

LEGAL ANALYSIS OF DRAFT LAW NO. 7441-1 IN THE CONTEXT OF CREDIT RELATIONS PARTIES' RIGHTS DURING MARTIAL LAW

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Abstract. *This article provides a legal analysis of draft law No. 7441-1, which was adopted in the first reading at the time of conducting this research. It is noted that the draft law in its current form will not effectively protect either citizens-borrowers or creditors, and its norms risk becoming stillborn. Ways to solve the outlined problems are proposed.*

Keywords: *bankingsystem, creditrelations, consumercredit, mortgage, loanpayments, martiallaw.*

Relevance of the research topic. Due to the invasion of the Russian Federation into Ukraine, the financial situation of a large part of Ukrainians has significantly worsened. Researchers use the indicator of 53% of Ukrainians who are left without work and, accordingly, stable earnings [6]. In addition, many Ukrainians were forced to urgently change their place of residence, throwing away things and being forced to buy new ones in a new place. This was certainly associated with additional costs. Because of this, many citizens are unable to properly fulfill their obligations under credit agreements. According to the NBU, the share of non-performing loans for the period from March 1, 2022 to June 1, 2022 increased from 26.58% to 27.64%, or from UAH 305 billion to UAH 317.5 billion. [3].

Non-interference of the state in processes related to credit relations would be wrong under such circumstances. Therefore, since the beginning of the full-scale invasion of Russia, several normative legal acts have been adopted, designed to normalize these relations during martial law. In particular, draft law No. 7441-1 dated 14.06.2022 on amendments to the Tax Code of Ukraine and some legislative acts of Ukraine regarding the support of borrowers whose property was destroyed or damaged as a result of the armed aggression of the Russian Federation against Ukraine [1] is currently being considered under an accelerated procedure. It caused a mixed reaction from the legal community, so a scientific study designed to analyze the changes it proposed is currently relevant.

The degree of research. The legal regulation of credit relations has been studied by many scientists.

Among them are such researchers as I. A. Bezklubii, Yu. V. Vashchenko, L. K. Voronova, E. S. Kompaniets, O. P. Orlyuk, L. V. Rudenko, P. A. Tamarov, T. G. Timakova, Ya. O. Hirs, etc. However, their research related to peacetime. Issues of settlement of credit relations in such extreme conditions as wartime have not been properly investigated. Moreover, there is no thorough scientific analysis of the newly introduced draft law, although legal practitioners such as Ya. Lagan have already expressed their comments on it [4].

The purpose of the article is to analyze the effectiveness of the changes proposed by the Draft Law on Amendments to the Tax Code of Ukraine and some legislative acts of Ukraine regarding the support of borrowers whose property was destroyed or damaged as a result of the armed aggression of the Russian Federation against Ukraine No. 7441-1 dated 14.06.2022, and risks associated with this bill.

Presenting main material. Even at the beginning of the full-scale invasion of Russia, in March 2022, Law of Ukraine No. 2120-IX "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the application of norms during the period of martial law" was adopted. It defined the rules of credit holidays for Ukrainians. However, such holidays were not an obligation of banks, but only a right, therefore, each bank could independently choose whether to apply credit holidays to it and which version of the terms of these vacations to choose [5]. However, the said Law exempted citizens from responsibility for late payment of credit obligations. In addition, amendments were made to the Law of

Ukraine "On Mortgages", which protect citizens from eviction during martial law.

These are important regulations that provide citizens with some protection during the hardships of war. However, Russia's aggression is aimed not only at military and civilian infrastructure, but also at residential buildings. Many citizens' property, including real estate, was destroyed by the Russians. And a certain part of this property was purchased on credit. Thus, citizens found themselves in a situation where they have to spend money on buying new property to replace the lost one and at the same time continue paying loans for property that they will never own. Such a financial burden, according to the legislator, is not only heavy in wartime conditions, but also unfair.

That is why the Draft Law on Amendments to the Tax Code of Ukraine and some legislative acts of Ukraine regarding the support of borrowers whose property was destroyed or damaged as a result of the armed aggression of the Russian Federation against Ukraine No. 7441-1 dated 06/14/2022 appeared. Due to its extreme urgency, this draft law is being considered very quickly: already on June 19th, it received the opinion of the Committee on Finance, Tax and Customs Policy, and on July 9th it was adopted in the first reading with a shortened preparation period. Thus, it should be expected that it may come into force in the near future.

At the same time, many remarks were made to the draft law under consideration, with which we can agree. Let's consider in more detail the content of the draft law and the risks associated with it.

The changes proposed by the draft law apply exclusively to real estate and cars purchased on credit or in installments, and provide for the following:

1. Suspension of debt repayment. If the mentioned property is located in the temporarily occupied territory or within territorial communities located in the area of military (combat) operations or which are under temporary occupation, encirclement (blockade), or if the property is damaged or destroyed as a result of hostilities, acts of terrorism, sabotage, caused by the military aggression of the Russian Federation, the payment of loan payments can be suspended.

For this, the owner of the property must submit to the creditor an appropriate application and documents confirming that the specified conditions have been met. At the same time, the creditor not only suspends all payments on the loan from the moment of receiving such an application, but also cancels interest on such a loan, accrued from 02.24.2022 until the date of the borrower's application for suspension. This is a positive moment for the borrower, as it is known that due to a significant overload of relevant applications, state authorities may delay issuing documents certifying damage or destruction of property. Thus, the borrower, who is in a difficult situation due to the destruction of property, will not be forced to pay interest on the loan in the most difficult period for him - while he is waiting for the appropriate conclusion.

However, for credit institutions, the full write-off of interest on such loans, without any compensation, is quite a burden, because we are talking about quite significant sums of money. Thus, the banking system, which already has significant losses due to the war, will suffer even more.

Suspension of debt repayment in case the property is located in non-controlled territories, where Ukrainian state authorities are limited in providing administrative services (in temporarily occupied territories, in a war zone, etc.), is carried out only at the request of the borrower, and he can provide supporting documents later. But we cannot agree with the deadline for providing these documents, which is defined by the draft law: within 90 days after the termination or cancellation of martial law in Ukraine. This term is certainly too short. In order to understand this, it is necessary to simulate the process of providing such documents.

When the war ends with the victory of Ukraine and the temporarily occupied territories are liberated, before the state institutions will be able to conduct an inspection of the property and provide an appropriate conclusion, if it is damaged or destroyed, or at least provide a document that will confirm the presence of this property in this territory and the borrower's ownership of it, it will be necessary to clear the area of mines, clear the rubble. It is quite possible that temporary premises for government agencies will have to be furnished or existing ones repaired. Much more than 90 days can be spent on these actions alone.

After the state authorities become operational, they will have to deal with a large number of applications for the issuance of relevant documents. For example, Mariupol is a large city in which about 500,000 residents lived until 2014, and now the city is 90% destroyed. Therefore, state authorities will quite possibly be forced to provide relevant documents to thousands, or even tens of thousands of applicants, and at the same time provide other administrative services. It is unlikely that it will be possible within 90 days, even if applications for the provision of such documents will be accepted remotely and not during a personal visit, that is, that citizens will be able to submit them without spending time on a trip. And even in small settlements, the number of applications can be significant, because the number of people who lost their homes due to the war already reached 800,000 by the end of July 2022 [2].

Thus, we believe that the term of 90 days does not correspond to the purpose of making such changes to the legislation: to ease the financial burden on borrowers who are in trouble because of the war. After all, those borrowers who do not have time to receive the relevant documents within the period stipulated by the draft law will be forced to urgently make loan payments for the entire period from February 24, 2022 to the 90th day after the termination or cancellation of martial law in Ukraine. We consider it necessary to revise this term in the direction of a significant increase.

Since citizens must receive state compensation for damaged or destroyed property, the period of suspension of payments is tied to the compensation. Loan payments are renewed only after the borrower receives such compensation. It is quite obvious that a citizen does not receive such compensation until he receives documents confirming the status of his property. Therefore, there is no need to anticipate a situation in which loan payments have already been renewed, but the necessary documents have not yet been issued.

2. Cancellation of debt. Such a radical measure is designed to protect the most vulnerable category of the population: poor people who have lost their only home and/or their only car that was purchased on credit or in installments. At the same time, it is especially emphasized that this property should not be too expensive: if it is housing, then its total area does not exceed 140 square meters for an apartment, 250 square meters for a residential building, if it is a car, the working volume of its engine is 2500 cubic centimeters. It is also noted that we are talking about conscientious payers, i.e. persons who had no debt on this loan until February 23rd, 2022. Thus, the most vulnerable category of people – borrowers who were unable to fulfill their loan obligations as of February 23rd, 2022 – is not protected by the law.

Here there is the same problem with the deadlines for submitting documents, which was discussed above, since the same deadline is provided - 90 days after the termination or cancellation of martial law in Ukraine.

In addition, a complete write-off of such loans will hit creditors hard. Thus, the draft law provides for the creditor's right to apply to the state for compensation of the written-off debt. But:

a) compensation is not unconditional – only the credit organization has the right to apply for it. That is, it must spend time and effort to turn to the state and demand what belongs to it in general - funds lent to the citizen;

b) the procedure for obtaining this compensation has not been developed and it is not known when it will be developed, and the loan must be written off immediately.

Thus, the draft law foresees significant risks for the banking system, which within a short period of time (according to the draft law, this is the time until the end of martial law plus three months) will lose significant sums of funds, and will receive compensation, maybe sometime later, maybe years later I believe that placing such a burden on the banking system is not only impractical, but dangerous, especially given that banks also lose property and money that ended up in temporarily occupied territories and in the war zone.

We believe that in order to effectively protect the most vulnerable categories of the population, it is necessary not to limit oneself to the draft law under consideration, but to immediately develop and legis-

late a mechanism for unconditional compensation of written-off loan funds by the state, so that the credit organization does not "have the right" to apply for it, but receives such compensation unconditionally - and only then adopt this bill. Since the state is also in trouble because of the war, it can be proposed to divide such compensation into several parts, one of which will be in the form of a sum of money that the credit institution receives immediately after the debt is written off, the second - in the form of a sum of money that the credit institution receives after some time (to ease the financial burden on the state), and the third - in the form of a future write-off of certain tax and/or other payments of the credit institution. Thus, by writing off several loans, the credit institution will receive not cash income, but the opportunity to pay fewer payments in the future. It is possible to foresee the possibility for the credit institution itself to determine exactly which payments it will allocate such a benefit to (separately for each written-off loan), and if necessary, for example, "invest" it in the payment of utility services.

It is worth expressing a few more comments about the draft law under consideration. It contains a lot of vague or overly general wording, which can significantly complicate its enforcement. Thus, the draft law provides that when loan payments are suspended, all payments are suspended, including interest payments and other payments. But when it comes to canceling the loan, there is no such clarification. Therefore, this legal norm can be interpreted as one that provides for the write-off of only the body of the loan, and as one that provides for the write-off of all loan-related payments. This must be defined clearly.

The wording about «90 days after the termination or cancellation of martial law in Ukraine» raises questions. According to this wording, we are talking about martial law declared on the entire territory of Ukraine. However, in accordance with Part 1 of Art. 1 of the Law of Ukraine «On the Legal Regime of Martial Law» martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack. Thus, it is quite probable that the martial law will be suspended in the entire territory of Ukraine, but martial law will be in effect in some regions. Therefore, the deadline for submitting the relevant documents will expire, and the residents of the relevant regions will not be able to receive them, and therefore will not be protected by the law. We consider it a distortion of the legislator's will.

It is also unclear how damaged property differs from destroyed property, because the current legislation does not contain a clear mechanism for conducting such an assessment, but this is a claim not against the draft law itself, but against the law-making process as a whole. This includes questions about the list of documents that confirm the status of the property, or the time frame for receiving state compensation for damaged or destroyed proper-

ty. However, the presence of these gaps in the legislation indicates that enforcement of this draft law will be problematic. Its coming into force does not guarantee the implementation of these legal norms, without the adoption of relevant normative legal acts, they will be stillborn. Therefore, there is no need to urgently accept this project, and to take time to fill the mentioned gaps. Instead, it is necessary to immediately adopt a package of normative legal acts that will ensure consistent and effective implementation of the requirements of the law. Without this, this bill will remain a populist step that will have no real positive consequences.

Conclusions and prospects for further research.

The analysis of the draft law under consideration shows that it contains a number of vague wordings, which may negatively affect its effectiveness, and also sets too little a deadline for citizens to receive documents, the list of which, by the way, is still not defined by law. Also, procedures and mechanisms

without which the application of the legal norms proposed by the draft law will be impossible have not yet been developed. Thus, there is a risk of stillbirth of these norms.

In order to avoid these risks, it is necessary to immediately develop and adopt a number of normative legal acts, some of which require fundamentally new approach that should be scientifically substantiated (for example, we are talking about the mechanism of state compensation to credit institutions for write-off loans). Such justification is the main direction of further scientific research in this area.

Without this, the bill under consideration may have a significant negative impact on the banking system of Ukraine. Therefore, we consider it necessary to recommend not to be in too much of a hurry with its adoption, because in order to protect the interests of borrowers, there is already a legal norm on the cancellation of responsibility for late payment of loans during the martial law.

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