

LEGAL GUARANTEEING FOR PROVIDING FINANCIAL SERVICES IN UKRAINE: PROBLEMS AND POSSIBLE WAYS TO OVERCOME THEM IN MODERN REALITIES

GARANTIA LEGAL PARA A PRESTAÇÃO DE SERVIÇOS FINANCEIROS NA UCRÂNIA: PROBLEMAS E POSSÍVEIS FORMAS DE SUPERÁ-LOS NAS REALIDADES MODERNAS*

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Abstract: Financial stability and guarantee continue to remain of great interest to every society, in the absence of such stability, the financial system of a country will continue to be threatened. The purpose of the article is to analyze the legal guarantees of the processes for providing financial services in Ukraine, to identify problematic aspects in this area and to form possible ways to overcome them. The quality of legal guarantees of the financial services market depends on a number of factors, in particular, the political regime of the state, the existence of real rule of law, the level of development of financial and legal institutions, etc. It has been argued that the financial sector of the state's economy is unable to function effectively without proper legal regulation, whose quality can only be achieved in terms of a stable and smooth political regime. Given the situation in different countries of the world, as well as considering historical experience, it has been found out that effective legal

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regulation of financial services is mostly available in democratic countries, where the rule of law is actually realized. It has been concluded that an effective legal guaranteeing for the provision of financial services can improve the domestic financial market, and the development of the national financial system and the national economy will facilitate to improve the quality of legal guaranteeing in this area. The practical experience of developed democratic countries will be able to provide significant assistance in achieving this.

Keywords: Financial services. Legal guaranteeing. Efficient functioning. Financial sector. Regulatory impact.

Resumo: A estabilidade financeira e a garantia continuam a ser de grande interesse para toda sociedade, na ausência de tal estabilidade, o sistema financeiro de um país continuará a ser ameaçado. O objetivo do artigo é analisar as garantias legais dos processos de prestação de serviços financeiros na Ucrânia, identificar aspectos problemáticos nesta área e formar possíveis formas de superá-los. A qualidade das garantias legais do mercado de serviços financeiros depende de uma série de fatores, em particular, do regime político do Estado, da existência de um verdadeiro Estado de direito, do nível de desenvolvimento das instituições financeiras e jurídicas, etc. Tem sido argumentado que o setor financeiro da economia do Estado não pode funcionar efetivamente sem uma regulamentação jurídica adequada, cuja qualidade só pode ser alcançada em termos de um regime político estável e sem sobressaltos. Dada a situação em diferentes países do mundo, bem como considerando a experiência histórica, descobriu-se que a regulamentação jurídica eficaz dos serviços financeiros está disponível principalmente em países democráticos, onde o Estado de direito é realmente realizado. Concluiu-se que uma garantia legal eficaz para a prestação de serviços financeiros pode melhorar o mercado financeiro nacional, e o desenvolvimento do sistema financeiro nacional e da economia nacional facilitará a melhoria da qualidade da garantia legal nesta área. A experiência prática dos países democráticos desenvolvidos será capaz de fornecer assistência significativa para atingir este objetivo.

Palavras-chave: Serviços financeiros. Garantia legal. Funcionamento eficiente. Setor financeiro. Impacto regulatório.

1. INTRODUCTION

During the incorporation of Ukraine into the Russian Empire, the elimination of Ukrainian statehood, and the encroachment upon the very cultural and national identity of the Ukrainians, the system of state credit actually did not exist. The attempts to create banking institutions were unsuccessful because there was neither any market formed nor money and securities in the feudal serfdom empire. The changes only took place in the course of capitalist modernization in the second half of the nineteenth century. The abolition of serfdom made available a large number of workers and the legislator faced the urgent task of creating legal foundations for the development of the credit market. The main reform was the creation of the State Bank in 1860, which, in addition to regulating money market, emission activities, made long-term loans (Holovko, Grechenko, 2019).

Recently, the volume and diversity of financial services in Ukraine and the world has been constantly growing, both quantitatively and qualitatively. Given this fact, state authorities, whose primary responsibilities include stabilizing and securing the country's

financial sector, must constantly monitor the timeliness and dynamism of legal guaranteeing of the growing needs in the sphere of financial services. We can, for example, single out such a phenomenon as microcredit among everything that requires better legal regulation. According to experts, microcredit is the provision of cash loans to the population (mostly the poor part of it). Among the main advantages of microloans are their low requirements for the issuance of money, which in practice means that they can be obtained by almost anyone. Therefore, most of the people, who were surrendered at the country's traditional banking institutions, applied to macro-financial institutions for loans. Taking this into account, researchers of legal processes related to the regulation of financial activities have begun to actively study this issue over the past few years. It must be acknowledged that the growing interest of scholars in studying specific features of the functioning of macro-financial institutions within the legal framework has borne fruit. Thus, control over the activities of micro-financial organizations passed to the National Bank of Ukraine in July 2020, and later the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amending Certain Laws of Ukraine in regard to Consumer Lending and Formation and Circulation of Credit Records" (2020).

According to competent experts in this field, such a decision of the Parliament was caused by the rapid growth of the demand for microcredit, as well as the need to regulate this area of legal relations and to improve the quality of the systems of individuals' credit records.

Thus, due to the spread of financial services in Ukraine, as well as the growing interest of lawyers to this phenomenon, we can state that this topic is one of the most relevant. In the context of qualitative improvement of the processes related to the legal regulation of financial services, we prefer to single out publications that relate to the analysis of the latest tendencies within the processes for providing financial services and characteristics of peculiarities of successful global experience in this area, which will be most useful for Ukraine.

2. RESEARCH PURPOSE AND OBJECTIVES

The purpose of this article is to characterize successful examples of international experience in the field of legal guaranteeing the processes for providing financial services in order to choose the most effective means and ways to improve legal regulation in this area for Ukraine on the basis of such research.

The objectives of the article are, first of all, to conduct a thorough analysis in regard to the current situation in the field of the provision of financial services. Secondly, finding key places in the domestic system of legal guaranteeing of the financial services market that have to be improved as soon as possible to achieve their compliance with modern world standards. Truly guaranteeing financial stability is a prominent factor that will promote a stable economy, but such stability can never be realised without good policy network of regulating the financial sector so as to possess efficiency and quality. The fact the objective of the financial system of a country is in ensuring productivity, enacting good legal policies is of great necessity. The problems continue to be challenging as we continue to experience possible threat when issues of financial guarantees are concerned. This constant instability in the financial services and system continue to be questionable as there is aspect of inefficiency affecting the very essence of the financial law system.

3. METHODOLOGY

The authors of the article have used a bibliographic research method, which assisted to get up-to-date information from leading foreign and domestic researchers on the current situation in the field of legal guaranteeing the processes for providing financial services in the developed foreign countries. Accordingly, the results obtained in the course of this research were compared with the current situation in the domestic financial sector.

Empirical and theoretical, empirical methods were also used, which were necessary for bringing the proper light to terms important for the topic of this article. The use of historical and legal method was due to the accomplishment of historical and legal analysis of the origin and development of new financial services in our country, as well as examples of legal guaranteeing of financial instruments in the past.

The comparative method of legal research assisted to analyze the effectiveness of certain means of legal guaranteeing of the financial services market in the developed countries by emphasizing the compliance of some of them with the improvement of the domestic financial sector. It is always appropriate in having an empirical and even a comparative standard so as to understand the need of having an efficient financial services operation in Ukraine. Our problem here is not only at the level of developing a credible methodology system, but to show how credible is the method is handling aspect or the various threat affecting the financial service of Ukraine. Putting in place a reliable methodology, ensuring that this method realises the initial results of the financial system is

another problem. This aspect of implementing legal policies of the financial services in Ukraine continue to be a serious nightmare after the entire system

4. RESULTS AND DISCUSSION

Financial services provide complex financial intermediation to match sources and uses of USD 262 To funds globally, generating an annual revenue of USD 5T. Retail Banking (35%), Corporate and Commercial Banking (30%), Wealth, Asset Management and Investment Banking (18%), Payments (14%), and Financial Market Infrastructure (3%) constitute the five major financial services in terms of the share of this revenue (Bhaskaran, Chang, Dey, Sanz, 2019).

High-quality legal guaranteeing in the field of financial services is recognized as one of the key elements for reforming the country in accordance with its European integration perspectives. Researchers emphasize the fact that the level of stability will be reduced without proper legal regulation of the sphere for providing financial services in society and the state system (Kuzminska, Abesinova, 2021).

The experience of legal (including legislative) practice confirms that the timely adaptation of the law norms to significant changes in the daily functioning of a particular area of legal relations is particularly critical. In case, if legal acts have not been timely brought into line with the latest changes in a particular sphere of public life, there is a growing risk that their further active operation will be more harmful to the sphere of public life than help its effective settlement (HUDIMA, 2016). Given this and other important factors, it can be noted that the intention to call on the leadership of the state and domestic legislators to take active steps to ensure proper legal regulation of the processes for providing financial services increases among domestic scholars in the field of law. For example, lawyers are urging legislators to temporarily eliminate their political interests and work together in achieving the adoption of a series of effective financial regulatory legal acts. One of the priorities is, for example, to improve the legislative consolidation and, accordingly, further legal regulation of the functioning of microfinance organizations (Moloney, 2021).

In terms of ongoing reforms in the economic sphere of Ukraine, as well as in connection with the global tendency of increasing economic inequality between rich and poor, microcredit is becoming one of the fastest growing phenomena in almost every country.

The above-mentioned actions on legal guaranteeing of this phenomenon, carried out by the Verkhovna Rada and other state institutions of Ukraine, only initiated the wider activity of state officials and legislators in the field of legal guaranteeing of microfinance services. Fortunately for domestic legislators and for Ukrainian society in the whole we can use already made, successful solutions to the problems associated with this phenomenon. By the word “use” in this case we mean either the absolute repetition of actions and instruments taken by the developed countries in the process of legal regulation of financial services sector, or their partial implementation given the peculiarities of domestic realities (Cosgrove, 2021). However, it should be remembered that in addition to detailed work on the introduction of quality legal regulation of new types of financial services in the country, we should continue systematic activities to improve the legal framework at the market of long-standing financial organizations and institutions. In particular, we are talking about the activities of banking institutions in Ukraine. Banks and their stable functioning like in have always played a serious, influential role in the life of every world country, in its stability. To confirm this, it is only necessary to recall that the lack of legal control over the activities of some American banks largely led to the severe consequences of the global financial crisis in 2008-2009 (Bogan, 2011).

However, some aspects of banking operations still remain unresolved in Ukraine, and therefore lead to significant losses affecting the state and, consequently, all citizens of the country. In order to quickly and effectively overcome these negative factors, one of the most important steps is to improve the legal framework in the banking sector of the financial area. The statement about the need to strengthen the protection of systemically important banks in Ukraine can be referred to the suggestions on improving the legal status of the banking system of Ukraine, which are most actively discussed (Emerson; McGough, 2018). In addition, the list of banking institutions, which fall into the category of “systemically important”, needs to be expanded. At the same time, the criteria for including any bank into the specified list should be changed or clarified.

Banking policy in Ukraine, which has been going on since 2014, receives mostly positive reviews from foreign experts representing the developed world countries. However, despite this, the reform of the banking sector has currently many shortcomings. It is primarily due to the fact that the guarantees, under the protection of which Ukrainian banks must operate, are not reliable enough due to the current weakness of the domestic economy. As a result, ordinary Ukrainian citizens suffer the most. The citizens become the objects for banking institutions to compensate their losses incurred due to the above-mentioned

insufficiently clear and regulated state policy. In turn, the instability and constant growth of foreign currency, in particular against the hryvnia exchange rate, only increases the risk of taking a loan.

In view of the above, we support the statement of researchers in the field of law that the clear establishment of percentage limits for any financial services in regulatory legal acts, as well as other specific rules of operation in this area, will improve the situation (Matthew et al., 2019). Optimization of the domestic financial sector in accordance with the standards of the developed world countries is recognized as one that should be done in the nearest future. After all, given the dynamic changes in the global financial services sector, with the lack of real changes in Ukraine, we will continue to lag behind global trends (Tovkun, Zubko, 2021). Considering all this, we support the suggestions of those scholars who offer to qualitatively regulate the entire field of financial services in Ukraine by several (two or three) legal acts. Before making this decision specific, we would like to remind that Ukraine, according to the points of view of the majority of domestic and international lawyers, is part of the Romano-Germanic legal family. Therefore, Ukraine in the traditions of this legal family places written, in particular, codified law as the highest priority. It means that the next most important sets of rules after the Constitution of Ukraine are the Laws of Ukraine and other regulatory legal acts within the national law, but not, for example, Resolutions of the National Bank of Ukraine or the Ministry of Finance.

We note that Ukraine has the current program of “Affordable loans of 5-7-9%” for representatives of micro, small and medium enterprises. Since the start of this program, representatives of micro, small and medium enterprises have totally received 32,091 loans from authorized banks totaling UAH 81.81 billion. They include:

- *entrepreneurs received UAH 9.51 billion for investment purposes;*
- *UAH 49.01 billion in the form of anti-crisis loans;*
- *UAH 23.22 billion were issued as refinancing of previously received loans.*

One of the priorities of the Ministry of Finance is the state support for the development of small businesses, including micro-entrepreneurship and medium-sized enterprises, which is carried out, inter alia, due to the Program “Affordable Loans of 5-7-9%” initiated by the President of Ukraine Volodymyr Zelenskyi. The draft State Budget-2022 provides UAH 3 billion (including the Program “Affordable Financial Leasing of 5-7-9 %” and Affordable Mortgage of 7%) for the implementation of the budget Program “Ensuring the functioning of the Fund for Entrepreneurship Development”, which finances the Program “Affordable Loans of 5-7-9%”. This will provide support for the development of

another 20,000 entrepreneurs (Resolution of the Cabinet of Ministers of Ukraine of 24 January 2020, No. 28 “On providing financial state support”; Resolution of the Cabinet of Ministers of Ukraine of 24 January 2020, No. 29 “On approval of the Procedure for using funds from state budget provided for the functioning of the Fund for Entrepreneurship Development”).

Continuing our research, it should be noted that in contrast to the countries that are part of the Anglo-American model of law, where the vast majority of issues and problems in the legal field were resolved by the court precedent, the main role in Ukraine is given to the written (codified) law, within clear legal regulation of all spheres of public life, as well as certain private legal aspects (Vasylieva, 2018).

Therefore, we believe that Ukrainian lawyers and legislators will be able to carry out adequate legal provision for guaranteeing the sphere of financial services through several codified regulatory legal acts. Success will be achieved, if these regulatory legal acts qualitatively complement each other, being interconnected. This will allow conducting unified legal policy in relation to the processes of providing financial services. It is also necessary that all norms and provisions of such regulatory legal acts comply with the Constitution of Ukraine (Khachaturian, 2021). The specified aspect is currently an urgent need, since such a broad sphere of public legal relations as the provision of financial services cannot be actually regulated by a single legislative act. Therefore, the Verkhovna Rada of Ukraine should adopt a Law that would fully prescribe the basic principles of legal guaranteeing of banking operations in Ukraine, in particular in the provision of financial services by banking institutions (Khyzhnyak, 2021). The creation of a separate Law for banking operations is due to the fact that banking operations, as well as the role of banks in providing financial services occupy the central place in the country’s economic prosperity and its recognition in the international arena. It is due to the fact that banking institutions provide the largest share of financial services both in percentage and absolute terms. Such financial institutions as microcredit institutions also need to receive deep and meaningful legal support. In particular, it is necessary for effectively eliminate threats to the security of citizens arising from the current legal irregularities in the sphere of providing microfinance services used by unscrupulous entities (Stepushov, 2021).

The main elements of the future regulatory legal act should be clear legal boundaries, where microcredit organizations should operate, as well as requirements for improving the level of accountability of such organizations to state authorities of Ukraine.

The creation of a public, non-profit organization, whose main task would be to protect the rights and legitimate interests of debtors taking loans from microfinance institutions and to monitor the compliance with the specified rights and interests deserves relative support from both lawyers and legislators. We can observe the activities of such public organizations through the experience of both foreign countries and our own experience of Ukrainian society, such as the “Ukrainian Consumers Association”, “Organization for Protecting Consumers Rights”, etc. As we can see, nowadays there are certain human rights mechanisms to protect the rights of consumers, which must be done in the field of protecting debtors’ rights, especially in terms of transferring the right to influence the debtors to repay debt from banking institutions to collection companies. This influence is surely psychological in nature and is often associated with intrusion into a person’s private life.

Collection services in Ukraine have become a separate type of business, which was formed with the development of express lending and the emergence of fast online loans. The volume of consumer lending to individuals has been rapidly growing since 2001, and accordingly, the percentage of problem loans. Collection companies usually receive 15%-50% of the amount owed, depending on the type of loan, its size and duration. There is currently no separate Law regulating the activities of such institutions in Ukraine, so they are guided by the Civil Code of Ukraine and other legislative acts regulating legal relations between the debtor and the creditor. In this regard, the activities of collection companies are commonly believed as illegal. In case of disputes with such companies, one should protect own interests. The activity of collectors is regulated by Chapter 47 of the Civil Code of Ukraine, where paragraph 1 of Part 1 of the Art. 512 provides that the creditor in the obligation may be replaced by another entity as a result of transferring the rights to another entity by deed (assignment of right of demand). Therefore, it follows that if a bank as a creditor transfers its claim to another bank or financial institution (collection company), it will be a sufficient legal basis to replace the creditor in the obligation. All the rights and obligations of the original creditor are transferred from this moment to the collectors, including the right of financial claim.

The problem is that the norms of the Civil Code of Ukraine (2003) do not impose any restrictions on the composition of persons in respect of whom the right of claim may be assigned.

The vast majority of collectors are former law enforcement officers who, due to many years of experience in communicating with people, become good psychologists and can find

weaknesses in a person to force him / her to pay a certain amount of money. However, most of the methods used by collectors in their activities are illegal, including the following:

- 1) *telephone conversations with the debtor or his / her relatives, when a collector presents himself as a law enforcement officer and threatens to initiate criminal proceedings, if the debt is not repaid;*
- 2) *dissemination of information about the debtor and his / her debt to creditors in any way;*
- 3) *arrival to the debtor's address in order to force him / her to pay the debt through threats or even violence, etc.*

All these methods are designed for a person with a weak psyche, who is willing to give the last money to get in disturbance; collectors also hope for legal ignorance of debtors. The law does not define the rights of collectors, there is no even such a legal concept. Such actions must be usually carried out without obvious threats, in a civilized manner, in compliance with the rules of ethics and the norms of applicable law.

The above demonstrates the real need for state support for the protection of the rights of debtors, since they have acquired this status to a greater extent due to the deterioration of economic stability in the country.

These and other non-governmental organizations have been able to prove their effectiveness in monitoring the observance of citizens' rights during almost the entire period of Ukraine's independence. We are deeply convinced that the growing number of people who are "consumers" of microcredit in Ukraine is in dire need of proper legal protection (SUS, 2021). Therefore, the adoption of these laws by the Verkhovna Rada will lead to the creation of an effective tool for the protection of the rights by citizens within financial relations. First of all, this instrument means the possibility of going to court with a request to restore own rights. Our suggestions, as well as our analysis of the propositions of other scholars, are based on the principle that the sphere of providing financial services, as well as any other area of public administration or private services to the public, should function for the benefit of citizens. Therefore, we support the calls of domestic lawyers for the immediate adoption of real steps by the government to achieve a high level of stability and efficiency in the field of providing financial services.

Effectively functioning processes of providing financial services have the opportunity to make a positive impact on many other areas of public life. For example, they are able to improve the current situation in the domestic economy, to increase the level of business attractiveness of Ukraine to high world standards. Legislators in close cooperation with lawyers should work well to improve legal regulation in this area (Zhuravlov, Riadinska; Durnov, 2018).

Brusakova O. V. and Getmanets O. P. (2021) proposed to create new and modernize existing legal means to ensure cybersecurity in the financial services market (to create a mechanism to stimulate entities engaged in the creation and development of information technology used in the financial services market, and a mechanism to protect such technology). Authors proposed to create new special legal regimes for financial services market participants in order to increase the level of cybersecurity. The importance of creating a single state fund to support innovative development is emphasized, which should stimulate the involvement of innovative technologies in the financial sector in order to increase the level of cybersecurity of the financial services market. It is proposed to create a mechanism for the state to guarantee partial compensation to financial market entities for losses caused by cyber-attacks, and to form a separate state body that will determine the amount of compensation, compile a list of critical entities for the financial services market, and establish criteria that will provide appropriate financial assistance. The importance of adopting a separate legal act, which will contain the basic rules governing relations in the field of cybersecurity of the financial services market, is emphasized.

5. CONCLUSIONS

Thus, summarizing all the theses, statements and scientific views of researchers in the field of law and administrative activities, as well as forming authors' conclusions based on them, we note that the need for quality legal guaranteeing of the processes for providing financial services is currently very urgent.

The ongoing weak regulation of this area contributes to the continuing negative impact from several national problems in the field of law and economics. In particular, it increases economic inequality among citizens; blocks entire segments of the population from active participation in entrepreneurial business; and prevents to improve Ukraine's indicators in the world economic and legal rankings.

Given the points of view of leading researchers, one of the priority tasks in addressing this issue is to improve the legal guaranteeing of microfinance organizations. However, despite the leading role of banking institutions in the financial sector of the state and society of Ukraine and the entire world, their volume and role continue to remain more or less stable within the financial system of the state. Instead, the volume of microfinance operations, in particular, microcredit processes, has been steadily growing especially over the last few years. Improving the level of accountability of micro financial (especially microcredit) institutions,

the introduction of clear criteria for their final legalization, as well as clear limits on the interest profit margin for providing micro credits, are the most important parts of future regulatory legal acts for legal guaranteeing of this area.

It has been also demonstrated (by the example of some public organizations) that Ukraine should both use the successful experience of foreign countries and spread the practice of effective activities of non-governmental domestic public organizations in the field of financial services.

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