

**N. V. Trotskyuk,**

Candidate of Juridical Sciences

ORCID ID: <https://orcid.org/0000-0002-5943-8694>

**I. S. Melnychuk,**

Master of Laws

## LEGAL REGULATION OF RELATIONS UNDER THE AGREEMENT ON THE PROVISION OF CONSUMER LOAN DURING THE MARTIAL LAW IN UKRAINE

National Aviation University

Liubomyra Huzara Avenue, 1, 03680, Kyiv, Ukraine

E-mail: [olimp512@ukr.net](mailto:olimp512@ukr.net)

**Purpose:** the purpose of the research paper is to study the concept of «consumer loan» and to disclose the legal regulation of relations under the agreement on the provision of consumer loan in connection with 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 effect of norms during the martial law». To the defined goal, general and special scientific **methods** were used, in particular such as: analytical, comparative-legal, system-structural methods, as well as the method of analysis of current domestic legislation. **Discussion:** search for modern theoretical and methodological approaches to the study of the definition of «consumer loan», the definition of the parties and conditions of the agreement on the provision of consumer loan, the analysis of legislative novels in the sphere of consumer loan in Ukraine during the period of the legal regime of martial law, which provide guarantees to consumers of «microcredit» and provide mechanisms for their protection from unlawful actions, above all, non-bank financial institutions - microfinancial organizations.

**Key words:** consumer lending; martial law; consumer loan; agreement; interest rate; lender; consumer; forfeit; fine; penalty.

**Problem statement and its relevance.** In connection with the armed aggression of the Russian Federation against Ukraine, on February 24, 2022 in Ukraine, the Supreme Commander-in-Chief of the Armed Forces of Ukraine Volodymyr Zelenskyy signed the Decree No. 64/2022 "On the imposition of martial law in Ukraine", which radically changed the life of every citizen of our state. Most Ukrainian citizens have been forced to move from temporarily occupied territories and territories where active fighting is taking place, part of them have lost their permanent income and as a consequence are unable to fulfill their obligations under the consumer loan agreement.

According to the results of two studies of the practices of consumer lending of banks and finan-

cial companies, conducted in April-June 2021 according to the USAID Project "Transformation of the financial sector", it was established that the average real annual interest rate (hereinafter - RAIR) of bank loans for personal purposes is 121% annual, and in respect of microloans that are missed by financial companies – 28671% annual. According to statistical reports published on the NBU website, in the second quarter of 2021 67% of loan agreements were concluded by financial companies for a period of up to 1 month [1].

In view of the situation that has emerged in the state and in order to provide certain guarantees for Ukrainians borrowers during the war and post-war recovery of the economy, on March 15, 2022, the Verkhovna Rada of Ukraine adopted the Law of

Ukraine "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the effect of the norms during the martial law" No. 2120-IX [2], which changes a number of rules of work of banks and non-bank financial institutions, in particular those providing credit services, including consumer.

All of the above indicates the relevance of the study of the legal regulation of relations under the agreement on the provision of consumer loan during the martial law.

**Analysis of research and publications.** The issues of legal regulation of relations under the agreement on the provision of consumer loan in Ukraine are devoted to the work of leading scientists and practitioners, such as: A.Yu. Babaskin, L.M. Ivanenko, S.M. Lepekh, V.V. Luts, T.M. Larina, I.A. Melnyk, O.V. Onischenko, I.B. Okhrymenko, V.Ya. Pohrebniak, A.M. Pylutsky, Ya.M. Shevchenko, G.Yu. Shemshuchenko, V.P. Yanyshen and others. However, these issues were considered for the most part in the general context of credit relations and without taking into account the recent changes to the legislation of Ukraine in the sphere of consumer loan related to the introduction of the martial law.

**Purpose of the article** is to study the concept of "consumer loan" and to reveal the peculiarities of the legal regulation of relations under the agreement on the provision of consumer loan in connection with the adoption of the Law of Ukraine No. 2120-IX "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine concerning the effect of norms during the martial law".

**The presentation of the main material.** Particular interest in the modern stage of development of society causes the sphere of consumer loan and its legal regulation. After all, consumer lending plays a significant role in ensuring the social needs of the population, the formation of solvency demand, which, in turn, influences the development of the country's economy.

The basis of consumer lending is the economic and legal category of credit. The great encyclopedic legal dictionary contains the following definition of credit (lat. creditum - loan, debt, from credere - trust): relations in connection with the transfer of money or material values in temporary use, subject to their return. The main forms of it are bank loans,

provided as money loan, and consumer loan, used in cash and commodity forms [3, p. 425].

According to paragraph 11 of Article 1 of the Law of Ukraine "On Consumer Lending", which is the direct regulator of relations under the agreement on the provision of consumer loan, consumer loan (credit) is money provided to the consumer (lender) for the acquisition of goods (works, services) to meet needs not related to entrepreneurial, independent professional activity or performance of duties of an employed worker [4]. It should be noted that this definition is not universal, since part 2 of article 3 of the Law of Ukraine "On Consumer Lending" defines a comprehensive list of cases to which its provisions do not apply. This rule was partially implemented from Directive 2008/48/EC on the exclusion of certain types of credit contracts from the consumer list [5]. Such cases include:

1) agreements containing a condition on consumer loan in the form of crediting an account with a period of repayment of loan up to one month;

2) loan agreements that do not provide for the payment of interest or any other payments for the use of the money provided under such agreements;

3) credit agreements, the purpose of which is to give the consumer the right to make transactions with financial instruments, if such transactions are made with the participation or intermediation of the lender or other professional participant in the securities market;

4) loans granted under agreements concluded as a result of settlement of a dispute by concluding a peace agreement approved by the court;

5) loans granted exclusively within the framework of relevant state programs or programs of local self-government bodies to a definite group of individuals and providing for separate, defined by such programs, conditions of lending, including the payment of interest for the use of the loan;

6) unauthorized overdraft, which is the excess of the amount of the transaction carried out on the account, over the amount of the established credit limit, which is determined by the agreement between the lender and the consumer and is not predicted by size and time of occurrence;

7) loans granted by pawnshops in case of transfer of the subject of the pledge to the

preservation of the pawnshop, provided that the obligations of the consumer are limited to the value of the subject of the pledge [4].

Regarding the research of the definition of "consumer loan" in the scientific legal literature, it is worth noting that there is no single point of view on the definition of this concept. For example, T. Larina notes that consumer loan is an independent type of credit obligations of a targeted nature, which is granted by the credit organization to individuals for the purpose of acquiring them goods of long-term use for needs not related to the implementation of entrepreneurial activities, for a period not exceeding three years [6, p. 78].

According to V. Pohrebniak, a consumer loan is funds in foreign or national currency, provided by a bank or other financial institution, which received a license in accordance with the procedure established by the legislation for carrying out loan operations, a natural person for the purchase of goods, payment of the results of works, services, in order to meet its personal, family, household and other needs, not related to the implementation of entrepreneurial activity, on terms of security, return, timeliness, payment and targeted orientation [7, p. 114].

A. Kyrychuk defines the concept of consumer loan as a agreement under which a bank or other financial institution (lender) undertakes to provide funds (credit) to an individual (borrower) in order to purchase the latter goods (works, services) for personal, family, household and other needs not related to the implementation of business activities, in the amount and on the terms established by the agreement, and the borrower undertakes to return the amount received and pay interest on it [8, p. 42].

In view of the foregoing, we believe that the diversity of doctrinal approaches to the concept of "consumer loan" in legal studies leads to a misunderstanding in practice of the essence of such a civilized construction, and as a consequence, violations of borrowers' rights in these relationships.

Lending, including consumer, by its legal nature is a binding relationship and is carried out on a contractual basis. In accordance with paragraphs 1 and 3 of Article 1054 of the Civil Code of Ukraine

[9], under the loan agreement the bank or other financial institution (lender) undertakes to provide funds (loan) to the borrower in the amount and under the terms of the agreement, and the borrower undertakes to repay the loan and pay interest. According to paragraph 1 of Article 1 of the Law of Ukraine «On Consumer Lending», a consumer loan agreement is a type of credit agreement under which the lender undertakes to provide consumer credit in the amount and on the terms established by the agreement, and the consumer (borrower) undertakes repay the loan and pay interest on the loan on the terms of the agreement [4].

Note that such legislative definition of this transaction in general corresponds to the concept of the loan agreement contained in Article 1054 of the Civil Code of Ukraine [9], clarifying the specific features of the consumer loan agreement (target use and subject composition).

By targeted use should be understood the use of funds to satisfy consumer needs, not to obtain an economic effect. Therefore, the ability of the borrower to return the funds received in the credit is not affected by the definition of a particular subject investment of those funds. In this regard, we believe that the targeted use of funds in the consumer loan may be indicated in the agreement if one of the parties wishes.

The specificity of the subjective composition of the consumer loan agreement is that its parties are the lender – a bank or other financial institution, which in accordance with the law has the right to provide consumer loan and the consumer, which is only a natural person who has concluded or intends to conclude the consumer loan agreement.

In addition to lenders and consumers (borrowers), the Law of Ukraine "On Consumer Lending" [4] introduces to the circle of participants relations related to consumer loan, as well as credit intermediaries: credit brokers – legal entities or natural persons – entrepreneurs, who on their behalf in the interests of the lender perform for reward intermediary activities in the sphere of consumer loan and credit agents – natural persons, natural persons – entrepreneurs or legal persons, acting on the basis of a agreement of commission with the lender on behalf and in the interests of the lender

and perform part of his duties under the consumer loan agreement.

In order to ensure awareness of the consumer of the credit service regarding the future agreement before its conclusion, the lender or credit intermediary provides the consumer with the information necessary to compare the different offers of the lender in order to make a reasoned decision by the consumer on the conclusion of the corresponding agreement, including taking into account the choice of a certain type of loan. The aforementioned information is provided free of charge by the lender to the consumer in a special form (consumer loan passport), in written form (in paper form or in the form of an electronic document) with indication of the date of provision of such information and the period of its relevance.

It is worth agreeing with the opinion of O. Onischenko and Yu. Stepanova that the institution of consumer information is of great importance given that in the relationship between the bank and the consumer there is an information disproportion. Therefore, the necessary prerequisite for protecting consumer rights is the implementation of an open credit policy to inform potential customers about the real price of the credit [10, p. 111].

Analyzing the question of the terms of agreement between the lender and the borrower, it should be noted that the legislation separately also established requirements. Thus, Article 12 of the Law «On Consumer Lending» does not contain a list of essential conditions, but stipulates which conditions in the studied agreement should be mentioned: 1) name and location of the lender and loan intermediary (if available), surname, name, paternity and place of residence of the consumer (lender); 2) type of credit (credit, credit line, credit account, etc.), purpose of receipt of the credit; 3) the overall amount of the loan granted; 4) procedure and conditions for granting the credit; 5) the term for which the credit is granted; 6) the need to conclude agreements on additional or related services of third parties related to receipt, maintenance and repayment of the credit (if available); 7) types of security of the granted credit (if the credit is granted on condition of obtaining security); 8) interest rate on the credit, its type

(fixed or modified), the procedure for its calculation, including the procedure for change, and payment of interest; 9) the indicative real annual interest rate and the indicative total value of the loan for the consumer on the date of conclusion of the contract on consumer credit; 10) the procedure for repayment of the credit and payment of interest for the use of consumer credit, including the number of payments, their size and periodicity of making, in the form of a payment schedule (in the case of lending in the form of credit account, the credit line of payments may not be provided); 11) information about the consequences of default on payment obligations, including the amount of the penalty, interest rate, other payments that are applied or charged in case of non-performance of the obligation under the contract on consumer credit; 12) the procedure and conditions of refusal to grant and receive the credit; 13) the procedure for early repayment of the credit; 14) the responsibility of the parties for breach of the terms of the contract.

In the course of our research, we agree with the scientific position of S. Lepekh that this legislative provision is not successful, because the consequences of non-compliance with this requirement are not clear.

The disadvantage of legislative terminology in this article is also the disclosure of the terms of the contract through economic categories, the operation of which is not inherent in civil law regulation. Thus, the condition of the subject is defined through such concepts as the type of credit (credit, credit line, credit account, etc.) and the general amount of the loan granted. In view of the fact that the consumer loan agreement belongs to a group of agreement for the provision of services according to current legislation, the condition on its subject must not only contain the characteristics of the financial assets for which the parties agree, but also disclose the essence of the service itself, i.e. actions for the provision of these assets [11, p. 30].

It should be noted that with the adoption on September 15, 2020 by the Verkhovna Rada of Ukraine of the Law of Ukraine No. 891-IX “On Amendments to Certain Laws of Ukraine on Consumer Lending and Formation and Circulation of Credit Histories” [12], the mandatory condition

for the conclusion of the consumer loan agreement is the consent of the consumer to access the information that constitutes his credit history, and to collect, store, use and disseminate through the Bureau of Credit Histories, included in the Unified Register of the Bureau of Credit Histories, information about it and this loan. The absence of such consent by the consumer results in the refusal of the lender to conclude the contract and to carry out the credit transaction.

This decision of the Parliament is caused by the rapid growth of the demand for "microcredit", as well as the need to normalize this area of legal relations and improve the quality of the system of credit histories of individuals. Ultimately, more and more citizens have had a lot of problems because the requirements for disclosure of information did not extend to so-called "microcredit".

Note that the contract on the provision of consumer loan is concluded in written form (in paper form or in the form of an electronic document). Each party to the agreement receives one copy of the agreement with annexes to it. A copy of the agreement belonging to the consumer must be transferred to him without delay after the signing of the agreement by the parties.

The particularity of regulating legal relations in the sphere of consumer loan is the determination by the lender of the possibility of concluding a agreement on consumer loan also on the basis of the corresponding request (application) of the consumer, including the use of means of distance communication (for example, through the Internet), and the assessment of the creditworthiness of the consumer.

Another innovation in the sphere of regulation of relations under the agreement on the provision of consumer credit is the establishment of the obligation for the lender to transfer information on all consumer loan free of charge to at least one bureau of credit histories included in the Unified Register of the Bureau of Credit Histories and the reduction of the period of introduction by the credit bureau of the information received from the lender. In accordance with part 2 of article 9 of the Law of Ukraine "On the organization of formation and circulation of credit histories", the user shall transmit the information to the Bureau no later than

two working days from the date of conclusion of the credit transaction or change of information about the subject of credit history. Previously, the legislation provided seven days for this procedure.

In turn, the consumer is entitled to withdraw from the consumer loan agreement and to return it early. In accordance with Article 15 of the Law of Ukraine "On Consumer Lending" [4] the consumer has the right within 14 calendar days from the date of conclusion of the consumer loan agreement without explaining reasons to refuse it, even if he has received funds, in writing informing the creditor of his intention within the specified period. This refusal is due to the obligation of the consumer within seven calendar days from the date of submission of the written notice to return to the lender the money received under the agreement and pay interest for the period of actual use of the funds at the rate established by the agreement. The consumer does not pay any other payments related to its withdrawal from the agreement.

In connection with the adoption of the Law of Ukraine "On Amendments to Certain Laws of Ukraine concerning Consumer Lending and Formation and Circulation of Credit histories" [12], Article 21 of the Law of Ukraine "On Consumer Lending" [4] was supplemented by Part 3, according to which the the maximum aggregate amount of fines and penalties for breach by the consumer of his obligations under the consumer loan agreement, the total amount of loan for which does not exceed the minimum wage, may not exceed double the amount received by the consumer under such contract, and may not be increased by agreement of the parties. This legislative rule is a guarantee for the consumer and gives the opportunity to protect him from unlawful actions, primarily of microfinancial organizations. After all, before the entry into force of this legislative act, microfinancial organizations, such as "Moneyveo", the company with limited liability "Emergency Financial Assistance" provided loans to the population under high interest rates and with the indication in the agreement of tough sanctions for delays, which could triple or even increase the debt of the consumer by ten. According to statistics, during July-September 2020, the National Bank of Ukraine received 2965 complaints of citizens on the

work of financial companies (without accounting for insurance companies, loan unions, pawnshops). Signs of violation of rights had 52.7% of complaints [14].

However, it should be noted that in connection with the introduction of the legal regime of martial law in Ukraine on February 24, 2022, on March 15, 2022 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine for the period of martial law" No. 2120-IX [2], which section IV "Final and transitional provisions" of the Law of Ukraine "On Consumer Lending" supplemented by paragraph 61, according to which, during martial law, state of emergency and thirty-day the term after the day of its termination or cancellation in case of delay by the consumer in fulfilling the obligations under the contract on consumer loan, the consumer is released from liability to the creditor for such delay. In case of such delay, the consumer is released, in particular, from the obligation to pay the lender forfeit (fines, penalties) and other payments, the payment of which is provided by the contract on consumer loan for delay in performance (default, partial performance) by the consumer.

It is forbidden to increase the interest rate for the use of the loan for reasons other than those provided for by part four of Article 10561 of the Civil Code of Ukraine [9], in particular, when the establishment of the modified interest rate is provided for by the credit agreement or the contract on consumer loan. This rule applies, in particular, to loans specified in Section 2. Law of Ukraine "On Consumer Lending" [4].

It should be noted that the forfeit (penalty, fine) and other payments, payment of which is provided by the contract on consumer loan, charged including from February 24, 2022 for delay in performance (failure to perform, partial performance) under such agreement, are subject to disbursement by the lender.

However, the National Bank of Ukraine on its official website [15] pays attention to the fact that the new rules do not provide for the abolition of interest for the use of credit funds. Such compensation is legitimate on the part of the creditor. Credit holidays are delayed payments, not

forgiveness. Also, credit holidays are the right of the creditor, not his obligation. That is why we recommend to negotiate directly with the lender about credit holidays. However, if borrowers have sufficient resources to continue operations and service loans, it is worth paying them in the future [16].

**Conclusion.** Implemented legislative changes in the sphere of consumer loan in Ukraine during the period of the legal regime of martial law provide guarantees to consumers of "microcredit" and provide mechanisms for their protection from unlawful actions, above all, non-bank financial institutions - microfinancial organizations. Despite the overwhelming number of amendments in favor of clients of financial institutions, introduced by the Law of Ukraine "On Amendments to Certain Laws of Ukraine on Consumer Lending and Formation and Circulation of Credit Histories", the Law of Ukraine "On Amendments to the Tax Code of Ukraine" martial law exempts the consumer from liability to the creditor for delay in fulfilling the obligation under the consumer loan agreement during the period of martial law, state of emergency in Ukraine and within thirty days after the date of its termination or cancellation, and prohibits the increase interest rate for the use of credit, except in cases where the establishment of a variable interest rate is provided by the loan agreement or consumer loan agreement.

Exemption from payment of forfeit (fines, penalties) does not mean exemption from interest on the loan.

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Ніна Троцюк, Ірина Мельничук

## ПРАВОВЕ РЕГУЛЮВАННЯ ВІДНОСИН ЗА ДОГОВОРОМ ПРО НАДАННЯ СПОЖИВЧОГО КРЕДИТУ В ПЕРІОД ДІЇ ВОЄННОГО СТАНУ В УКРАЇНІ

Національний авіаційний університет  
проспект Любомира Гузара, 1, 03680, Київ, Україна  
E-mail: [olimp512@ukr.net](mailto:olimp512@ukr.net)

*Незважаючи на чисельні дослідження у сфері укладення договору про надання споживчого кредиту, окремої уваги потребує аналіз законодавчих новел щодо правового регулювання відносин за договором про надання споживчого кредиту в період дії воєнного стану в Україні. У статті співавторами здійснено пошук сучасних теоретико-методологічних підходів до вивчення дефініції «споживчий кредит», визначено сторін та умови договору про надання споживчого кредиту, проаналізовано законодавчі новели у сфері споживчого кредитування в Україні в період дії правового режиму воєнного стану, що надають гарантії споживачам «мікрокредитів» та забезпечують механізми їх захисту від неправомірних діянь.*

*Зазначено, що особливий інтерес на сучасному етапі розвитку суспільства викликає сфера споживчого кредитування та його правове регулювання, адже споживче кредитування відіграє значну роль у забезпеченні соціальних потреб населення, формуванні платоспроможного попиту, який, у свою чергу, впливає на розвиток економіки країни.*

*Недоліком законодавчої термінології у ст. 12 Закону «Про споживче кредитування», на думку авторів, є розкриття умов договору через економічні категорії, оперування якими не притаманне цивільно-правовому регулюванню.*

*Зазначено, що у зв'язку із введенням 24 лютого 2022 року в Україні правового режиму воєнного стану, 15 березня 2022 року Верховною Радою України прийнято Закон України «Про внесення змін до Податкового кодексу України та інших законодавчих актів України щодо дії норм на період дії воєнного стану» № 2120-IX [2], яким розділ IV «Прикінцеві та перехідні положення» Закону України «Про споживче кредитування» доповнено пунктом б<sup>1</sup>, відповідно до якого, у період дії в Україні*



воєнного, надзвичайного стану та у тридцятиденний строк після дня його припинення або скасування у разі прострочення споживачем виконання зобов'язань за договором про споживчий кредит споживач звільняється від відповідальності перед кредитором за таке прострочення. У разі допущення такого прострочення споживач звільняється, зокрема, від обов'язку сплати кредитором неустойки (штрафу, пені) та інших платежів, сплата яких передбачена договором про споживчий кредит за прострочення виконання (невиконання, часткове виконання) споживачем зобов'язань за таким договором.

Зроблено висновок, що попри переважну кількість змін на користь клієнтів фінансових установ, які внесено Законом України «Про внесення змін до деяких законів України щодо споживчого кредитування і формування та обігу кредитних історій», прийнятий Закон України «Про внесення змін до Податкового кодексу України та інших законодавчих актів України щодо дії норм на період дії воєнного стану» звільняє від відповідальності споживача перед кредитором за прострочення виконання зобов'язання за договором про надання споживчого кредиту, а також забороняє збільшення процентної ставки за користування кредитом, крім випадків, коли встановлення змінюваної процентної ставки передбачено кредитним договором чи договором про споживчий кредит. Проте, звільнення від сплати неустойки (штрафу, пені) не означає звільнення від сплати процентів за користування кредитом.

**Ключові слова:** споживче кредитування; воєнний стан; споживчий кредит; договір; процентна ставка; кредитор; споживач; неустойка; штраф; пеня.

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