UDC 349
IRSTI 10.21.55
DOI 10.56525/CXDP4810

THE ESSENCE OF STATE REGULATION OF BANKING RELATIONS AND ITS LEGAL BASIS

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Abstract. The article is devoted to the study of the essence of state regulation of banking relations and its legal nature. State regulation of banking activity is a set of regulatory and individually authoritative actions on the part of regulatory authorities aimed at creating, functioning and stability of the banking system, protecting the rights of its participants and ensuring legality in the banking sector.

The paper analyzes the dual legal nature of state regulation of banking activities. On the one hand, it is expressed in the adoption of regulations that establish the foundations of the organization of the banking system, the status of subjects and legal regimes of banking activities. On the other hand, the Central Bank, acting as an element of the banking system, regulates by issuing legal acts affecting specific credit institutions, as well as through banking supervision mechanisms.

It also examines key aspects of government impact on the banking sector, including external (regulatory) regulation and intra-system regulation carried out by the Central Bank. Regulatory objectives are highlighted, such as ensuring the stability of the banking system, protecting the interests of depositors, and countering monopolization and unfair competition.

In addition, the article makes a distinction between public administration and banking regulation, emphasizing the need for a clear distinction between these concepts. The role of self-regulatory organizations in the banking sector and their interaction with government agencies is discussed.

Thus, the authors conclude that state regulation of banking activities is a complex system of legal mechanisms aimed at maintaining the stability and efficiency of the banking sector, as well as protecting public and private interests.

Keywords: banking relations; government regulation; banking system; credit organizations; banking supervision; legal regulation.

Introduction.

State regulation of banking relations is a fundamental component of the legal and economic framework that ensures the stability and efficiency of the banking system. The necessity of such regulation stems from the significant role that banking institutions play in the financial and economic development of a country. Governments worldwide recognize that an unregulated banking sector can lead to financial crises, systemic instability, and the infringement of public and private interests. Therefore, state intervention is crucial to maintaining order, protecting consumers, and fostering a competitive yet stable banking environment.

State influence on the banking sector manifests through both external regulatory frameworks and internal systemic governance. The external regulation, often executed by legislative and executive authorities, establishes the macro-level legal foundations of the banking industry. In contrast, intra-system regulation, primarily executed by the central bank, ensures adherence to established legal provisions while allowing for discretion in responding to dynamic market conditions. This distinction highlights the complexity of banking regulation as it encompasses elements of both direct administrative control and indirect market-driven governance [1].

Given the critical role of banks in ensuring monetary stability, credit availability, and economic growth, state regulation must strike a balance between fostering a competitive market and

safeguarding public interests. This paper aims to analyze the essence of state regulation of banking relations, its legal foundation, and the implications of regulatory policies on the banking industry. By examining various regulatory approaches, the study seeks to contribute to a deeper understanding of how legal frameworks shape the banking sector and its interactions with the broader economy.

Materials and methods

In the course of the research, various methods of scientific analysis were used to comprehensively study the essence of state regulation of banking activities and its legal foundations.

1. Methodological basis of the research

The research is based on general scientific and special methods of cognition of legal and economic phenomena, including:

A dialectical method that allows us to consider the state regulation of banking activities in development, to identify its features and patterns.

A systematic method used to analyze the banking system as a complex legal and economic phenomenon involving public and private entities.

2. Private scientific methods

The comparative legal method was used to study various models of government regulation of banking activities in different countries.

The formal legal method was used to analyze the regulations governing the banking sector, their structure, content and legal mechanisms of implementation.

The historical and legal method made it possible to trace the evolution of the legal regulation of the banking system and identify trends in its development.

3. Empirical research base

The work uses regulatory legal acts regulating banking activities, including the legislation of the Republic of Kazakhstan, international legal acts, as well as doctrinal sources, scientific publications and monographs by leading researchers in the field of banking law.

Thus, the combination of various research methods made it possible to comprehensively study the problem of state regulation of banking activities and identify its legal foundations.

State regulation of banking activities is a regulatory and individual – governmental activity of regulatory entities aimed at regulating the creation and operation of credit institutions, the banking system as a whole, the formation and maintenance of a stable rule of law in the banking sector, and the protection of the rights and legitimate interests of its participants and individuals [2].

State regulation of banking activities has a dual legal nature. On the one hand, this is reflected in the adoption by government agencies of regulations that establish the foundations of the organization and basic parameters of the country's banking system, the status of subjects and legal regimes of banking activities, as well as the rules for banking activities as a set of banking operations and transactions. On the other hand, this is reflected in the fact that the Central Bank, as a subject of the banking system, is carried out through regulatory regulation and the adoption of certain legal acts concerning specific credit institutions on behalf of the state and in the public interest, as well as banking supervision.

Government influence on public relations in the banking sector is characterized by the following features:

1) the influence of the state on banking activities is of a regulatory nature;

2) the legal form of state regulation of banking activities is objectively characteristic. It is carried out using the means of regulatory legal regulation, which constitute the legal mechanism of state regulation of banking activities.;

3) state regulation of banking activities is carried out through two relatively independent but interrelated processes: the normative activity of public authorities (for this phenomenon it is recommended to use the term «external banking regulation») and the normative and private - the legislative independence of the Central Bank from government authorities and discretionary powers

(preferences) in decision-making the legal activity of the country as a subject of the banking system (for this phenomenon it is recommended to use the term «intra-system banking regulation»);

4) rules of banking operations, status characteristics of credit institutions, regime requirements for banking activities and not only the activities of specific credit institutions, but also the parameters of such a unique regulatory entity as the banking system of the country as a whole[3].

Results

The above factors make it possible to consider state regulation of banking activities as a unique legal phenomenon, a real system of legal regulation instruments that is not typical of any other sphere of public relations in which state influence is exercised in one form or another.

In the scientific literature, two terms About Government influence on banking activities are used and often confused: «state management of banking activities (banking system)» and «state regulation of banking activities», a synonym for the term «banking regulation».

For example, G.A. Tosunyan considers the influence of the state on the banking system and, in particular, on the activities of commercial banks through the prism of the general concept of social management: «the management of the banking system meets all the characteristics of social management. But social management itself can take various forms (Public administration), therefore, for a legal analysis of the state and prospects of legal regulation of the management of the banking system, it is very important to emphasize the governmental nature of its management» [4].

Later, G.A. Tosunyan clearly distinguishes the terms «public administration» and «state regulation» at the level of definitions: «direct state regulation means direct interference of state bodies in the production and economic activities of institutions, enterprises and organizations.... In conditions of direct government regulation, administrative management methods prevail. The implementation of public administration in the form of state regulation puts economic management methods in the first place, as a rule, «soft» - regulatory regulation, recommendations, coordination of directions, assistance, etc. - is carried out in the form of... This process leads to the use of the term «regulation» instead of the term «management» in appropriate situations [4].

The concept of social management, proposed in the eighties and early nineties, has now changed significantly and today does not meet either the needs of practice or the theoretical foundations of managing the affairs of society.

Y.A. Tikhomirov, who has developed the theory of social management in more detail, is currently talking about state regulation, rather than public administration in this area in relation to economic management: «state regulation in scientific works still depends only on economics and serves as one of the manifestations or functions of public administration in a broad sense. It is characterized as the establishment and provision by the state of general rules of conduct (activities) of subjects of public relations and their adjustment depending on changing conditions.... According to many economists, state regulation of the economy is becoming the dominant form of state influence» [5].

Thus, it is currently advisable to use the term «regulation» rather than «management» in relation to government influence on economic public relations, since the latter involves direct managerial influence with the direct establishment of objects and subjects of management, correspondence of rights and obligations, expediency of management, which is not only very difficult in a market economy, it is time-consuming. That's the case, but together they contradict the principles of a market economy and legitimacy in the country.

At the same time, many authors consider state regulation as a function or type of public administration, since it is a form of state influence on public relations in the field of economics, and this type of influence is included in the system of social management [6].

This rule applies if the term public administration is used in a broad sense, as a function of the state in managing the affairs of society as a whole. However, in the narrow sense of the term, in relation to the legal category of public administration, their definition seems to be erroneous.

At the same time, the current legal regime of entrepreneurial and, in particular, banking activities in many ways does not allow for direct government management, since business entities

have certain legal guarantees secured by law against government interference in their activities, and have certain regulatory limits.

The above gives grounds to assert that there are legally established regulatory limits in the management system, which establish a certain scope and objectives of regulation and do not allow the regulatory body to go beyond the legally established competence.

Thus, the established legal regime of banking activities, which combines the method of legalization and guarantees of the independence of credit institutions from interference by government authorities and the Central Bank in operational activities, is administrative in nature and allows us to conclude that the management of a regulatory entity and a specific object of state regulation of banking activities (credit institution) is carried out only in the following cases:, and carries out banking activities through legal means used in government regulation, they have a low specific gravity in the total volume.

In banking, personal and public interests are closely linked, interact and complement each other. In this regard, it is very difficult to isolate public interest in the field of banking regulation. With a stable banking system, it is obvious that both the real client of this organization and the entire society are interested in the reliability of each individual credit institution, since the collapse of even one large bank to a certain extent leads to a destabilization of the economic life of the entire society.

The public interest in the banking sector is as follows:

1. ensuring the stability of the banking system as a whole and individual socially significant credit institutions;

2. ensuring the stability of the national currency, the formation of a system of settlements and banking services adequate to the unified and existing economic relations;

3. protection from violations in the banking sector;

4. protecting the interests of depositors of credit institutions;

5. ensuring freedom of entrepreneurial activity in the banking sector and protection from unfair competition, supervision of compliance with antimonopoly legislation [7].

The characterization of public interests protected by the state in the banking sector, taking into account the legally established goals of the Central Bank's activities, allows us to determine the goals of state regulation of the bank's activities. In our opinion, government regulation of banking activities has the following objectives:

Firstly, it is a system-forming function - the formation and strengthening of the country's banking system. It is implemented by establishing legal regimes of banking activity, regulatory consolidation of the status of subjects of banking activity;

Secondly, it is the reduction of risks inherent in banking activities carried out by credit institutions through the use of preventive measures, prudential regulation and supervision, as well as coercion.;

Thirdly, it is the protection of the interests of the bank's customers by creating a special collateral mechanism that guarantees the fulfillment of obligations of specific banks in the context of the financial crisis. It is implemented through legislative approval and the creation of a mandatory deposit insurance system in banks, the formation of a mandatory reserve fund, and the establishment of mandatory standards for the bank's activities.;

Fourth, it is the creation of conditions for the possibility of self-organization and self-regulation of the banking system.;

Fifth, it protects against monopolization and unfair competition in the banking services market.;

Sixth, it is the establishment of uniform rules for conducting banking operations, ensuring the legal regime and guarantees of the bank's activities.

The characterization of public interests and regulatory objectives allows us to proceed to the consideration of the concept of state regulation of banking activities. It should be noted that there is an active discussion on this issue in the scientific literature, since there is no unified approach in the science of banking law due to the complexity and universality of this phenomenon.

N.Y. Yerpyleva emphasized that the regulation of banking activities (banking regulation) has specific regulatory behavior, formed by government agencies (for example, parliament in the form of laws), other government structures (for example, the Central Bank), as well as non-governmental self-regulatory organizations seeking to limit banking activities and banking activities as a system of rules, mostly banking operations [8].

From this definition, it is concluded that the rule is an economic limitation. This restriction includes an element of non-economic coercion and is implemented by the authorities in legal forms.

However, the above definition does not take into account the qualitative specifics of government regulation, since it combines regulation carried out as a subject of the banking system by both government agencies and the Central Bank (i.e., intra-system regulation), and also does not take into account. realizable forms of government influence through regulatory and private legal regulation.

At the same time, in our opinion, regulation, especially in the banking sector, is not an abstractly established system of rules and regulations, but, above all, the activities of regulatory entities, a system of direct and feedback communication between regulatory authorities and credit institutions - subjects of the bank, constantly interacting. Without taking this provision into account, the definition of regulation as a formally dogmatically established system of rules acquires a metaphysical character, divorced from specific legal relations.

Banking regulation involves two processes that have different goals, financial systems, and regulatory methods. The main type of banking regulation is government regulation based on power relations and an imperative method of regulation. This type of regulation carries out a public initiative in banking and, accordingly, has the protection of public interests as a goal. The second process is self-regulation, based on a dispositive method, equality of participants and carried out on a contractual basis, with the free consent of banking entities, that is, in this case, the legal means of private law are applied.

This type of regulation is primarily aimed at protecting the personal interests of regulatory entities, protecting their property and non-property rights, representing the interests of commercial banks in relations with the Central Bank and other government agencies, developing proposals, and developing uniform rules summarizing experience.

Self-regulation is carried out through the conclusion of a contract and recommendations, that is, it is based on a dispositive method and, accordingly, other legal means in comparison with state regulation of banking activities. As R.O. Halfina notes, for hierarchical and horizontal structures, the tools should be strictly separated, since they are practically incompatible. The subjects of this type of regulation independently determine the terms of agreements, decide on their conclusion, and have the right to take into account or ignore recommendations on banking practice.

Some authors attribute all the activities of the Central Bank to the process of self-regulation or self-management.

It follows from this that the Central Bank, as a federal government body, acts only in cases where it performs functions, in particular, issuing money and ensuring the stability of the tenge.

In our opinion, banking regulation as a social phenomenon is a complex object and operates in several forms.:

1) direct state regulation carried out by state authorities through the adoption of laws and other regulatory legal acts,

2) banking regulation (intra-system regulation), carried out by the National Bank as a subject of the banking system, and also, as mentioned above, has a governmental character,

3) the activities of organizations of banking self-regulation (associations, unions, etc.), implemented by means of civil law regulation (contract, generalization and development of practice in the banking sector, etc.) [9].

The analysis of the above definition makes it possible to identify the following signs of state regulation in its legal nature:

Firstly, it is a targeted effect, that is, implemented in accordance with pre-established goals defined by the managing entity or formulated in the law.;

Secondly, it is the regulatory and institutional effect, which is perhaps the most interesting and important element of this definition. It is no coincidence that this term combines two predicates: normative and institutional. There is a deep dialectical connection between them, based on the constitutional principle of legality as a key principle of the legal system.

Regulatory impact means that management (state regulation) is carried out on the basis of regulations that have been adopted and are in force in accordance with the established procedure. Institutional means that the impact is carried out through specialized institutions: government agencies or bodies specifically authorized by law to regulate this area.

Thirdly, management is an influence exercised in accordance with objective laws and with the aim of reorganizing in the interests of society.

Conclusion

Thus, a new trend is beginning to manifest itself in the phenomenon of banking regulation, in which government influence on the banking system «on the one hand, by economic methods - the issuance of stabilization loans, and on the other hand, through the acquisition of shares (controlling stakes) of renewable credit institutions, the use of legal means, there are direct government bodies managing the activities of commercial banks», is of an administrative nature.

The above suggests that government regulation as a complex social process is an integral element of banking regulation and that the definition of these phenomena is incorrect. On the other hand, government regulation of banking activities (as part of banking regulation), in turn, in a broad sense, is an integral part of government regulation of business activities.

State regulation of banking activities is a complex and multidimensional process that ensures the stability of the financial system, protects the interests of depositors and participants in the banking sector, as well as the rule of law in this area. An analysis of the legal nature of this process shows its dual nature, including regulatory regulation and individual public administration. This allows government agencies to establish the basic principles of the functioning of the banking system and at the same time monitor the activities of individual credit institutions.

The definition of the boundaries and methods of state regulation of banking activities is the subject of scientific debate. The distinction between the concepts of «public administration» and «state regulation» is especially important in a market economy, where excessive government intervention can violate the principles of competition and entrepreneurial freedom. At the same time, the lack of adequate regulation creates risks of destabilization of the banking system, which ultimately negatively affects the country's economy as a whole.

The study revealed that state regulation of banking activities includes several levels: regulatory regulation, regulatory activities of the Central Bank and self-regulation of banking associations. Such multilevel interaction makes it possible to effectively balance the interests of the state, the banking sector and society.

Thus, state regulation of banking activities is an integral element of economic policy aimed at ensuring financial stability, supporting the development of the banking sector and protecting the rights of its participants. In modern conditions, the most important tasks remain the improvement of the regulatory framework, the development of oversight and control mechanisms, as well as increasing the transparency and effectiveness of regulation of the banking system.

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БАНК ҚАТЫНАСТАРЫН МЕМЛЕКЕТТІК РЕТТЕУДІҢ МӘНІ ЖӘНЕ ОНЫҢ ҚҰҚЫҚТЫҚ НЕГІЗІ

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Аннотация. Мақала банк қатынастарын мемлекеттік реттеудің мәнін және оның құқықтық табиғатын зерттеуге арналған. Банк қызметін мемлекеттік реттеу – реттеуші органдар тарапынан банк жүйесін құруға, оның жұмыс істеуі мен тұрақтылығына, оған қатысушылардың құқықтарын қорғауға және банк саласында заңдылықты қамтамасыз етуге бағытталған нормативтік және жеке-билік әрекеттерінің жиынтығы.

Жұмыста банк қызметін мемлекеттік реттеудің қосарланған құқықтық сипаты талданады. Бір жағынан, бұл банк жүйесін ұйымдастырудың негіздерін, субъектілердің мәртебесін және банк қызметінің құқықтық режимдерін белгілейтін нормативтік актілерді қабылдауда көрінеді. Екінші жағынан, Орталық банк банк жүйесінің элементі ретінде әрекет ете отырып, белгілі бір несиелік ұйымдарға әсер ететін құқықтық актілер шығару арқылы, сондай-ақ банктік қадағалау тетіктері арқылы реттеуді жүзеге асырады.

Сондай-ақ Орталық банк жүзеге асыратын сыртқы (нормативтік) реттеу мен жүйеішілік реттеуді қоса алғанда, банк секторына мемлекеттік ықпал етудің негізгі аспектілері қарастырылады. Банк жүйесінің тұрақтылығын қамтамасыз ету, салымшылардың мүдделерін қорғау, монополияландыруға және жосықсыз бәсекелестікке қарсы тұру сияқты реттеу мақсаттары ерекшеленеді.

Сонымен қатар, мақалада мемлекеттік басқару мен банктік қызметті реттеу арасындағы айырмашылық жасалады, осы ұғымдарды нақты ажырату қажеттілігі атап өтіледі. Банк саласындағы өзін-өзі реттейтін ұйымдардың рөлі және олардың мемлекеттік органдармен өзара іс-қимылы талқыланады.

Осылайша, авторлар банк қызметін мемлекеттік реттеу банк секторының тұрақтылығы мен тиімділігін сақтауға, сондай-ақ қоғамдық және жеке мүдделерді қорғауға бағытталған құқықтық тетіктердің күрделі жүйесі деген қорытындыға келеді.

Түйін сөздер: банк қатынастары; мемлекеттік реттеу; банк жүйесі; кредиттік ұйымдар; банктік қадағалау; құқықтық реттеу.

СУЩНОСТЬ ГОСУДАРСТВЕННОГО РЕГУЛИРОВАНИЯ БАНКОВСКИХ ОТНОШЕНИЙ И ЕГО ПРАВОВАЯ ОСНОВА

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Аннотация. Статья посвящена исследованию сущности государственного регулирования банковских отношений и его правовой природы. Государственное регулирование банковской деятельности представляет собой совокупность нормативных и индивидуально-властных действий со стороны регулирующих органов, направленных на создание, функционирование и стабильность банковской системы, защиту прав ее участников и обеспечение законности в банковской сфере.

В работе анализируется двойственная правовая природа государственного регулирования банковской деятельности. С одной стороны, оно выражается в принятии нормативных актов, устанавливающих основы организации банковской системы, статус субъектов и правовые режимы банковской деятельности. С другой стороны, Центральный банк, действуя как элемент банковской системы, осуществляет регулирование путем издания правовых актов, затрагивающих конкретные кредитные организации, а также через механизмы банковского надзора.

Также рассматриваются ключевые аспекты государственного воздействия на банковский сектор, включая внешнее (нормативное) регулирование и внутрисистемное регулирование, осуществляемое Центральным банком. Выделяются цели регулирования, такие как обеспечение стабильности банковской системы, защита интересов вкладчиков, противодействие монополизации и недобросовестной конкуренции.

Кроме того, в статье проводится различие между государственным управлением и регулированием банковской деятельности, подчеркивается необходимость четкого разграничения этих понятий. Обсуждается роль саморегулируемых организаций в банковской сфере и их взаимодействие с государственными органами.

Таким образом, авторы приходят к выводу, что государственное регулирование банковской деятельности представляет собой сложную систему правовых механизмов, направленных на поддержание стабильности и эффективности банковского сектора, а также на защиту общественных и частных интересов.

Ключевые слова: банковские отношения; государственное регулирование; банковская система; кредитные организации; банковский надзор; правовое регулирование.