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Matvieieva Anastasiia

*PhD, Senior Researcher, Associate Professor of the Department of
Civil Procedure, Arbitration and Private International Law
Yaroslav Mudryi National Law University
ORCID: 0000-0002-6276-6912*

PECULIARITIES OF BANKING INSTITUTIONS' OPERATION UNDER THE LEGAL REGIME OF MARTIAL LAW

Summary. *Introduction. In the circumstances of the current development of Ukrainian society, when the country is at war, all sectors of the national economy are significantly affected by the destructive processes caused by military operations. The banking sector is particularly vulnerable in such circumstances, as it is traditionally one of the most sensitive components of the national economy in times of crisis and force majeure. Since the beginning of the full-scale war, financial institutions have faced complex challenges that require prompt management decisions, including adapting to the unstable macroeconomic environment, ensuring the continuity of financial operations, attracting customer resources, and maintaining the reliability of financial services.*

The functioning of the banking system under martial law is accompanied by an increased level of risks that cover both financial and operational aspects of its activities. The main threats include foreign exchange market volatility, cyber attacks, the risk of insolvency of individual financial institutions, difficulties in providing liquidity, and significant capital outflows. Given these challenges, banking institutions are forced to influence the prompt modernization of financial and technological processes to minimize the negative effects of crisis phenomena and ensure the smooth functioning of the system.

The relevance of the study of the financial sustainability of the banking sector necessitates analyzing the causes and consequences of crisis phenomena, assessing current transformation processes, and forecasting further trends in the industry. The key areas of research are the development of optimal strategies for the adaptation of banking institutions to unstable conditions, the identification of mechanisms for managing financial risks, and the assessment of the effectiveness of state policy in the field of banking regulation. An integrated approach covering economic, legal, and technological aspects of the banking system is a prerequisite for its stabilization and laying the foundation for sustainable development.

Purpose. The purpose of the study is to determine the peculiarities of legal regulation of extraordinary legal regimes and to analyze the functioning of banking institutions during martial law in Ukraine.

Materials and methods. The research materials are: 1) regulatory and legal support for the regulation of banks in the context of the introduction of the legal regime of martial law in Ukraine; 2) works of domestic and foreign authors conducting their scientific and practical research in the field of functioning of special economic regimes, extraordinary regimes, and banking activities in special conditions.

In the course of the study, the following scientific methods were used: theoretical generalization and grouping (to characterize special legal means of regulating banking activities in a special period); formalization, analysis and synthesis (to model extraordinary modes of functioning of the banking system during the period of martial law); logical generalization of the results (formulation of conclusions).

Results. This article explores the specific features of the functioning of Ukraine's banking system under martial law, identifying the main challenges and threats faced by various participants in the Ukrainian banking market, including banks, consumers of financial services, and the National Bank of Ukraine (NBU). It has been established that the functioning of the state's banking system under

special, extraordinary conditions (such as war, pandemics, etc.) should be regulated through stricter, predominantly restrictive state regulatory measures.

Emphasis is placed on the necessity of joint efforts by experts and legislators to achieve a common goal-stabilizing and adapting the banking system to the conditions of martial law.

It is highlighted that the special measures implemented during the COVID-19 pandemic, particularly the transition of banks to remote servicing, have had a positive impact on the ability of the banking system to operate under wartime conditions.

A number of shortcomings in draft laws and other regulatory legal acts adopted after the outbreak of the full-scale war have been identified, particularly their populist nature and the lack of effective legal mechanisms for regulating the special regime of banking activities during wartime.

Discussion. Future research should focus on the levers of restraining the imbalance of the banking system in the face of external and internal threats, as well as on the development of a number of special measures that would become a kind of "emergency" bag in extraordinary conditions. It is also necessary to analyze in more detail the functions of state bodies and local governments under special economic regimes and the procedure for vesting them with extraordinary functions.

Key words: *banking activity, banking system, bank, martial law, economic and legal means and elements of special regimes of banking activity.*

Statement of the problem. The banking sector of Ukraine is a key element of the financial system of the State, which ensures the stability of economic circulation and functioning of economic processes. In the context of martial law, legal regulation of banking activities is of particular importance, which is ensured by the Government of Ukraine and the National Bank of Ukraine with the

involvement of creating regulatory and organizational conditions to maintain efficiency and competitiveness.

The modern banking system plays a significant role in ensuring the economic security of the state, as its functioning is the basis for financial, production and operational processes in all areas of economic activity. Since the beginning of the full-scale military aggression of the Russian Federation, the financial system of Ukraine has faced significant challenges that necessitated a prompt legal response. As a result of the hostilities, the functioning of the payment system was threatened, which was caused, in particular, by the temporary suspension of bank branches, restricted access to financial resources and massive cash withdrawals from ATMs.

Despite the challenging environment, the banking system continues to perform its functions, ensuring uninterrupted operations in regions where there is no threat to life and health of the population. An important role in maintaining the stability of the financial sector is played by legal mechanisms for regulating the activities of banks, in particular, NBU Board Resolution № 18 dated February 24, 2022 "On the operation of the banking system during the period of martial law" [1].

It is the legal and regulatory measures implemented by the NBU that play a key role in ensuring the financial stability of the state under martial law. The comprehensive application of currency regulation mechanisms, control over banking operations, support for the liquidity of financial institutions, and the use of new approaches to risk management help to maintain the relative stability of the national currency and ensure business activity. Thus, the legal regulation of the banking sector is an integral factor in maintaining the economic security of the state, allowing the banking system to effectively adapt to martial law conditions and ensure financial stability.

Analysis of recent research and publications. In his study, H. O. Kryshstal focused on the issue of financial security of the banking system under

martial law. The author determines that the financial security of the banking sector is a key task of its functioning and tries to identify it by identifying and classifying threats under martial law. The author differentiates such threats into external and internal, which are manifested through the risks of banking activities (increased costs of forming reserves, deterioration in the quality of the loan portfolio) and systemic risks in banking activities (falling capitalization, inflationary processes, increasing dollarization, duration of impact) [2]. However, in practice, it turned out that the threats mentioned by the author can be considered to a greater extent as additional opportunities to ensure the efficiency of the banking system.

Mazurkevych Y. O. focused his research on the challenges and prospects for the development of the banking system under martial law. Thus, the author summarized the main challenges to the banking system caused by the war and determined that the war had a serious impact on the country's banking system, with one of the main problems being a decrease in the liquidity of the banking system due to a decrease in economic activity and a loss of confidence in banks as a result of the escalation of the conflict [3]. It should be noted that the statistical data provided by the author in the article indicate quite the opposite processes. For example, according to the results of the banking system in 2022, there was an increase in the volume of retail deposits, which is evidence of an increase in confidence in the domestic banking system, as well as the absence of a decrease in liquidity. Thus, we again observe a certain paradox, which is that the domestic banking system has not so much suffered losses from operating under martial law as received additional opportunities to improve its efficiency.

Pravdykovska I. I. and Doroshenko N. O. also made an attempt to determine the impact of the war on the banking system of Ukraine and concluded that the banking system of Ukraine is stable, controlled and liquid due to effective regulation by the National Bank of Ukraine. Despite the change in the rules of functioning of the banking system and the introduction of various restrictions on

its activities, it was able to adapt to work under the legal regime of martial law [4].

At the same time, there remain unresolved issues of legal support in terms of modeling special economic regimes in the banking sector of the economy under martial law, as well as the general issues of banking institutions and banking activities under extraordinary legal regimes.

The purpose of the study is to determine the peculiarities of legal regulation of extraordinary legal regimes and to analyze the functioning of banking institutions during martial law in Ukraine.

Materials and methods. The research materials are: 1) regulatory and legal support for the regulation of banks in the context of the introduction of the legal regime of martial law in Ukraine; 2) works of domestic and foreign authors conducting their scientific and practical research in the field of functioning of special economic regimes, extraordinary regimes, and banking activities in special conditions.

In the course of the study, the following scientific methods were used: theoretical generalization and grouping (to characterize special legal means of regulating banking activities in a special period); formalization, analysis and synthesis (to model extraordinary modes of functioning of the banking system during the period of martial law); logical generalization of the results (formulation of conclusions).

Summary of the main material. A priority area for the development of the financial system of each country is the improvement of the banking sector through the digitalization of all processes taking place in it. Recently, the domestic banking system has experienced significant shocks and continues to operate under stress, uncertainty and significant market volatility. All of this, starting in 2020, was caused by the spread of the COVID-19 pandemic and the quarantine restrictions imposed, and then significantly deepened by the armed aggression of the aggressor country and, as a result, the introduction of martial

law in Ukraine on February 24, 2022, by the Decree of the President of Ukraine [5]. On the same day, the National Bank of Ukraine (NBU) adopted Resolution No. 18 "On the Operation of the Banking System during the Period of Martial Law." This regulatory document defined a fundamentally new procedure for the operation of the Ukrainian banking system in the short term [6]. These circumstances became very important factors that affected the stability of the banking sector. According to the Resolution, banks were forced to ensure that all branches operate in an uninterrupted mode, but only if there is no immediate threat to the life and health of employees and customers. The banks were obliged to create conditions for free access of their owners to their safe deposit boxes. At the same time, no restrictions were imposed on non-cash payments. They were also allowed to make payments to the government without restrictions in accordance with the legislation on the special period.

The NBU was obliged to provide support to banks to ensure that ATMs are constantly supplied with cash. At the same time, the NBU introduced a number of special legal measures to stabilize the financial system in general and support the operation of banks in particular. For example, to maintain liquidity, the central bank introduced a blanket refinancing mechanism for banks, namely, it abolished restrictions on the terms and amount of refinancing and added the possibility of extending it for another calendar year. In order to offset the negative impact of panic among the population with regard to withdrawals from accounts, the National Bank imposed a restriction on cash withdrawals of no more than UAH 100 thousand in the first days of the full-scale war. In addition to this restriction, other NBU regulations also apply, namely:

- prohibition of cash withdrawals from clients' accounts in foreign currency;
- suspension of the Ukrainian foreign exchange market, except for transactions on sale of foreign currency by clients;
- fixing the official foreign exchange rate as of February 24, 2022;

- a moratorium on cross-border foreign currency payments;
- suspension by servicing banks of expenditure transactions on accounts of residents of the state that has committed armed aggression against Ukraine;
- suspension of issuing banks from issuing electronic money, issuing electronic money, replenishing electronic wallets with electronic money, and distributing electronic money.

However, all decisions made by the NBU were subject to certain principles, such as:

- 1) protecting the interests of the bank's customers, ensuring that they receive services at the appropriate level, but with due regard for security factors
- 2) support for banking institutions and their liquidity. The NBU proceeded from the premise that the negative impact of military operations on banks should not lead to their insolvency. To this end, troubled financial institutions will be given time to restore financial stability after the end of martial law, if necessary;
- 3) ensuring transparency of banks' financial statements, which reflect their real financial position. This is due to the fact that in the absence of reliable and transparent reporting, it will be extremely difficult for the regulator to implement effective measures to improve the conditions for the functioning of the domestic banking system after the end of the war. Based on these principles, the NBU determines the list and content of measures aimed at supporting the banking system. However, the feasibility of applying certain regulatory levers in practice depends on the implementation of various scenarios [7].

An additional tool to support the stability of the banking system during martial law was the introduction of blanket refinancing at the beginning of the war. According to official data published on the National Bank's website, about 30 banks used this tool during the first month of the war. At the same time, the total amount of debt under this type of refinancing amounted to UAH 20.2 billion, which is less than 3% of all deposits. Further support for the liquidity of the banking system was provided by suspending tenders for the placement of deposit

certificates for a period of 14 days, changing the procedure for announcing refinancing tenders, taking into account the current situation in the country, and abolishing the requirement to increase the mandatory reserve requirements [8]. In addition, in April 2022, the NBU allowed peer-to-peer P2P and quasi cash transfers to foreign accounts. However, as of October 5, 2022, the NBU's decision to ban P2P transfers to foreign accounts due to the negative impact on the stability of the banking system was issued [9]. This indicates that the NBU's decisions were made chaotically, were not planned, coordinated, and calculated by the relevant experts in advance. There was also, of course, a lack of a legislative framework on which the NBU could rely to implement a balanced policy in the field of banking regulation under martial law.

At the same time, the analysis of the banking sector published by the NBU in February 2023 shows positive dynamics: the banking system has withstood and quickly adapted to functioning in the face of a full-scale invasion.

It should be acknowledged that, in the context of the full-scale war initiated by the aggressor against Ukraine, the banking sector's primary tasks have become the rapid adaptation to martial law conditions and the evolving situation concerning combat zones and occupied territories.

The active digitalization facilitated by COVID-19 in the financial sector has ensured a well-coordinated mechanism of bank-client cooperation. The innovations introduced through this process have made it possible to provide banking services in a way that remains as convenient and accessible as possible for the population despite the war. In this regard, the adoption of the Law of Ukraine No. 2120-IX "On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Application of Provisions During the Period of Martial Law" was of great importance.

The new law introduces a number of changes to the operation of banks and non-banking financial institutions, particularly those providing lending services.

The primary goal of these changes is to ease the financial burden on Ukrainian borrowers during the war and the post-war economic recovery.

Furthermore, an increase in the interest rate on consumer loans due to non-performance of contractual obligations is prohibited, except where a variable interest rate is explicitly stipulated in the credit or consumer loan agreement. It is important to note that penalties (fines, late fees), as well as other charges stipulated by consumer credit agreements, accrued from February 24, 2022, onwards due to overdue payments under such agreements, must be written off. However, the new rules do not cancel interest on the use of credit funds.

Such interest accrual remains lawful from the lender's perspective. Credit holidays represent a deferral of debt repayment, not a debt forgiveness. Therefore, it is crucial to emphasize that credit holidays are a right of the lender, not an obligation. Each case should be assessed individually at the bank-client level.

In the context of the subject matter, it is also worth mentioning the Draft Law "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine Regarding the Support of Borrowers Whose Property Has Been Destroyed or Damaged Due to the Armed Aggression of the Russian Federation Against Ukraine." [12].

This draft law has attracted significant interest within the legal community. Its primary objective is to ensure adequate legal protection for borrowers who have lost their property due to military actions, particularly in relation to housing and vehicles. The expected legal and social consequences of adopting this draft law are aimed at ensuring social justice and reducing the tax burden on borrowers who have lost or sustained damage to their property due to military operations.

Draft Law No. 7441-1 proposes amendments to the Civil Code of Ukraine, the Laws of Ukraine "On Consumer Lending" and "On Mortgage," according to which, from the date of the Law's entry into force, borrowers shall be exempt from the obligation to repay the principal amount of the loan, interest, and penalties (fines) under such loans issued by banks and other financial institutions

in Ukraine to individuals and legal entities for the purchase of real estate, including those secured by such real estate, or vehicles that were destroyed as a result of hostilities, terrorist acts, or sabotage caused by the military aggression of the Russian Federation, or are located in temporarily occupied territories.

It is important to understand that there is no consensus among scholars regarding the legal regulation mechanism of banking activities. Some researchers advocate for the introduction of strict "rules of the game" in the banking services market [13, 14]. In this context, the justification for imposing numerous restrictions on banking institutions often stems from the necessity to counteract external and internal challenges and threats. Additionally, emphasis is placed on the fact that the banking sector, like the entire financial system, is an integral part of the national security mechanism of any state. Therefore, the establishment of sometimes excessively "tight" regulatory frameworks for business entities in the banking sector is of critical importance.

We believe that such an approach, in extraordinary periods (such as war), would to some extent enable the banking system to transition to a so-called "manual" management mode, allowing the Regulator (primarily the National Bank of Ukraine) to respond swiftly to all challenges and threats to banking activities, as well as to develop adaptation mechanisms ensuring the survival of banks under such extraordinary conditions.

It should be noted that such measures must be developed in advance, before the emergence of potential threats and challenges. Of course, it is impossible to predict all risks. Each situation requires its own specific legal regulatory tools. However, a basic set of such instruments should undergo scientific examination, thorough expert analysis in the field of banking (involving economists, financiers, lawyers, sociologists, etc.), and the development of draft laws and other regulatory legal acts that will enable a prompt response to any crisis.

It is evident that today, amid wartime conditions, we are encountering entirely new phenomena, including in the banking sector. For example, banking

institutions located in areas of military (combat) operations, or in temporarily occupied or blockaded (besieged) territories, are unable to provide access to their branches, including access to individual safe deposit boxes. In most cases, bank premises are seized by armed groups, assets are looted, and the bank is unable to verify the presence or absence of stored property until the territories are fully restored under Ukrainian control.

However, an important step in adapting the banking system to extraordinary wartime conditions was the fact that, long before the war began, banks had already started to transform their business models in working with their client base. The goal was to minimize direct contact with clients by providing a wide range of banking and advisory services remotely. This transition led to the optimization of branch networks by utilizing remote channels for customer acquisition and service, which, in turn, has ensured full and uninterrupted access to financial products and services for Ukrainian citizens, allowing them to continue concluding contracts online.

Conclusions and Prospects for Further Research. It has been established that the current developments pose challenges not only at the national level but also at the sectoral level. The situation in which a part of the banking system has found itself holds hostage not only financial institutions but also their clients. The only course of action remains to wait for victory, as it is currently impossible to legally regulate the issue of access to material assets physically located in bank branches.

It is particularly important to emphasize the existence of serious problems in the field of legislative activity. A number of draft laws, including those regulating banking activities during special periods, are entirely populist, detached from the realities of Ukraine and their potential consequences. In other words, before drafting a bill, its authors failed to conduct a thorough study of the issues they intended to address with this document. Such legislative initiatives will negatively impact the resolution of problematic situations, leading to an

increase in legal disputes and encouraging those seeking to unlawfully benefit from state support.

Prospective areas for further research in this field include analyzing the competitiveness of Ukrainian banking institutions during special periods, developing specialized adaptation mechanisms for the banking system to address new potential challenges and threats, and establishing a framework for communication between legislators and researchers to create unified approaches to resolving these issues.

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