

ГРАЖДАНСКОЕ ПРАВО И ПРОЦЕСС

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CIVIL REMEDIES FOR PROTECTION OF CONSUMER RIGHTS IN BANKING RELATIONS

Annotation

In today's society, where financial transactions play a huge role, consumer protection is becoming an increasingly relevant and important topic. The banking sector is no exception, and civil law means of protecting consumer rights in legal relations regarding a bank deposit, bank account and issue of securities are of particular importance. That is why it is important that consumers can be confident that their rights on this issue are reliably protected. Civil law means of protecting consumer rights in relation to a bank deposit provide them with the opportunity to appeal against incorrect attitude on the part of banks or other financial institutions, as well as receive compensation in case of losses incurred as a result of their illegal actions.

Keywords: financial system, financial operations, banking operations, banking services, protecting consumer rights, information transparency, contractual relationships, resolving disputes, government guarantees.

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БАНКТІК ҚҰҚЫҚТЫҚ ҚАТЫНАСТАРДАҒЫ ТҰТЫНУШЫЛАРДЫҢ ҚҰҚЫҚТАРЫН ҚОРҒАУДЫҢ АЗАМАТТЫҚ-ҚҰҚЫҚТЫҚ ҚҰРАЛДАРЫ

Аңдатпа

Қаржылық операциялар үлкен рөл атқаратын қазіргі заманғы қоғамда тұтынушылардың құқықтарын қорғау өзекті және маңызды тақырыпқа айналып келеді. Банкілік секторы да осы үдерістен тыс қалмай, банктік салым, банктік шот және бағалы қағаздар шығару жөніндегі құқықтық қатынастарда тұтынушылардың құқықтарын қорғаудың азаматтық-құқықтық құралдары ерекше рөлге ие. Сондықтан тұтынушылардың осы мәселе бойынша құқықтары сенімді қорғалуына сенімі аса маңызды. Банк операцияларына қатысты тұтынушылардың құқықтарын қорғаудың азаматтық-құқықтық құралдары оларға банктер немесе басқа да қаржы институттары тарапынан дерекі қарым-қатынасқа шағымдануға, сондай-ақ олардың заңсыз әрекеттері салдарынан келтірілген шығындар жағдайында өтемақы алуға мүмкіндік береді. Ұсынылатын мақала банк операцияларына қатысты тұтынушылардың құқықтарын қорғаудың азаматтық-құқықтық құралдарын құқықтық реттеуге арналған.

Түйінді сөздер: қаржы жүйесі, қаржылық операциялар, банк операциялары, банк қызметтері, тұтынушылардың құқықтарын қорғау, ақпараттық ашықтық, шарттық қатынастар, дауларды шешу, мемлекеттік кепілдіктер.

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ГРАЖДАНСКО-ПРАВОВЫЕ СРЕДСТВА ОХРАНЫ ПРАВ ПОТРЕБИТЕЛЕЙ В БАНКОВСКИХ ПРАВООТНОШЕНИЯХ

Аннотация

В современном обществе, где финансовые операции играют огромную роль, защита прав потребителей становится все более актуальной и важной темой. Банковский сектор не является исключением, и гражданско-правовые средства охраны прав потребителей в правоотношениях по поводу банковского вклада, банковского счета и выпуска ценных бумаг имеют особое значение. Именно поэтому важно, чтобы потребители могли быть уверены в том, что их права по этому вопросу надежно защищены. Гражданско-правовые средства охраны прав потребителей в отношении банковских операций предоставляют им возможность обжаловать некорректное отношение со стороны банков или других финансовых институтов, а также получить компенсацию в случае убытков, понесенных вследствие их неправомерных действий. Правовому регулированию гражданско-правовых средств охраны прав потребителей в отношении банковских операций посвящена данная статья.

Ключевые слова: финансовая система, финансовые операции, банковские операции, банковские услуги, защита прав потребителей, информационная прозрачность, договорные отношения, разрешение споров, государственные гарантии.

Civil law means of protecting consumer rights in legal relations regarding a bank deposit, bank account and issue of securities of the Republic of Kazakhstan is a necessary and reliable tool for protecting consumer rights in the field of financial transactions. They ensure transparency, reliability and fairness in relations between consumers and financial institutions, as well as protect the interests of consumers in case of violation of their rights. The first and most important remedy is legislation. Laws and regulations establish the basic rights and obligations of both consumers of banking services and banks themselves. For example, legislation can determine the minimum requirements for banking contracts, mandatory conditions for providing information to customers and rules for regulating banking activities.

Another important means of protection is information transparency. Banks are obliged to provide consumers with complete and reliable information about their services, tariffs, commissions, rules for opening and maintaining accounts, as well as about the conditions for issuing securities. This helps consumers make informed decisions and avoid unfair practices on the part of banks.

Contractual relationships also play an important role in consumer protection. The agreement between the bank and the client defines the rights and obligations of the parties, the conditions for the provision of services and the procedure for resolving disputes. Consumers have the right to demand compliance with contractual obligations from the bank and apply for protection of their rights in case of violation. In addition, the ability to resolve disputes is an important remedy. In the event of conflicts or violations of consumer rights, they can apply to the competent authorities or courts to protect their interests and restore justice. Finally, government guarantees on deposits also provide additional protection for consumers. These guarantees allow saving customer funds in the event of a bank bankruptcy and reducing the risk of losing money.

Civil legal means of protecting consumer rights in relations with banks ensure the stability and reliability of the financial system. This is especially important in the context of maintaining public confidence in banking institutions and maintaining economic stability. As banks play a key role in financial mediation and capital allocation in the

economy, consumer protection promotes financial resilience and sustainable economic growth. Guaranteeing consumer rights in the field of banking services also contributes to the development of competition in the market. Consumers, having a clear understanding of their rights and capabilities, are free to choose banking products and services based on their quality, service level and conditions. This encourages banks to constantly improve their services and provide better offers, which ultimately has a beneficial effect on the level of service and innovative development of the banking industry. In addition, civil legal means of protecting consumer rights in banking relations contribute to increasing the financial literacy of the population. Understanding their rights and obligations, as well as knowledge of the basic principles and mechanisms of the banking system, makes consumers more informed and competent in the field of financial decisions. This allows them to make better decisions when choosing banking products, managing their finances and protecting against possible risks and fraud.

Moreover, civil legal means of protecting consumer rights in the field of banking services contribute to the development of institutional protection and the rule of law in general. The existence of effective consumer protection mechanisms creates the basis for legal support for other areas of society. This demonstrates that the state closely monitors the observance of the rights and interests of its citizens, which is an important aspect of social justice and legal statehood. In addition, civil legal means of protecting consumer rights in the field of banking services contribute to improving the business reputation and image of banks. Banks that respect the rights and interests of their clients become more attractive to new customers and investors, which contribute to their sustainable development and growth. It also promotes public confidence in financial institutions and encourages them to be socially responsible and behave ethically. Legal Instruments for Consumer Protection in the Field of Consumer Credit discusses various legal mechanisms used to protect consumer rights in lending, including banking. The document emphasizes the importance of legislation, judicial practice and alternative methods of dispute resolution to ensure fairness and equality of parties in banking relations [1].

M. Galli's work "Consumer Protection and the Law" examines the role of civil law consumer protection in various fields, including banking services. The author emphasizes the importance of

consumer awareness, transparency of the terms of service and the availability of dispute resolution mechanisms to ensure fairness and consumer protection. The Consumer Financial Protection Bureau (CFPB) study in the United States analyzes the effectiveness of various civil law consumer protection mechanisms in the financial services sector. CFPB reports often contain data and analytics on consumer rights issues in relations with banks, including the effectiveness of legislation, dispute resolution mechanisms and practices of financial institutions [2]. Studies and reports are also conducted by the International Monetary Fund (IMF), the World Bank and other international organizations that analyze the effectiveness of consumer protection legal mechanisms in various countries and recommend measures to improve their performance in the banking sector.

Specialists of the Agency for Regulation and Development of the Financial Market of the Republic of Kazakhstan inform that the responsibility for protecting deposits and the rights of legitimate interests of depositors in the event of deprivation of the bank's license lies with the Kazakhstan Deposit Guarantee Fund (KFGD). From the moment of conclusion of a bank deposit or account agreement, deposits become protected by the KFGD. Guarantees relate to all types of deposits of individuals and individual entrepreneurs: demand deposits, conditional, time and savings deposits, as well as money on current accounts and payment cards. It should be noted here that the savings of citizens are fully protected within the guarantee amounts, regardless of the situation in the bank, the functioning of branches or external circumstances. Thus, in the event of revocation of a banking license, depositors, account holders and cardholders are provided with a guaranteed refund. Guarantee compensation is issued from a special fund of the Kazakhstan Deposit Guarantee Fund, which is financed by mandatory contributions from participating banks operating in Kazakhstan, with the exception of Islamic banks. The maximum guarantee amount depends on the type and currency of the deposit. For savings deposits in national currency, this amount cannot exceed 20 million tenge, for other deposits in national currency - 10 million tenge, and for deposits in foreign currency - 5 million tenge. If the clients have several deposits of different types and currencies, then the total amount of the guarantee compensation should not exceed 20 million tenge, taking into account the restrictions for each type of deposit.

From January 11, 2022, the guaranteed amount of compensation was increased. The maximum amount of guarantee compensation for savings deposits in tenge increased from 15 million to 20 million tenge. The total guarantee indemnity was also increased if there are several deposits in one bank. In order to increase the profitability of household savings and maintain financial stability, the KFGD decided to increase the maximum interest rates on savings deposits of individuals in national currency. For terms of 3 and 6 months, remuneration rates increased by 2 percentage points: without the possibility of replenishment - from 11.3% to 13.3%, with the possibility of replenishment - from 10.8% to 12.8%. For a period of 12 months, the interest rate increased by 1 percentage point: without the possibility of replenishment - from 13.9% to 14.9%, with the possibility of replenishment - from 12.7% to 13.7%. From January 1, 2020, payments of guarantee compensation to depositors are made within 35 working days from the date of deprivation of the bank's license to conduct all banking operations. The latest insurance claims showed that the start of payments was ensured in record time. For example, depositors of Asiacredit Bank JSC and Capital Bank Kazakhstan JSC were able to apply for payment 8 and 6 working days, respectively, after the banks were deprived of their licenses [3].

An application for the payment of warranty compensation from September 2021 can be submitted in electronic form through the KFGD portal (Kazakhstan Deposit Guarantee Fund). It is also possible to apply personally through the branches of the agent bank. Applications are accepted within one year from the date of payment. It is important to note that depositors of banks already liquidated or deprived of a license must submit their applications by May 1, 2022. The agency has developed special measures to maintain information and cybersecurity in the banking and microfinance sectors. In accordance with the regulations of the agency, financial institutions must ensure the protection of information in their information systems, on their Internet resources and in mobile applications. These requirements prevent the possibility of fraud, as they exclude the possibility of withdrawing money or obtaining a loan without the active participation of customers. Due to the need to improve the security of remote financial services, in October 2023, modifications were developed and approved to regulatory legal acts aimed at strengthening the requirements for banks and microfinance organizations engaged

in the provision of these services. At first glance, banks should be deeply interested in preserving information. They have the ability to analyze huge amounts of data, provide customers with relevant offers and serve them anywhere, accompanying each operation. However, the protective mechanisms offered by banks must be adequate to the problem and understandable to customers. One common example is the use of two-factor authorization via SMS, instead of using a temporary password generator in the form of a key fob. Thus, the security tool must meet three requirements at the same time: provide a high level of protection, be convenient for customers and pose significant difficulties for attackers trying to hack it.

Protecting personal information is an inherent responsibility of the service provider. The cost of maintaining data security should be much more economical than the intrinsic cost of information. Since independence and the beginning of market transformations, the system of regulation of the securities market in Kazakhstan has begun to develop actively. Already in 1994, a primary legal framework was created, which made it possible to put into circulation and trade in securities. The key law underlying the regulation of the securities market was the Civil Code of the Republic of Kazakhstan adopted in December 1994. Together with the provisions of the Civil Code, the main legal regulation of the securities market in the country is carried out in accordance with the Law on the Securities Market, regulations of the National Bank of the Republic of Kazakhstan and the Agency of the Republic of Kazakhstan for Regulation and Development of the Financial Market (ARDFM), as well as the internal rules of the Kazakhstan Stock Exchange (KASE) and the Exchange of the Astana International Financial Center (AIX). One of the fundamental concepts in the legal regulation of securities is a "security", which is defined by the Civil Code as "a document certifying, in compliance with the established form and mandatory details, property rights, the exercise of which is possible only upon presentation" [4]. As securities, domestic legislation includes stocks, bonds, derivative securities, mortgage certificates and other types of securities. Securities can be divided into two types: debt and equity. Debt securities imply an obligation of the issuer or the debtor to pay the principal amount of the debt in accordance with the conditions established when issuing these securities. Equity securities, on the contrary, provide the owner's right to a share in the issuer's property. Securities can also be divid-

ed into issue and non-issue. Issuable securities include shares, bonds and depositary receipts, and promissory notes, checks and other similar instruments are considered non-issuable.

In Kazakhstan, securities are regulated and monitored by the following bodies, including the Financial Market Regulatory and Development Agency (ARDFM). According to the legislation on the securities market, a specialized body carries out state regulation of this market. Since the beginning of 2020, ARDFM has become responsible for these functions. In addition, the Agency, together with the Government of Kazakhstan, determines the priorities for the development of the securities market, makes decisions on the recognition of financial market assets as securities, carries out state registration of issues of non-state issue securities, Islamic financial instruments and derivative securities, and also establishes mandatory requirements for professional market participants. As a result of the recognition of the ARDFM as a regulatory structure, the National Bank of Kazakhstan has lost a number of functions to regulate activities in the securities market. However, he continues to collect, analyze and publish statistics related to the government securities market.

The Kazakhstani securities market is at a very early stage of its development, and in order to understand how it can develop in the future and predict the situation in the field of privatization and circulation of securities in the republic, we need to turn to the experience of other countries. Usually, in any developed market, the behavior of its participants is based on the same motives, and therefore the formation of a market economy in Kazakhstan will contribute to the emergence of the same interests and structures that are characteristic of the modern capitalist system. To study the principles of economic organization and methods of state regulation necessary for building a market system in Kazakhstan, the most interesting is to consider the American experience. The study of the American experience is important because of the scale of their economy, which gives us the basis for analyzing the principles of organization and regulation of the securities market. Therefore, in order to achieve the desired results, we must study the main features of the American practice of banks in the securities market and analyze the motives of buyers and sellers of shares. Banks play an important role in the global securities market, acting as investors, issuers and intermediaries. However, the role of

banks in the securities market varies from country to country.

In the United States and Japan, there is a segmented bank structure that legally separates banking operations related to accepting deposits and issuing short-term loans from operations for issuing and placing securities of industrial companies and providing specialized financial services (for example, insurance and real estate transactions). The universal structure of banks, which allows them to engage in all types of operations and financial services, is characteristic of a number of Western European countries, such as Germany, France, Switzerland and the United Kingdom. In these countries, a large role in the functioning of the banking sector is played by a high degree of self-regulation of financial institutions, their strict observance of the customs and traditions that were established by the banking community. Banks currently perform not only commercial, but also investment functions. Their role in the investment area is to guarantee the placement of new securities (underwriting) and advise clients on the issue and implementation of proposals for the issue of such securities. Of course, these functions are combined with traditional commercial operations, mainly related to raising deposits and lending at higher interest rates than interest accrued on deposits. Profits in this industry are usually based on the difference between interest rates on deposits and income from loans made.

Today, the banking sector is undergoing significant changes. In conditions of the concentration of capital and its influence on production, banking capital merges with industrial capital, the so-called financial capital arises. These changes indicate that banks are actively adapting to new conditions and are looking for new opportunities for the development of their activities. In March 1997, three important laws were adopted that laid the foundations for the functioning of the stock market infrastructure in Kazakhstan. These are the laws "On the securities market", "On registration of transactions with securities in the Republic of Kazakhstan" and "On investment funds in the Republic of Kazakhstan". In 1998, the Law "On Joint Stock Companies" was also adopted. The Law of the Republic of Kazakhstan "On the Securities Market" dated July 2, 2003 regulates relations related to the issue, placement, circulation and redemption of equity securities and other financial instruments. It also defines the specifics of the creation and activities of securities market entities, as well as establishes the pro-

cedure for regulation and supervision of the securities market in order to ensure the safe, open and effective functioning of the market, as well as the protection of the rights of investors and holders of securities. The law also contains provisions on stock transactions of the joint-stock company, the rights and obligations of owners of shares and bonds, as well as rules for registering securities and determining their market value. The National Securities Commission of the Republic of Kazakhstan and the Agency of the Republic of Kazakhstan for Regulation and Supervision of the Financial Market and Financial Organizations have issued a large number of regulations that regulate certain procedures on the securities market. For example, the law "On approval of the rules for licensing activities on the securities market", which was issued on December 27, 2004, is aimed at state regulation of these activities in the Republic of Kazakhstan.

So, having conducted a study of the state of legal regulation of banking consumer legal relations, we can note the following. As can be seen from the study, the problem of consumer protection in banking legal relations continues to be relevant and practically significant.

The main special transaction legal means aimed at protecting consumer rights in banking credit relations are:

- special requirements for the procedure for reporting and content of credit information;
- requirements for execution and content of the loan agreement, including requirements for font size, location of information on the loan amount on the document;
- restrictions on the possibility of unilateral changes in the terms of the loan agreement;
- restrictions on the inclusion in the loan agreement of additional services of the creditor or third parties, including insurance services;
- restrictions on the establishment of commissions and fines;
- rules for provision of information on debt in the course of loan agreement execution;
- special rules for early termination of the loan agreement.

The introduction of such an arsenal of special legal means by adopting special law on consumer credit to a large extent positively influenced the observance of consumer rights and in credit banking legal relations.

Bibliography:

- Recommendation of the Council on Consumer Protection in the field of Consumer Credit. OECD Legal Instruments // <https://legalinstruments.oecd.org/en/instruments/oecd-legal-0453>
<https://medium.com/@asifkh8949/consumer-financial-protection-bureau-cfpb-7979319eff44>
https://kdif.kz/depozity-i-garantiya/vyplata-vozmeshcheniya/?special_version=Y
Civil Code of the Republic of Kazakhstan (General Part), adopted by the Supreme Council of the Republic of Kazakhstan on December 27, 1994 // https://online.zakon.kz/Document/?doc_id=1006061&sub_id=10000&pos=542;-54#pos=542;-54

References:

- Recommendation of the Council on Consumer Protection in the field of Consumer Credit. OECD Legal Instruments // <https://legalinstruments.oecd.org/en/instruments/oecd-legal-0453>
<https://medium.com/@asifkh8949/consumer-financial-protection-bureau-cfpb-7979319eff44>
https://kdif.kz/depozity-i-garantiya/vyplata-vozmeshcheniya/?special_version=Y
Civil Code of the Republic of Kazakhstan (General Part), adopted by the Supreme Council of the Republic of Kazakhstan on December 27, 1994 // https://online.zakon.kz/Document/?doc_id=1006061&sub_id=10000&pos=542;-54#pos=542;-54