined as right to extract all the useful characteristics and impropriation of all the profit to be obtained from the object. That is why the users are claimed to be persons who use the motor vehicle by consuming its useful properties including the passengers of the motor vehicle. In this case driver is also considered to be a user of the motor vehicle just like passengers.

It is interesting that according to EU legal acts the users' (passengers) status is considered in rather detailed manner. For example, part 3 of the Article 13 Codified Directive 2009/103/EC of September 16, 2009 on compulsory insurance against civil liability in respect of motor vehicle use and respective obligations contains provisions stating that all member states take necessary measures to ensure the invalid status of any law or agreement provision included into the insurance policy which excludes the passenger from its coverage if passenger was aware of driver's intoxication in case if passenger lays a complaint.

So the authorized holders may be identified as persons who are authorized to use the motor vehicle with the aim to transport passengers and cargo, perform activities etc.

One of the key notions for the civil liability insurance for motor vehicles is the policy holder.

The legal definition of this notion can be found in the Laws of Ukraine «On insurance» and «On compulsory insurance against civil liability for the motor vehicle owners». According to the Article 3 of the Law of Ukraine «On insurance» policy holders are identified as legal persons and legally capable individuals who entered into contract with insurance companies and hold the relevant status according to the Ukrainian legislation. Policy holders have right to settle a contract with an insurance company concerning insurance of third parties (the insured) subject to one's consent except as otherwise provided by the current legislation. Insured persons may acquire rights and obligations of policy holders under the insurance agreement.

Another definition of «policy holder» is provided in the Law of Ukraine «On compulsory insurance against civil liability for the motor vehicle owners» – section 1.1 of Article 1 defines the holders as legal persons and legally capable citizens who entered into agreements on compulsory insurance against civil liability (compensation of damage to health or property of the third party during the motor vehicle use) with the insurance company.

Article 1 of the Law of Ukraine «On compulsory insurance against civil liability for the motor vehicle owners» defines the abovementioned participants of the legal relationship as «persons with insured civil liability» and refers the insurer and other persons who are authorized to possess the motor vehicle (persons who are not defined as policy holders and mentioned in the contract) to this category. But the law does not contain any regulations or direct references for the entry into insurance contract what we consider to be absolutely incorrect.

To obtain the full comprehension of the «policy holder» notion we should refer to the provision of Article 4 (subsection 3, section 1) of the Law of Ukraine «On insurance» – the insured subjects may include the property interests concerning compensation of damage to the person or property and damage to legal person (liability insurance).

The abovementioned proves that legal definition of the «policy holder» does not obligingly stipulate the driver of the motor vehicle. Also it does not provide an opportunity to put other owners of the motor vehicles into the

insurance contract including other owner mentioned in the contract or authorized holders. Liability insurance is not provided for the third parties as well.

In our opinion this approach is not substantiated as the opportunity of liability insurance for other persons is considered to be more rational. It results in extension of the financial insurance base (e.g. father has right to insure his son against civil liability who is financially incapable of ensuring this procedure). Moreover, one insurance contract may cover other owners or/and proprietors of the motor vehicle if the ownership is shared (e.g. by the family members); also it creates comfortable legal environment for motor vehicles registered abroad – if a driver enters the territory of Ukraine in a vehicle owned by a foreign firm (not bearing the «owner» status according to Ukrainian legislation), he/she will be able to enter into the insurance contract.

In this context civil liability insurance for motor vehicle owners provides insurance of other person's risks (as he is not the owner of the motor vehicle).

The situation is absolutely different in practical aspect. Our research has proven that insurance companies put accent on issues concerning vehicles in civil liability insurance contracts. Firstly, the authorized holder may be the contract party as well as the owner; secondly, insurer may insure only his/her property; in case if motor vehicle is an object of the shared ownership, insurer may pass his/her insurance policy to other owners for vehicle control (corresponds with section 2.2 of Traffic Regulations).

It is obvious that subject of the insurance contract is identified incorrectly in the Article 4 of the Law of Ukraine «On insurance» – its legal definition does not comply with the actual social relationship it is aimed to regulate. It results in considerable inconsistency between practice and statutory regulation. We offer to amend the Article 4 (section 1, subsection 3) of the Law of Ukraine «On insurance»: «property interests concerning policy holder's compensation of the damage to person or property or damage to legal person (civil liability insurance) may be the subject of the insurance contract».

The issue of civil liability insurance available to other persons has already been studied but still open for detailed research.

We consider the legal definition mentioned in subsection 1.1 of Article 1 of the Law of Ukraine «On compulsory insurance against civil liability in respect of motor vehicle owners» to be incorrect (policy holders are identified as legal persons and legally capable citizens who have entered into insurance contract on compulsory insurance against civil liability for damage to third parties during motor vehicle operation). First and foremost, the term «citizens» should be replaced in this particular context with «legally capable individual» as

not only Ukrainian citizens have right to enter into civil liability insurance contracts within the territory of Ukraine but also foreigners and stateless persons. Also the term «motor vehicle operation» must be contextually narrowed to use of the motor vehicle by the insured person.

Another interesting definition of the policy holder was offered by the Russian researcher O. Posok – she identifies him/her as an essential participant of the insurance relationship who is legally obliged to pay insurance premium to insurer and in case of loss occurrence – fulfill the obligations by provision of insurance benefit to oneself or the beneficiary party if insurance was performed in the benefit of the third party.

Taking the abovementioned into account, we identify the policy holder as legally capable individual and legal person who have entered into the civil liability insurance contract for damage to third parties during motor vehicle operation to be compensated by the authorized owners, pay the insurance premiums and have right to demand the fulfillment of the insurer's obligations in case of loss occurrence.

The conclusions are:

policy holder is legally capable individual and legal person who have entered into the civil liability insurance contract for damage to third parties during motor vehicle operation to be compensated by the authorized owners, pay the insurance premiums and have right to demand the fulfillment of the insurer's obligations in case of loss occurrence;

owner is an individual or legal person who owns, uses and disposes the motor vehicle as his/her property with the right verified by the relevant documents according to the Ukrainian legislation;

proprietor of the motor vehicle is a person who is authorized to control the motor vehicle (as driver) and use it;

authorized holder of the motor vehicle is person who is authorized to use the motor vehicle for passenger and cargo transporting, performing activities etc.