

# Compulsory financial ombudsman under the regulator's umbrella: Testing a new model of dispute settlement

K. Yu. Molodyko

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In post-Soviet countries, the courts are not always effective in resolving consumer disputes. I compare the models of organizing the work of financial ombudsmen in Russia, Kazakhstan, Azerbaijan and Armenia, as well as plans for its implementation in Kyrgyzstan and Belarus. Models of compulsory mediation in a number of European jurisdictions are also analyzed. In some countries there is a tendency towards an increase in the influence of the regulator on the work of financial ombudsmen. The reform of the Russian financial ombudsman is the first attempt at introducing a new compulsory ombudsman model for financial markets. It will be a mandatory stage initiation of a lawsuit in a civil court. The new Russian model is unique, differing both from the models established in the countries of the European Union (centralized, decentralized, professional association), as well as models implemented in other post-Soviet countries. The Russian financial ombudsman model is essentially a combination of Italian compulsory mediation on the basis of coercion before the dispute is considered by the court, and the English financial ombudsman on the basis of a vertical system headed by a sole chairman who is de facto appointed by the financial services regulator, while membership in this system of financial institutions that provide regulated services is generally mandatory. Whether the compulsory financial ombudsman under the Central Bank 'umbrella' will manifest itself positively or negatively will determine the possibility of extending this scheme to other categories of consumer disputes in the financial markets and such as housing construction and repair, utilities, and telecommunications with many small and medium consumer claims. Furthermore, since a number of post-Soviet countries continue to rely on the Russian experience, in such countries there may be an expansion of mandatory ombudsmen under the umbrella of regulators as well.

*Keywords:* consumer protection, compulsory financial ombudsman, regulatory body competence, alternative dispute resolution, mandatory pre-trial procedure.

## 1. Introduction

Standard litigation often leads to high legal costs, damage to mutual relations and unwanted publicity regarding the circumstances of the dispute. Therefore, the Recommendation of the Committee of Ministers of the Council of Europe R/86/12 of September 16, 1986 invites the governments of member states to encourage, where appropriate, a friendly settlement of disputes, either outside the court system, or before or during court proceedings. These governments are invited to provide bodies which, outside the judicial system, shall be at the disposal of the parties to solve disputes over small claims and in some specific areas of law and to take steps, by suitable means and in appropriate cases, to make arbitration more easily accessible and more effective as a substitute measure to court proceedings<sup>1</sup>.

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*Kirill Yu. Molodyko* — PhD in Law, MPA (Harvard), Associate Professor, Associate Professor at the Department of International Law, School of Law and Policy, HSE University, 11, Pokrovsky bul., Moscow, 109028, Russian Federation; [kmolodyko@hse.ru](mailto:kmolodyko@hse.ru)

<sup>1</sup> Council of Europe Recommendation No. R (86) 12 of the Committee of Ministers to Member States Concerning Measures to Prevent and Reduce the Excessive Workload in the Courts (Adopted by the Com-

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In June 2018, the Russian parliament adopted a federal law that would substantially reform the institution of financial ombudsman. Magistrates are overloaded with work, and their work is very heterogeneous, so the same judge often considers both criminal and civil cases on the same day. They are not always able to quickly and accurately understand the specifics of financial services. The new Russian Financial Ombudsman Law is the first experiment in the Post-Soviet world in introducing a new model of compulsory ombudsman. It will be the mandatory stage before the civil court in relevant cases. This is a rejection of the former model of a voluntary ombudsman in the financial markets in Russia and many other Post-Soviet countries.

Before the deterioration in relations between Russia and the EU in 2014, Russian official documents even directly recognized the European Union as a model for integration in the Post-Soviet space. For example, the insurance development strategy approved by the Russian government in July 2013 indicated that as part of cooperation with countries that would later (in 2014) form the EAEU, a legal basis should be created 'in the framework of cooperation in the insurance sector between the Russian Federation and other international organizations, as is the case in the European Union'<sup>2</sup>.

In 2013 in the framework of interaction for the G20 summit, finance ministers and heads of central banks of the future EAEU member states prepared a joint statement in which they noted the importance of a systematic approach to the problem of increasing the availability of financial services taking into account the interests of various population groups. They considered it necessary to ensure the best possible balance between expanding access to financial services and 'improving their quality and protecting the rights of consumers of financial services'. Another important area is the development of alternative mechanisms for the settlement of consumer disputes with financial institutions. When implementing alternative resolution mechanisms disputes with financial service providers, legislatures consider a number of possible models such as independent ombudsmen, regulatory dispute resolution services, conciliation schemes, financial dispute resolution centres, financial industry associations<sup>3</sup>.

Five post-Soviet states (Russia, Kazakhstan, Belarus, Armenia and Kyrgyzstan) created the Eurasian Economic Union (EAEU, or EEU) on the basis of the model of the European Union. The integration between them on the financial ombudsmen issue is set out in the EAEU Agreement on the Exchange of Information, Including Confidential, in the Financial Sector in Order to Create Conditions in the Financial Markets for Free Movement of Capital dated December 23, 2014. According to its Article 4, in accordance with the legislation of the member states, the authorized bodies will carry out mutual consultation and exchange opinions on the creation and development of pre-trial settlement of disputes that are related to the provision of services, including through the financial ombudsman<sup>4</sup>.

Within the framework of the EAEU, the Advisory Committee on Consumer Protection in the Member States of the Eurasian Economic Union was created in 2015. In September

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mittee of Ministers on 16 September 1986 at the 399<sup>th</sup> meeting of the Ministers' Deputies). URL: <https://rm.coe.int/16804f7b86> (accessed: 25.05.2022).

<sup>2</sup> Strategiya razvitiia strakhovoi deiatel'nosti v Rossiiskoi Federatsii do 2020 goda, utverzhdena sporiazheniem Pravitel'stva RF ot 22 iulia 2013 goda № 1293-r. URL: <http://government.ru/docs/3483/> (accessed: 25.05.2022).

<sup>3</sup> Federal'naiia sluzhba po nadzoru v sfere zashchity prav potrebiteli i blagopoluchiiia cheloveka (Rospotrebnadzor RF). Gosudarstvennyi doklad 'Zashchita prav potrebiteli v Rossiiskoi Federatsii v 2013 godu' ot 26 avgusta 2014 goda. P. 176. URL: [https://rospotrebnadzor.ru/documents/details.php?ELEMENT\\_ID=2291](https://rospotrebnadzor.ru/documents/details.php?ELEMENT_ID=2291) (accessed: 25.05.2022).

<sup>4</sup> Evraziiskii Ekonomicheskii Soiuz. Soglashenie ob obmene informatsiei, v tom chisle konfidentsial'noi, v finansovoi sfere v tseliakh sozdaniia uslovii na finansovykh rynkakh dlia obespecheniia svobodnogo dvizheniia kapitala ot 23 dekabria 2014 goda. URL: <http://publication.pravo.gov.ru/Document/View/0001201611020005?rangeSize=50> (accessed: 25.05.2022).

2019, it published the EAEU report on the practice of introducing financial ombudsmen as alternative mechanisms for resolving consumer disputes. In the report the Committee stated that:

In order to increase consumer confidence in financial institutions, it is proposed to strengthen consumer protection by introducing dispute settlement mechanisms, and creating a standardized institution of financial ombudsman for the protection of consumers of financial services that is authorized to make binding decisions. The creation of a professional financial ombudsman, if necessary, for each market segment, as an alternative to litigation may be the most effective way to resolve consumer disputes in the financial services market. It will also help strengthen public confidence in the financial sector and, accordingly, increase the efficiency of the financial sector itself. The introduction and maintenance of the functioning of ombudsmen does not require funding from the Government and, at the same time, is effective and affordable for the population, including low-income citizens and high-debt households, especially in rural areas and remote regions<sup>5</sup>.

Finally, on October 1, 2019, the Supreme Eurasian Economic Council — which is composed of five Presidents (Russia, Kazakhstan, Belarus, Armenia and Kyrgyzstan) — approved the Concept of the Formation of the Common Financial Market of the Eurasian Economic Union. The Concept was developed by central banks and governments of the Union countries together with the Eurasian Economic Commission. It defines the directions of creating the infrastructure, and the stages of implementation of key areas of formation and development of the common financial market of the Union. Among other things, the document states that ‘the common financial market is an integral part of Eurasian integration and a necessary condition for the implementation of the basic goals of the Union’. In particular, the interaction of national regulators, business communities of member states, and financial ombudsmen has been declared an ‘integral part of protecting the rights and interests of investors and consumers of financial services in the common financial market, including the establishment of pre-trial dispute settlement institutions in Member States, including through the institution of the financial ombudsman’<sup>6</sup>.

## 2. Financial Ombudsmen in Some Post-Soviet States

### 2.1. Armenia

A financial ombudsman was established in January 2009 in the Republic of Armenia<sup>7</sup>. The ombudsman was initially established by the Central Bank of Armenia, however, the central bank has only one out of seven votes in the Council, which appoints and dismisses the ombudsman, therefore, it cannot be argued that it is controlled by the central bank. The ombudsman is financed by fees paid by the participants in the system who have voluntarily

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<sup>5</sup> Обзор практики внедрения альтернативных механизмов урегулирования потребител'sких споров, на примере деятельности института финансового омбудсмена (уполномоченного) в государственных — членах Евразийского экономического союза. Одобрено на 6-м заседании Консультативного комитета по вопросам защиты прав потребителей государств — членов Евразийского экономического союза 26 сентября 2019 года. URL: [https://potrebitel.eaeunion.org/ru-ru/Lists/Analytics/%D0%9E%D0%B1%D0%B7%D0%BE%D1%80\\_%D1%84%D0%B8%D0%BD%D0%BE%D0%BC%D0%B1%D1%83%D0%B4%D1%81%D0%BC%D0%B5%D0%BD%202019.pdf](https://potrebitel.eaeunion.org/ru-ru/Lists/Analytics/%D0%9E%D0%B1%D0%B7%D0%BE%D1%80_%D1%84%D0%B8%D0%BD%D0%BE%D0%BC%D0%B1%D1%83%D0%B4%D1%81%D0%BC%D0%B5%D0%BD%202019.pdf) (accessed: 25.05.2022).

<sup>6</sup> Концепсия формирования общечего финансового рынка Евразийского экономического союза. Утверждена решением Высшего экономического совета от 1 октября 2019 года № 20. URL: <http://www.eurasiancommission.org/ru/act/finpol/dofp/Documents/%d0%9a%d0%be%d0%bd%d1%86%d0%b5%d0%bf%d1%86%d0%b8%d1%8f%20%d0%9e%d0%a4%d0%a0.pdf> (accessed: 25.05.2022).

<sup>7</sup> Закон Республики Армения ‘О примирительной финансовой системе’ от 17 июня 2008 года. URL: [http://www.unibank.am/Reports/orenq/hashtarar\\_rus.pdf](http://www.unibank.am/Reports/orenq/hashtarar_rus.pdf) (accessed: 25.05.2022).

entered it, i.e., membership in the system is optional. The ombudsman is not a mandatory stage for a disgruntled client of a financial organization, even if the latter participates in the ombudsman's system, i.e., the consumer can go directly to court. The ombudsman is authorized to deal with disputes in the amount of up to 10 million Armenian drams (approximately EUR 18,300 at the current exchange rate). As a general rule, decisions of the ombudsman can be appealed in court by both parties. The financial institution, in order to increase market trust in it, has the right to declare in writing that it will refuse to appeal any future decisions of the ombudsman in court. In such case, the right to appeal remains only with the consumer.

## 2.2. Kazakhstan

The Republic of Kazakhstan has created two ombudsmen, a banking ombudsman and an insurance ombudsman. However, in reality, the former does not deal with all types of banking services, only with mortgages, and, recently, with debt collectors. The powers of the banking ombudsman in Kazakhstan are limited to disputes over mortgages for loan amounts of up to 20,000 special national indicators (approximately EUR 118,000 at the current rate). It is important that the ceiling of powers is based on the total amount of the loan, not on the amount of the dispute. The banking ombudsman is appointed and dismissed by a meeting of representatives of the regulator, mortgage lenders and consumer protection organizations. The participation of all mortgage lenders in the banking ombudsman system and the payment of fees for its maintenance are mandatory. For the consumer, there is no obligatory pre-trial appeal to the ombudsman before going to court. Both parties to a dispute have the right to appeal its decision in court<sup>8</sup>.

The Kazakh Banking Ombudsman also carried out extensive methodological work in the fight against unreasonable bank fees in mortgage lending. As a result, in July 2017, in Kazakhstan, an exhaustive list of permitted bank fees was approved by the Central Bank<sup>9</sup>.

Furthermore, the Kazakh banking ombudsman was recently additionally granted the power to settle disputes between borrowers and debt collection agencies to which the initial lender sold the loan debt. In order to ensure a full and comprehensive consideration of received appeals, the law obliged debt collectors to interact with the banking ombudsman and to provide it with the information requested under these appeals<sup>10</sup>.

In Kazakhstan there is a separate insurance ombudsman. Until the summer of 2018, its competence was limited to compulsory insurance contracts connected to the liability of motor vehicle owners, including related disputes between insurance companies. The latter could expand the ombudsman's powers, but only voluntarily, by signing relevant memoranda. The activities of the insurance ombudsman were regulated by parliamentary

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<sup>8</sup> Zakon Respubliki Kazahstan 'O vnesenii izmenenii i dopolnenii v nekotorye zakonodatelnye akty Respubliki Kazahstan po voprosam ipotechnogo kreditovaniia i zashchity prav potrebiteli finansovykh uslug i investorov' ot 10 fevralia 2011 goda № 406-IV. URL: <http://adilet.zan.kz/rus/docs/Z1100000406/> links (accessed: 25.05.2022).

<sup>9</sup> Alekhova A. Kak voevat' s bankom po zakonu? Sovety ombudsmena // 365inf. 18.06.2018. URL: <https://365info.kz/2018/06/kak-voevat-s-bankom-po-zakonu-sovety-ombudsmena/> (accessed: 25.05.2022).

<sup>10</sup> Otkrytoe zasedanie Mezhdunarodnogo Koordinatsionnogo Soveta bankovskikh assotsiatsii stran SNG, Tsentral'noi i Vostochnoi Evropy (Mezhdunarodnyi Bankovskii Sovet, MBS). Sbornik analiticheskikh materialov 'O deiatel'nosti instituta finansovogo ombudsmena na finansovom rynke'. Assotsiatsiia Belorusskikh Bankov, 2017, October. P. 10. URL: <https://abbanks.by/upload/iblock/60b/analiticheskiy-material-baku.pdf> (accessed: 25.05.2022).

law<sup>11</sup>, regulation and rules<sup>12</sup>. The ombudsman was appointed and dismissed by a meeting of representatives of the regulator and insurers. Unlike with the Kazakh banking ombudsman, there was no participation of representatives of consumer protection NGOs in such meetings. There was no requirement for a mandatory pre-trial appeal to the ombudsman, that is, the Kazakh consumer could apply to the insurance ombudsman or immediately directly to the court. The decision of the Insurance Ombudsman on the relationship between insurers was binding for them. The decision of the ombudsman on disputes between insurers and consumers of their services was binding for both parties if the consumer accepted it. Otherwise, the consumer could challenge it in court.

In 2017, the National Bank of Kazakhstan (the Central Bank) submitted a draft law to the Kazakh parliament on extending the powers of the insurance ombudsman to voluntary types of insurance, including life insurance, as part of a large package of legislative reform of the insurance market<sup>13</sup>. This law was adopted in July 2018<sup>14</sup>. The overall organization of the Kazakh insurance ombudsman's work, described above, remained largely unchanged. Its competence is now extended to all types of compulsory and voluntary insurance. Now the insurance ombudsman settles disputes in which individuals and/or small businesses act as insuree (insured, beneficiaries). Medium and large companies may apply to the insurance ombudsman only on the basis of compulsory insurance of civil liability of motor vehicle owners. However, a general ceiling was set for any subjects to apply, so the amount of any claim to the insurance ombudsman should not exceed 10,000 special national indicators (around EUR 59,000 at the current rate).

If the ceiling is based on the total amount of a mortgage loan for the Kazakh banking ombudsman, then it is based on the amount of the dispute for the bank insurance ombudsman. However, the ceiling for an insurance ombudsman is two times less compared to the banking ombudsman. In terms of comparing the Kazakh legislation to new Russian legislation, the Kazakh approach, with its relatively higher ceiling level, appears more efficient. In Russia, where a general ceiling for new financial ombudsmen of 500,000 thousand Russian rubles is imposed (about EUR 8,000 at the current exchange rate)<sup>15</sup>, there is an obvious unreasonable loss of a considerable number of disputes from financial services, primarily from mortgage lending.

### 2.3. Kyrgyzstan

In Kyrgyzstan there are no financial markets ombudsmen yet but the need for them is fully recognized and actively debated by the local expert community. The Union of Banks of Kyrgyzstan advocates for an ombudsman being established by the state authorities,

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<sup>11</sup> Zakon Respubliki Kazakhstan 'Ob obiazatel'nom strakhovanii grazhdansko-pravovoi otvetstvennosti vladel'tsev transportnykh sredstv' ot 1 iulia 2003 goda № 446. URL: [https://adilet.zan.kz/rus/docs/Z030000446\\_](https://adilet.zan.kz/rus/docs/Z030000446_) (accessed: 25.05.2022).

<sup>12</sup> Respublika Kazakhstan. Vnutrennie pravila strakhovogo ombudsmena. URL: <http://www.insurance-ombudsman.kz/rus/pravila> (accessed: 25.05.2022).

<sup>13</sup> *Batishcheva T.* Strakhovoi ombudsmen: Varianty moshennichestva po KASKO vozmozhny // In-business. 2017. December 14. URL: <https://abctv.kz/ru/news/strahovoj-ombudsmen-varianty-moshennichestva-po-kasko-vozmozhny> (accessed: 25.05.2022).

<sup>14</sup> Zakon Respubliki Kazakhstan 'O vnesenii izmenenii i dopolnenii v nekotorye zakonodatel'nye akty Respubliki Kazakhstan po voprosam strakhovaniia i strakhovoi deiatel'nosti, rynka tsennykh bumag' ot 2 iyulya 2018 goda № 166-VI. URL: [https://online.zakon.kz/Document/?doc\\_id=38900848#pos=744;-43&sdoc\\_params=text%3D%25D0%25BE%25D0%25BC%25D0%25B1%25D1%2583%25D0%25B4%25D1%2581%25D0%25BC%25D0%25B0%25D0%25BD%26mode%3Dindoc%26topic\\_id%3D38900848%26spos%3D1%26tSynonym%3D0%26tShort%3D1%26tSuffix%3D1&sdoc\\_pos=1](https://online.zakon.kz/Document/?doc_id=38900848#pos=744;-43&sdoc_params=text%3D%25D0%25BE%25D0%25BC%25D0%25B1%25D1%2583%25D0%25B4%25D1%2581%25D0%25BC%25D0%25B0%25D0%25BD%26mode%3Dindoc%26topic_id%3D38900848%26spos%3D1%26tSynonym%3D0%26tShort%3D1%26tSuffix%3D1&sdoc_pos=1) (accessed: 25.05.2022).

<sup>15</sup> Compulsory insurance of civil liability of motor vehicle owners (OSAGO) is an exception; there is no ceiling in Russia.

arguing that 'the national and cultural conditions of the Kyrgyz Republic imply that the chances are that the public will trust an institution established by law more than a body independently organized within the association... The institution of financial ombudsman must be implemented according to the law, the founder must be a government body with sufficient authority to establish and further engage in its sustainable development, such as the Ministry of Finance, or the Central Bank, or the State Service for Regulation and Supervision of the Financial Market'. The option of creating one financial ombudsman, rather than several sectoral ones, is considered the preferred one<sup>16</sup>.

#### **2.4. Azerbaijan**

The Association of Banks of Azerbaijan (ABA) decided to create a Banking Ombudsman, the purpose of which was to establish a relationship of trust between banks and customers, by resolving disputes. The decision to establish a banking ombudsman was made at the General Meeting of the Association of Banks of Azerbaijan (ABA) in February 2017. At the same meeting, the statutes and regulations of the Banking Ombudsman were approved. The German model was chosen as a conceptual basis meaning that the institution of the Banking Ombudsman is not a part of public administration. This decision was made after a thorough study of the legislation on mediation, which seemed improper for the consideration of general disputes over insignificant amounts of money. The competence of the Banking Ombudsman includes the resolution of civil disputes arising in connection with the conclusion, amendment, execution and termination of contracts concluded by consumers with financial organizations.

A dispute may be submitted to the Banking Ombudsman for consideration only on the initiative of the individuals who are the bank's clients/consumers. The main objective of the Banking Ombudsman is to ensure an accessible, simple, fair and extrajudicial procedure for resolving civil disputes between banks and their clients. The amount of the dispute must not exceed USD 2,000 on the day of filing the application in Azerbaijani manats or another equivalent currency in accordance with the official rate of the Central Bank of Azerbaijan. The conciliation procedure for consideration of complaints applies to all types of services provided by banks. As for joining the Banking Ombudsman scheme, for Azerbaijan banks this is voluntary. Resolution of disputes is free for individuals. The Banking Ombudsman's office is financed from a special fund formed by the Association of Banks of Azerbaijan (ABA) from fees of banks which joined the scheme. Individuals who disagree with a decision of the Banking Ombudsman have the right to appeal in a state court<sup>17</sup>.

As far as I can judge, Azerbaijani banks refused to appeal the decisions of the banking ombudsman in court. However, this refusal is closely connected with a) ombudsman's appointment by the banking association and b) the insignificant ceiling of its competence which is only for disputes of up to USD 2,000.

#### **2.5. Belarus**

In Belarus, there are no financial markets ombudsmen yet. In March 2017, the Central Bank of Belarus announced that it had drafted a Presidential Decree on the financial ombudsman. According to the central bank, 'We see its advantages over litigation, first and foremost in the gratuitous consideration, promptness and obligatory implementation of a decision'. Therefore, it was supposed to establish the right of consumers of financial

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<sup>16</sup> Otkrytoe zasedanie Mezhdunarodnogo Koordinatsionnogo Soveta bankovskikh assotsiatsii. P. 13–14. URL: <https://abbanks.by/upload/iblock/60b/analiticheskiy-material-baku.pdf> (accessed: 25.05.2022).

<sup>17</sup> Ibid. P. 3–5.

services in cases of disagreement with a financial institution to contact the ombudsman to resolve the dispute, but with some restrictions. In particular, the amount of the dispute should not exceed around USD 6,000. The advantages of this institution would be out-of-court and simplified dispute resolution, free of charge for the consumer, and the possibility of enforcing the decision of the ombudsman by bailiffs<sup>18</sup>. However, after five years, neither parliamentary law, nor a decree of the President of Belarus on the establishment of a financial ombudsman has appeared.

### 3. Voluntary Financial Ombudsman in Russia (2010–2018)

Russian legal procedure recognizes alternative dispute resolution. A federal law on mediation was adopted in 2010, however, mediation is unpopular in practice. Sometimes a choice exists between applying for an administrative resolution, which does not preclude the option of later turning to a court, or turning to judicial remedies immediately. The federal law demands a compulsory attempt at pre-trial resolution by sending a claim to service providers for some types of transport and postal services consumer disputes. Furthermore, some types of legal disputes can be resolved by specially established bodies that are not part of the judicial system. Relevant dispute settlement bodies are established within the executive branch on the basis of community or mixed nature. This includes certain categories of patent and labor disputes.

Bodies that solve disputes using administrative procedures have various legal statuses and legal forms. Thus, the Chamber for Patent Disputes is a federal level institution established under parliamentary law by the executive branch<sup>19</sup>. The commissions on labor disputes which review individual labor disputes inside companies are not legal entities. The employer provides organizational and technical support of their activity.

The idea of creating a financial ombudsman in Russia was expressed by the World Bank in 2009. Disputes over minor amounts are troublesome for a financial institution but important for maintaining public confidence in the financial sector. The experience of several European countries, notably the United Kingdom, Ireland and Germany, is that an ombudsman can efficiently deal with minor cases. This reduces the burden on the financial institution and the supervisory agency, and avoids unnecessary lawsuits<sup>20</sup>.

Two options are available — an ombudsman established under professional associations or an independent ombudsman established by legislation. However, one of the issues for association-based ombudsmen is that they lack public credibility, particularly where the legal system is not fully developed or refined. Most consumers might think that the ombudsman represented the interests of the financial institutions (such as banks) that covered the costs of the ombudsman. The most effective long-term solution would be to create a statutory financial ombudsman or perhaps a Commission on Protecting Financial Consumer Rights. While the experience of Germany demonstrates the valuable role of an ombudsman under the professional association, the history of ombudsmen in the United Kingdom, Ireland, Canada and Sweden suggests the need for a full-time office of financial ombudsman established by law that is independent of financial institutions. Rather than

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<sup>18</sup> V Belarusi mogut poiavit'sia finansovye ombudsmeny // Naviny.by 2017. March 10. URL: <https://naviny.by/new/20170310/1489142864-v-belarusi-mogut-poyavitsya-finansovye-ombudsmeny> (accessed: 25.05.2022).

<sup>19</sup> Since 2008 it has been operating as part of the Federal State Budgetary Institution 'Federalnyi institut promyshlennoi sobstvennosti' [Federal Institute of Industrial Property].

<sup>20</sup> The World Bank, Russian Federation: Diagnostic Review of Consumer Protection in Financial Services. Volume I Key Findings and Recommendations. 2009. P.3. URL: <https://openknowledge.worldbank.org/handle/10986/12835> (accessed: 25.05.2022).

looking at each complaint on a case-by-case basis, a statutory financial ombudsman can look at complaints that reflect systemic issues<sup>21</sup>.

The following year, the Association of Russian Banks (ARB) initiated the establishment of an institution for out-of-court resolution of disputes with individuals that are clients of credit organizations. On September 20, 2010 the ARB Council adopted the General Regulation on the Financial Ombudsman and the Rules of the Financial Ombudsman. As a conceptual foundation, banks initially chose the German model according to which the institution of a financial ombudsman is not a state body. The conciliatory procedure of reviewing the complaints extends to all types of financial services provided by any financial organizations. The joining to the institute of financial ombudsman was voluntary for financial organizations<sup>22</sup>.

This financial ombudsman was authorized to consider disputes between consumers and financial organizations if the latter voluntarily entered the system and the value of the dispute did not exceed 500,000 Russian rubles, which was around EUR 12,500 in 2010 but is now approximately EUR 8,000 at the current rate of exchange. Costs of the examination of disputes were covered by contributions from financial organizations which had joined the scheme. To join the system, the financial organization had to sign contractual obligations to pay the fees necessary to cover the ombudsman's expenses and not to appeal the decisions of the conciliator (ombudsman) in court. The decision of the ombudsman was binding for the financial institution if the consumer accepted that decision. If the client disagreed, the ombudsman's decision did not deprive the client of the right to go to court.

#### 4. European Financial Ombudsman Models

The development of the Russian model of a financial ombudsman took place with a broad academic and research discussion, studying foreign experience. The following key models of financial ombudsmen existing in Europe such as the centralized UK model, the decentralized French model of consultative mediation that has no binding force and the model of a professional association in Germany.

The institution of financial ombudsman was formed in the European legal space as a set of principles, developed at the EU level and subsequently embodied in the national models of this body of alternative dispute resolution, between financial institutions and consumers of financial services. Both these systems are based on principles such as accessibility, transparency, honesty and freedom<sup>23</sup>.

In Germany, ombudsmen serve with the national associations, for example Ombudsman der privaten Banker (Ombudsman Scheme of the Private Commercial Banks). The ombudsman's decision is binding on the bank, but not on the complainant, where the amount involved in the dispute does not exceed EUR 10,000. The consumer does not pay a fee. If the complainant does not accept the ombudsman's decision, he can pursue the matter further before a court. The bank can only do likewise if the amount involved in the dispute is more than EUR 10,000. For disputes concerning application of the law on credit

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<sup>21</sup> Ibid. P.38.

<sup>22</sup> *Ponamorenko V. E., Chetverikov A. O., Karpov L. K.* Bankovskaia integratsiia v ES i EEP: vozmozhnosti pravovoi transplantatsii. Moscow: Iustitsinform, 2014. P. 164–165; *Korovyakovskiy D. G.* O nekotorykh al'ternativnykh sposobakh razresheniia sporov (ADR) gosudarstv, vkhodiashchikh v VTO (na primere SShA, Avstralii, Frantsii, Germanii, Velikobritanii, Rossiiskoi Federatsii) // Rossiiskii Sud'ia. 2014. № 11. P. 16–19.

<sup>23</sup> *Vishnevskiy A. A.* Finansovyi upolnomochennyi vs finansovyi ombudsmen: ob effektivnosti zashchity prav potrebiteli finansovykh uslug // Zakon. 2018. № 9. P. 58–65; *Vahrenwald A.* Out-of-court dispute settlement systems for e-commerce. Report on legal issues. Part III: Types of Out-of-Court Dispute Settlement. Joint Research Centre. 2020. URL: <https://tbplaw.com/data/part3.pdf> (accessed: 25.05.2022).



transfers or misuse of a payment card, the ombudsman's services are available not only to private individuals but also to companies and professionals<sup>24</sup>.

In France the ombudsman does not render a decision, i.e., he does not act as a lawyer or a judge for either party. He may suggest solutions but he is not permitted to settle a dispute by enforcing his decisions. Both parties can: refuse mediation, terminate an ongoing mediation procedure, or accept, change or reject the ombudsman's proposals<sup>25</sup>.

The British centralized model can be described as follows. Financial organizations were required to enter the financial ombudsman system in relation to their services licensed by the Financial Conduct Authority (FCA), for example, accepting household deposits. The Financial Services and Markets Act 2000, which led to the establishment of the Financial Ombudsman Service, requires the ombudsman to make decisions 'by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case'. The board of the Financial Ombudsman Service is appointed by the FCA, this Board appoints the financial ombudsmen. If the consumer accepts the ombudsman's decision, it is binding on both parties and enforceable in court. The High Court — in refusing an application for permission to apply for judicial review in *R (Sharma) v Parliamentary & Health Service Ombudsman* [2011] EWHC 2609 — highlighted the prevailing view of the courts that although judicial review of the Parliamentary Ombudsman is permissible, it will be a rare event.

This trend resurfaced again in a decision concerning the Financial Ombudsman Service ("the ombudsman"). In *R (Green) v The Financial Ombudsman Service Ltd* [2012] EWHC 1253, Mr Justice Collins was very clear that it was not a decision he was able to overturn. The test he had to consider was whether the decision was irrational in the *Wednesbury* sense, and it simply was not. Mr Justice Collins remarked that where a decision maker has particular expertise and is given wide discretion, such as the Financial Ombudsman, it will be very difficult to establish that a particular decision was irrational<sup>26</sup>.

Binding awards of up to £375,000 can be made for complaints about acts or omissions by firms which took place on or after 1 April 2019<sup>27</sup>. And the ombudsman can make awards for non-financial loss, like distress and inconvenience or pain and suffering. The investigator, having considered the file and having made any additional enquiries needed, will form a view and attempt to settle the dispute. In 90% of cases the parties reach agreement at this stage because the business accepts that it did something wrong and agrees to put it right, or the consumer accepts that their complaint cannot succeed<sup>28</sup>. The number of cases of parties requesting judicial review of decisions of the Financial Ombudsman in recent years has been from one to four per year<sup>29</sup>. The compulsory jurisdiction rules only applied to 'regulated activities'. Under these rules, the complaint could only be con-

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<sup>24</sup> European Commission. Germany. Ombudsman Scheme of Private Commercial Banks. URL: [https://ec.europa.eu/info/file/fin-net-member-germany-private-banks\\_en](https://ec.europa.eu/info/file/fin-net-member-germany-private-banks_en) (accessed: 25.05.2022).

<sup>25</sup> European Commission. ADR Scheme. France. AMF Ombudsman. URL: [https://ec.europa.eu/info/file/fin-net-member-france-financial-markets\\_en](https://ec.europa.eu/info/file/fin-net-member-france-financial-markets_en) (accessed: 25.05.2022).

<sup>26</sup> Kemp S. Challenging a Decision of the Financial Ombudsman Service. Dare You? // Kingsley Napley. 18.06.2012. URL: <https://www.kingsleynapley.co.uk/insights/blogs/public-law-blog/challenging-a-decision-of-the-financial-ombudsman-service-dare-you> (accessed: 25.05.2022).

<sup>27</sup> Financial Conduct Authority. PS19/8: Increasing the award limit for the Financial Ombudsman Service. March 2019. URL: <https://www.fca.org.uk/publications/policy-statements/ps19-8-increasing-award-limit-financial-ombudsman-service> (accessed: 25.05.2022).

<sup>28</sup> Mitchell C. UK Financial Ombudsman Service. Studyres. November, 2016. P.3. URL: <https://studyres.com/doc/10298772/uk-financial-ombudsman-service> (accessed 25 May 2022)

<sup>29</sup> Kirkham R. A Study into Ombudsman Judicial Review. Online appendix: Evidence of Result. University of Sheffield, 2018. P.10–11. URL: [https://www.sheffield.ac.uk/polopoly\\_fs/1.792260!/file/researchstudy2018.pdf](https://www.sheffield.ac.uk/polopoly_fs/1.792260!/file/researchstudy2018.pdf) (accessed: 25.05.2022).

sidered by FOS if the complaint concerned “the provision of or failure to provide a financial service or a redress determination”<sup>30</sup>.

While admitting the French model of a financial ombudsman is weak, I have no reason to believe that the UK model is better than the German one, or vice versa. It will be shown below that, in 2019, Russia legislatively carried out the transition from a decentralized German model to a centralized UK model. The latter is based on a very high level of trust of consumers, financial institutions, judges, the government and the financial ombudsman. This is evidenced by a very high percentage of disputes mutually settled by the parties at the stage of consideration by the ombudsman and the negligible number of cases when decisions of the ombudsman were then appealed in court. I can imagine that a significant proportion of disputes could be settled by the parties under the Russian financial ombudsman’s roof. But I expect thousands of appeals against the ombudsman’s decisions to go to court because there are many individuals and companies who are psychologically ready to appeal in all existing court instances.

In Italy, there are systems for alternative settlement of consumer disputes in the financial market, in particular the Arbitro Bancario Finanziario (ABF) scheme with the participation of the central bank (Banca d’Italia). Retail investor disputes are considered by the Arbitro per le Controversie Finanziarie (ACF) scheme with the participation of the exchange regulator (CONSOB — Commissione Nazionale per le Società e la Borsa). In these systems, regulators appoint the part of arbitrators, but consumers are not required to apply to them. In any case, if the consumer is not satisfied with the decision of such an ADR or does not want to apply at all, then before his dispute is considered by the court, he must go through the stage of forced mediation, in which the regulators of financial services are not involved in any way. These compulsory mediators are accredited by the Ministry of Justice (Ministero della Giustizia). If the parties to the dispute have not undergone mandatory mediation themselves, the judge will appoint a mediator to the parties. The court will consider the dispute only if the parties cannot find a compromise, using the help of a mediator.

## 5. Mandatory mediation

In this chapter, I show that compulsory mediation is commonly used in family law, and Italy is an exception here, using it extensively in consumer disputes in the financial market.

In England and Wales Mediation are only mandatory in family disputes. It is compulsory if a party wants to take a case to court concerning children and finances following separation before the parties take their case to the family court. Some exemptions to this rule include domestic violence, child protection concerns; urgency etc. Mediation is promoted in Italy because the civil courts are overburdened. It is considered beneficial for civil disputes about rights and duties over which the parties can freely dispose. Among the disputes in which mandatory mediation attempts are prescribed in Italy are: landlord and tenant matters; condominium; joint ownership of land; rights in rem (property); partition; hereditary succession; family agreements; loans; lease; damages arising from medical and healthcare liability; defamation through the press or by other means of advertising; insurance; banking contracts; financial contracts; neighbour-disputes; trusts and real estate; family-owned business<sup>31</sup>.

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<sup>30</sup> Evans M. High Court sheds light on compulsory jurisdiction of Financial Ombudsman Service. RBC. 19.07.2017. URL: <https://www.rpc.co.uk/perspectives/commercial-disputes/high-court-sheds-light-on-compulsory-jurisdiction-of-financial-ombudsman-service/> (accessed: 25.05.2022).

<sup>31</sup> Van Rhee C. H. Mandatory Mediation before Litigation in Civil and Commercial Matters: A European Perspective // Access to Justice in Eastern Europe. 2021. № 4(12). P. 7–24. URL: <https://doi.org/10.33327/AJEE-18-4.4-a000082> (accessed: 25.05.2022).

Various German Länder have indeed experimented with mandatory preliminary ADR, especially in small claims litigation. Most experiments have not been successful, and legislation on the topic has been amended or withdrawn. The opposition against the introduction of mandatory preliminary ADR in Germany was considerable, and attempts were made to circumvent the requirement. In 2004, Austria introduced a mandatory attempt at out-of-court settlement as a prerequisite for filing court action in the area of certain neighbourhood disputes. A second group of cases where initial mandatory mediation plays a role in Austria concerns the dismissal of apprentices. Mandatory mediation also plays a role in Austria in matters concerning child custody and access rights. For certain claims related to discrimination under the Austrian Federal Employment of People with Disabilities Act and the Federal Equal Opportunities for Disabled Persons Act, an out-of-court settlement attempt, for example, mediation, is mandatory before a claim can be brought in court. In France, the Law of 18 November 2016 on the Modernization of Justice for the Twenty First Century introduces experiments with mandatory mediation and other types of ADR. 40 Art. 750–1 of the Code of Civil Procedure contains an obligation to attempt mediation or another type of ADR before starting court proceedings for small claims (i.e., claims of up to 5,000 euros) or claims concerning neighbourhood disputes. Since November 2020, three kinds of matters are subject to mandatory mediation in Catalonia (so not in the whole of Spain): matters where the parties previously and expressly agreed on submission to mediation; matters related to custody of minors or disabled persons) or claims concerning neighbourhood disputes. Matters related to (other) family issues when the judge orders the parties to attempt mediation<sup>32</sup>.

In 1980, California was the first US state to introduce mandatory mediation for all parents with custodial and visitation disputes, with assistance given mostly by professionals within the court system. In 1991, influenced by continuing social change and research on mediation, the Norwegian government revised the Marriage Act, making mediation mandatory for all separating married couples who had children under age sixteen. The parents were required to attend mediation before separation was granted and before they could bring the case to court. In 2004, it was decided that mandatory mediation would also include separating parents who had not been married<sup>33</sup>.

From the point of view of the general doctrine of constitutional law and human rights, there exists a concern that mandatory pre-trial dispute resolution mechanisms can lead to a restriction of the constitutional rights of citizens to go to court. Therefore, the design of a particular system is of decisive importance. This issue is examined in detail via the EU Court of Justice decision C-75/16<sup>34</sup> on the review of the Italian system of compulsory mediation. In general, the EU Court of Justice approved the Italian scheme.

In reaching its judgment, the ECJ found that the requirement under Italian law that mandatory out-of-court mediation be initiated before bringing court proceedings may be compatible with the principle of effective judicial protection provided that such mediation (i) does not result in a binding decision on the parties; (ii) does not cause substantial delay; (iii) does not suspend the period for the time-barring of claims; and (iv) does not give rise to high costs. In addition, urgent interim measures should be possible. The ECJ also noted that the contested Italian legislation could not require a consumer taking part in an alternative dispute resolution procedure to be assisted by a lawyer. In addition, the

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<sup>32</sup> Ibid.

<sup>33</sup> *Tjersland O., Gulbrandsen W., Haavind H.* Mandatory Mediation outside the Court: A Process and Effect Study // *Conflict Resolution Quarterly*. 2015. № 33. P. 19–34. <https://doi.org/10.1002/crq.21129>.

<sup>34</sup> Judgment of the Court (First Chamber) of 14 June 2017. *Livio Menini and Maria Antonia Rampanelli v Banco Popolare — Società Cooperativa*. Request for a preliminary ruling from the Tribunale Ordinario di Verona. Case C-75/16. URL: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A62016CJ0075> (accessed: 25.05.2022).

ECJ found that the Italian requirement that a consumer need demonstrate a valid reason before withdrawing from the mediation procedure violated Directive 2013/11/EU<sup>35</sup>.

According to de Palo, the Italian experience provides a concrete example for the proposition that introducing mandatory elements, more specifically mandatory mediation with the ability for parties to opt out easily, will likely increase the number of mediations in any Member State. Experience has also shown that the incidence of voluntary mediation is increased by the introduction of mandatory mediation when provided in one regulatory framework. In Italy, when mandatory mediation was introduced, the number of mediations, including voluntary mediations, increased. It is also important to note that the Italian mechanism has been lauded as a model to follow. Following the presentation of the Re-booting Study before the European Parliament, the former Vice-President of the European Parliament and Rapporteur for the Mediation Directive, Arlene McCarthy, wrote a public letter to the then Minister of Justice of Italy, indicating that the opt-out Italian mediation model was 'an example the entire EU should learn from'<sup>36</sup>.

In March 2022 the Italian Minister of Justice issued the figures on year 2021: 2,731,349 new proceedings filed in civil courts; 166,511 civil mediation proceedings; 22,812 mediated settlement agreements. In the 2011/2021 period there has been a decrease in civil court litigation (-4% per year), because of the economic crisis, a strong increase in mediation proceedings (+17% per year) and a strong increase in mediated settlement agreements (+13% per year). According to the European Parliament, Italy uses mediation at rate six times higher than the rest of Europe<sup>37</sup>.

## **6. Switching from a Voluntary to a Mandatory Financial Ombudsman under the Central Bank of Russia Umbrella**

Some Russian legal scholars believe that there are two main aims of solving consumer disputes by a financial ombudsman. They are to expedite dispute resolution between a financial organization and its client and to release courts from deciding relatively minor applications. Achieving these two aims leads to a rise in confidence towards those banks that accept the financial ombudsman's competence and towards the financial system as a whole<sup>38</sup>.

I agree with opinion that the ineffectiveness of the dispute resolution system encourages dishonest market participants, for example, some credit organizations. These organizations are not interested in clients returning to them for further services or developing stable relationships with clients. If a dispute arises, such a company has no motivation to participate in its resolution, so it is easier for the consumer to go to court. The task of such a company is 'to attract' customers only, but not 'to hold onto' them. In addition, a developed system of alternative dispute resolution is a kind of barometer for the bank because products for which complaints are most often received need to be modified. Such a mechanism allows both for the necessary adjustments to banking products and improve-

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<sup>35</sup> *Longeval C., Declève Q.* Court of Justice of European Union Rules on Mandatory Mediation before Court Proceedings involving Consumer Claims. Van Bael & Bellis. 16.06.2017. URL: <https://www.vbb.com/insights/corporate-commercial/corporate-commercial/court-of-justice-of-european-union-rules-on-mandatory-mediation-before-court-proceedings-involving-consumer-claims> (accessed: 25.05.2022).

<sup>36</sup> *De Palo G.* A Ten-Year-Long 'EU Mediation Paradox' When an EU Directive Needs To Be More ...Directive. European Parliament. November 2018. P. 6. URL: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL\\_BRI\(2018\)608847\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL_BRI(2018)608847_EN.pdf) (accessed: 25.05.2022).

<sup>37</sup> *Matteucci G.* 2022. Compulsory Civil Mediation in Italy 2011/2021 // Mediate.com. 24 May 2022. URL: <https://www.mediate.com/compulsory-civil-mediation-in-italy-2011-2021/> (accessed: 25.05.2022).

<sup>38</sup> *Mikulskaya M. P.* Sozdanie instituta ombudsmena v Rossiiskoi Federatsii // Bankovskij ritejl. 2011. № 6. P. 50–64.

ments in quality of service. However, the object of the ombudsman is not only in deciding disputes, it is also in developing the financial culture of the public. The ombudsman's mission is more humanitarian and should be understood as wider than just issuing a decision in favor of one of the parties. The global goal of the institution of the ombudsman is keeping the client's desire to remain an active participant of the financial market and, as far as possible, maintaining relations between clients and financial institutions<sup>39</sup>.

A financial ombudsman, similar to a deposit insurance system, significantly improves the moral climate of society. At the same time, it avoids situations of artificial underreporting by consumers of the sum of their debts just to meet the ceilings established by law for the competence of the financial ombudsman<sup>40</sup>.

The real market practice demonstrates that when a dispute is adjudicated in a court the clients mostly tend not to maintain their relationships with banks even when their complaints were satisfied by the judge. Participation of a financial ombudsman in settling disagreements can promote compromise without turning to a court and thus retain loyalty. Other significant advantages of the financial ombudsman's participation in settling disputes for a bank include the efficiency of reaching the solution, confidentiality of the proceedings and also workload reduction for a bank's in-house legal department. Moreover, the reaching of a mutually acceptable decision in a dispute with a client without applying to a court facilitates minimization of the legal costs of the credit organization<sup>41</sup>.

To achieve these goals, it is necessary to explain to the general public the mechanism of the functioning of the ombudsman institution, the application process and the application review process. Even if the institution is established by law, individuals that lack information might develop a negative attitude towards it. Therefore, the advantages of using the institution should be explained and its effectiveness should be illustrated by examples from foreign jurisdictions simultaneously with the establishment of the institution. The ombudsmen must be experienced professionals yet, unfortunately, Russian legislation does not allow retired judges to take on the role of ombudsmen<sup>42</sup>.

It is important that unsatisfied consumers submit their claims not only to the courts, but also to the central bank. So there exists a practical need to distinguish between the powers of the regulator and the financial ombudsman. The latter cannot and must not fight for all cases to be referred to it, it has enough other business. Therefore, it can be somewhat of a judge that defines principles and approaches but it must not review specific cases. The ombudsman 'having impartially reviewed the disputes, will, in some cases, explain the reason for the disagreement and such complaints will be annulled. In another case, based not only on the principles of law, but also on the principles of fairness, the ombudsman will direct banks towards the wisest solution. In this case, the ombudsman's recommendations must be binding. The bank will benefit from this in the long-run, both morally and financially'<sup>43</sup>.

In general, financial ombudsmen are 'commissioners for the protection of the rights and interests of a specific group of people'. For the insurance ombudsman, this group is clients of insurance companies, first and foremost individuals who demonstrate a lack of

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<sup>39</sup> *Kandyba M. A., Chirkin D. V.* Finansovyi ombudsmen: zarubezhnyi opyt // *Bankovskoe Pravo*. 2012. № 6. P. 15–16.

<sup>40</sup> *Medvedev P. A.* Sistema strakhovaniia vkladov i institut finansovogo ombudsmena neobkhodimy dlia normal'nogo moral'nogo klimata v obshchestve // *Bankovskoe Pravo*. 2012. № 3. P. 24.

<sup>41</sup> *Shabanova I. I.* Polnomochiia finansovykh ombudsmenov v dosudebnom razreshenii sporov // *luridicheskaiia rabota v kreditnoi organizatsii*. 2014. № 3. P. 22.

<sup>42</sup> *Sergeev V. V.* O zasedanii Komissii po zakonodatelstvu v sfere deiatel'nosti kreditnykh organizatsii i finansovykh rynkov Assotsiatsii iuristov Rossii // *Bankovskoe Pravo*. 2010. № 4. P. 38–39.

<sup>43</sup> *Tosunyan G. A.* Povedencheskii nadzor — 'nachni s samogo sebya' // *Bankovskoe Pravo*. 2017. № 4. P. 68.

professional knowledge necessary to win a dispute. From this point of view, they are the weaker party to the dispute. However, the ombudsman is not the legal representative and legal defender of insured individuals since he or she has to impartially review conflicts guided by current legislation and professional knowledge<sup>44</sup>.

Therefore, let me summarize the interests of financial services providers in respect of the ombudsman. These interests include the fair and fast settlement of disagreements with the provider's client with the possibility of maintaining their relations, workload reduction for legal departments, legal cost reduction, and increasing the demand for financial services through the general growth of the public's confidence in the insurance market. Gatsalov summarized the arguments of the Russian opponents of the institution of insurance ombudsman: a) lack of resources to promote a mechanism equitable to the state court system combined with criticism of the opinion that this mechanism will be cheap, b) a lack of professionals to serve for this institution, c) establishing ombudsmen for specific services will only unreasonably privilege consumers in this market over all other consumers, d) it is unclear why the public will trust the ombudsmen, e) ombudsmen will be fighting conflicts between consumers and service providers, but they will not be eradicating the reasons for these conflicts, such as inefficiency of corporate management<sup>45</sup>.

The bill on the financial ombudsman was adopted by the Russian parliament as a law in June 2018<sup>46</sup>. The Russian Parliament decided that the Chief Financial Ombudsman (CFO) should be appointed for a period of five years by the Board of Directors of the Central Bank of Russia on the basis of a proposal by the Chairman of the Bank of Russia, with the consent of the President of the Russian Federation. The same person may be appointed to the position of CFO no more than three times in a row. Sectoral Financial Ombudsmen in the areas of financial services will be appointed by the Board of Directors of the Central Bank of Russia on the basis of a proposal of the CFO for a period of five years and also can be re-appointed twice afterwards.

Although the Russian financial sector lobbied voluntarily for its participation in the ombudsman system, the scheme of mandatory participation was eventually adopted. In terms of financing, it was decided that, while in the first year the financial ombudsman's office will be funded by the Central Bank of Russia, in subsequent years, the regulator will grant supplementary funding if there is a shortage of funds. The payments by those financial organizations that lose their cases will be the primary source of funds for the maintenance of the offices of financial ombudsmen, including for conducting an independent expert analysis in cases under their review. The second potential source is payment for applying to the ombudsman, the fees for which are paid by assignees to whom the clients of financial organizations have ceded their rights of claim to financial organizations<sup>47</sup>. For the consumer of financial services themselves, an appeal to a financial ombudsman is free of charge. In addition to these two sources of financing, there will be a third such as mandatory fees paid by financial organizations. Sums of fees will be calculated on the basis of many factors, including the total number of complaints against the financial institution and the final results of their review by the ombudsmen and the courts.

Compulsory joining for different categories of financial organizations takes place at different times, starting 31 May 2019 for mandatory auto-insurance (OSAGO) insurers,

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<sup>44</sup> Gatsalov K. A. Strakhovoi ombudsmen: praktika razresheniia strakhovykh sporov // *Luridicheskaia i pravovaia rabota v strakhovanii*. 2009. № 4. P. 91–100.

<sup>45</sup> Gatsalov K. A. Strakhovoi ombudsmen v Rossii: vozmozhnye puti i perspektivy razvitiia // *Luridicheskaia i pravovaia rabota v strakhovanii*. 2010. № 2. P. 43–44.

<sup>46</sup> Speaking of legislative technique, on the same day, a second law was adopted on amending the legislation of Russia necessary for the start of work by the financial ombudsman.

<sup>47</sup> CB: finombudsmen budet finansirovatsya iz trekh istochnikov // *Banki.ru*. 2018. June 14. URL: <http://www.banki.ru/news/lenta/?id=10517819> (accessed: 25.05.2022).

then on 27 November 2019 for all insurance organizations with the exception of mandatory medical insurance, on 1 January 2020 for microfinance organizations, and on 1 January 2021 for banks, consumer credit cooperatives, pawnshops and private pension funds. It is possible to join a financial ombudsman scheme voluntarily<sup>48</sup>.

The Central Bank of Russia indicated that the creation of an alternative mechanism for resolving disputes between consumers and financial institutions would contribute to enhancing consumer trust as well as at the level of consumer protection. The resolution of disputes by financial ombudsman will be faster and less expensive than the consideration of the dispute in court. Specialization of financial ombudsmen and high requirements for their professional competence will ensure qualified dispute resolution. The development of this institution will reduce the burden on the judicial system<sup>49</sup>.

The right to appeal against the decisions of financial ombudsmen in court was granted in Russia to both parties of disputes, i.e., to financial organizations and consumers of their services. Rulings of financial ombudsmen, unless annulled by the court, are enforced by the federal bailiff service in the same manner as decisions of the civil courts.

If the question is under the jurisdiction of the financial ombudsman, the consumer must submit a claim to the financial organization, then to the financial ombudsman and only go to court after passing through the stage of the ombudsman. This combines elements of both pre-trial dispute resolution, out-of-court dispute resolution and regular litigation. The obligatory ombudsman, in fact, is not significantly different from the usual trial court of first instance. Unless he has no right, unlike the court, to provide deferments and installment plans for loans.

I also note that Russia was the first country in the CIS to decide to introduce and test the following rule. If the financial institution does not voluntarily execute the decision of the financial commissioner or the terms of the mutual settlement agreement of the dispute under the financial ombudsman, the consumer can submit a claim to court to fine the financial organization in favor of the consumer in the amount of 50% of the sum granted to him under the financial ombudsman scheme.

Also in Russia, three ombudsmen have been functioning for quite a long time, created according to the public law, namely the parliamentary ombudsman, the children's ombudsman and the business ombudsman. All of them, unlike the new financial ombudsman, are not entitled to resolve disputes. Professor Ruchkina justifiably notes that the existent very significant difference between the status of the financial ombudsman and the other three ombudsmen is undesirable, so their statuses should be unified as much as possible<sup>50</sup>. However, I am not sure that it is realistic in practice now to give the other three ombudsmen the power to resolve disputes.

According to Vishnevskiy, the financial ombudsman would be much more effective if it did not have a private law contractual nature and its decisions were not be carried out on the basis of the principle of voluntariness and good faith of the parties, and if the ombudsman were, instead, a statutory institution of extrajudicial consideration of disputes in the banking system. That is, its decisions would be binding on credit organizations according to the direct norms of legislation<sup>51</sup>. Turbanov, another Russian professor of banking law, noted that Russia must establish an ombudsman whose functions will be based on global

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<sup>48</sup> Ibid.

<sup>49</sup> Tsentral'nyi bank Rossiiskoi Federatsii. Osnovnye napravleniya razvitiia finansovogo rynka Rossiiskoi Federatsii na period 2019–2021 godov. Moskva, 2019. P. 45. URL: [https://www.cbr.ru/Content/Document/File/71220/main\\_directions.pdf](https://www.cbr.ru/Content/Document/File/71220/main_directions.pdf) (accessed: 25.05.2022).

<sup>50</sup> Ruchkina G. F. Finansovyi upolnomochennyi v Rossiiskoi Federatsii: nekotorye problemy pravovogo regulirovaniia deiatel'nosti // Bankovskoe Pravo. 2019. № 5. P. 8.

<sup>51</sup> Vishnevskiy A. A. Sovremennoe bankovskoe pravo: bankovsko-klientskie otnosheniya // Sravnitel'no-pravovye ocherki. Moscow: Statut, 2013. P. 94–96.

practice and, at the same time, will be distinguished by the features conditioned by Russian realities. In particular, it seems evident that a voluntary and self-regulated model of an ombudsman will not work for Russia, therefore, imperative legal regulation is a must. Its establishment should not be postponed due to the low levels of financial and legal literacy of the general public. These two problems must be solved simultaneously, since the emergence and popularization of the ombudsman will contribute to the increase in the legal culture and awareness of the specifics of the financial market<sup>52</sup>.

According to new Russian legislation, the financial ombudsman is considered as an alternative to a mediator. Thus the appeal to a mediator leads in Russia to the impossibility of a subsequent appeal to the financial ombudsman. However, in the early days of the new Financial Ombudsman in 2020–2021, the courts sometimes accepted claims by financial consumers in disputes within the jurisdiction of the Financial Ombudsman without mandatory consideration of the dispute by latter. The Supreme Court of Russia twice drew the attention of the courts to the fallacy of such an approach<sup>53</sup>.

After comparing the models of Russia, Kazakhstan, Armenia, Azerbaijan and the proposed models of Belarus and Kyrgyzstan, I can conclude.

With the exception of Russia, financial ombudsmen are elected by market participants. Even if the regulator votes in these elections, the majority of votes belong to the market participants (Kazakhstan, Armenia). Of course, it is very unlikely that market participants will approve a candidate against very strong regulator objections but, formally, this is possible.

If the limit of powers of the financial ombudsman in terms of the amount of the dispute is relatively small, then this institution can be fully administered by self-regulatory organizations in the relevant markets by concluding a private law agreement. If the financial ombudsman has the right to consider relatively large disputes, then a parliamentary act is usually issued on his powers. This act can empower the national regulator of the financial market with the ability to influence the work of the financial ombudsman through, for example, participation in the elections of the ombudsmen, and the work of the administrative councils of the financial ombudsmen. At the same time, the regulator never has the right to interfere in the ongoing consideration of specific disputes by the ombudsman, etc.

The consumer always retains the right to go to court after passing the financial ombudsman stage. With regard to a similar right for financial institutions, approaches in different jurisdictions are not uniform. There is no standardized approach to the question of whether the membership of financial institutions in the financial ombudsman system is mandatory. Regardless, ombudsmen cover only a subset of the participants in the national financial services markets. Apart from Russia, there is no consumer obligation to refer some disputes to the financial ombudsman for consideration. In the other jurisdictions considered, this is a voluntary choice of the consumer based on his personal trust or, on the contrary, distrust of the ombudsmen.

The initial powers of financial ombudsmen can then gradually increase over time.

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<sup>52</sup> Vystuplenie Turbanova A. V., cited from: Sergeev V. V. O zasedanii Komissii po zakonodatelstvu v sfere deiatel'nosti kreditnykh organizatsii i finansovykh rynkov Assotsiatsii iuristov Rossii // *Bankovskoe Pravo*. 2010. № 4. P. 39–40.

<sup>53</sup> Raz"iasneniia po voprosam, svyazannym s primeneniem Federal'nogo zakona ot 4 iyunia 2018 goda № 123-FZ 'Ob upolnomochennom po pravam potrebiteli finansovykh uslug'. Utverzhdeny Prezidiumom Verkhovnogo Suda Rossiiskoi Federatsii 18 marta 2020 goda. URL: <https://www.vsrfr.ru/documents/all/28812/> (accessed: 25.05.2022); Obzor sudebnoi praktiki po delam o zashchite prav potrebiteli, utverzhden Prezidiumom Verkhovnogo Suda RF 20.10.2021 goda. P. 32–46. URL: <https://vsrf.ru/documents/all/30461/> (accessed: 25.05.2022); Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii ot 22 iyunia 2021 goda № 18 'O nekotorykh voprosakh dosudebnogo uregulirovaniia sporov, rassmatrivaemykh v poriadke grazhdanskogo i arbitrazhnogo sudoproizvodstva', punkty 3, 33–43. URL: <https://www.vsrfr.ru/documents/own/30139/> (accessed: 25.05.2022).



Tables 1 and 2 show the results of activity of the Russian Financial Ombudsmen in 2019–2021.

*Table 1. Grounds for inadmissibility of consumer claims by the Russian financial ombudsmen, 2019–2021*

Ground	Amount	Share, %
The applicant has not previously filed a claim with the financial institution	85,745	66,7
The amount of the claims exceed the legal ceiling or the financial institution is not party to the financial ombudsman scheme	23,357	18,2
The complaint doesn't meet formal technical requirements	10,908	8,5
Repeat appeals relating to an issue that was considered or under consideration by the financial ombudsman	4,561	3,6
The financial institution has been liquidated or is undergoing bankruptcy (liquidation)	892	0,7
The same case being under consideration in civil court, or in another alternative dispute resolution institution, or resolved by them	768	0,6
The three-year statute of limitations has expired	658	0,5
Fees is unpaid by assignees to whom the clients of financial organizations have ceded their rights of claim to financial organizations	637	0,5
The text of the appeal is technically impossible to read	101	< 0,1
Based on labour/tax/family/ bankruptcy law	70	< 0,1
Request for moral damage/ lost profits	63	< 0,1
Obscene language	17	< 0,1
TOTAL	128,414	100

*Source.* Financial Ombudsman of Russia Office. Annual Report 2019<sup>54</sup>. Financial Ombudsman of Russia Office. Annual Report 2020<sup>55</sup>. Financial Ombudsman of Russia Office. Annual Report 2021<sup>56</sup>.

At the moment, it is not possible to accurately estimate how many decisions of the financial ombudsman are canceled by the courts, since many such cases have only been passed by the court of first instance, whose decisions have been appealed in a court of appeal. The ombudsman reports that, in 2020–2021, the first instance court overturned 958 and partially changed 9,579 of its decisions<sup>57</sup>. The last figure is due to the fact that the statute provides for a rather high fine for violation of consumer rights. Only the court, but

<sup>54</sup> Sluzhba finansovogo upolnomochennogo. Otchet o deiatel'nosti v 2019 godu. May 2020. P. 16–17. URL: <https://finombudsman.ru/wp-content/uploads/2020/05/Otchet-o-deyatelnosti-v-2019-godu.pdf> (accessed: 25.05.2022).

<sup>55</sup> Sluzhba finansovogo upolnomochennogo. Otchet o deiatel'nosti v 2020 godu. May 2021. P. 23–24. URL: <https://finombudsman.ru/wp-content/uploads/2021/05/Otchet-o-deyatelnosti-v-2020-godu.pdf> (accessed: 25.05.2022).

<sup>56</sup> Sluzhba finansovogo upolnomochennogo. Otchet o deiatel'nosti v 2021 godu. May 2022. P. 38–39. URL: <https://finombudsman.ru/assets/files/1072/Otchet-o-deyatelnosti-v-2021-godu.pdf> (accessed: 25.05.2022).

<sup>57</sup> Sluzhba finansovogo upolnomochennogo. Otchet o deiatel'nosti v 2020 godu. P. 31–33; Sluzhba finansovogo upolnomochennogo. Otchet o deiatel'nosti v 2021 godu. P. 57.

Table 2. Financial ombudsman of Russia decisions on merits, including closed cases, 2019–2021

Case result	Amount	Share, %
The application of the consumer is fully or partially granted and the financial institution voluntarily complied with the decision	79,261	27,5
The application of the consumer is fully or partially granted and the financial institution neither challenged this decision in court nor voluntarily enforced it. So the ombudsman decision is enforceable by bailiffs	11,945	4,1
The application of the consumer is fully or partially granted and the financial institution challenged this decision in court. The ombudsman decision will be enforceable by bailiffs if not overruled by the court	16,890	5,9
The case was closed, including settled by the parties	36,836	12,8
The application of the consumer is fully denied	142,954	49,7
TOTAL	287,886	100

Source. Financial Ombudsman of Russia Office. Annual Report 2019. Financial Ombudsman of Russia Office. Annual Report 2020. Financial Ombudsman of Russia Office. Annual Report 2021<sup>58</sup>.

not the financial ombudsman, can reduce it if there are valid reasons. Therefore, financial organizations, agreeing with the decision of the ombudsman at the primary request of the consumer, often go to court only to reduce this additional fine. Courts often grant such requests. If the financial ombudsman is legally allowed to reduce this fine in the future, then these appeals to the court will disappear.

From an organizational point of view now only the Chief Financial Ombudsman Mr. Yuriy Voronin and four sectoral financial ombudsmen namely Mrs. Tatiana Maksimova, Mrs. Svetlana Savitskaya, Mr. Denis Novak and Mr. Viktor Klimov, that is, five people, in sum actually serve as the financial ombudsmen and make decisions. They consider the cases alone without summoning the parties, however, they manage a legal and administrative staff of about 600 subordinates. In 2020, the financial ombudsman system revenues amounted to 1.9 billion Russian rubles, expenses 2.0 billion, that is, there was a small budget deficit. But in 2021 the deficit was overcome, as revenues amounted to 2.3 billion rubles, and expenses 2.1 billion rubles<sup>59</sup>. That is, the annual budget of the Russian financial ombudsman is about EUR 35 million and this scheme is financially sustainable.

## 7. What other Subjects could the Mandatory Financial Ombudsman Cover?

According to my observations, with the exception of the problem of bank bankruptcy, the most significant conflicts in Russian financial services are: auto insurance, consumer loans, mortgages, and unauthorized debiting of card accounts. Since voluntary medical insurance, life insurance and real estate insurance are still developing in Russia (the latter is a typical requirement of lenders for mortgages), I expect a relatively high degree of conflict in these areas in the future too.

<sup>58</sup> Sluzhba finansovogo upolnomochennogo. Otchet o deiatel'nosti v 2019 godu. P. 18–21; Sluzhba finansovogo upolnomochennogo. Otchet o deiatel'nosti v 2020 godu. P. 25, 29–30; Sluzhba finansovogo upolnomochennogo. Otchet o deiatel'nosti v 2021 godu. P. 53–54.

<sup>59</sup> Sluzhba finansovogo upolnomochennogo. Otchet o deiatel'nosti v 2020 godu. P. 36; Sluzhba finansovogo upolnomochennogo. Otchet o deiatel'nosti v 2021 godu. P. 64.

It is also important that, so far, disputes between consumers and their brokers except banks on the stock exchange have been excluded from the competence of the financial ombudsman. In my opinion, this exception should be removed in the future.

Several scholars<sup>60</sup> reasonably drew attention to the need for financial ombudsmen to consider minor disputes regarding payment services. This proposal is partly implemented in the new law. Banking payment disputes worth up to 500,000 Russian rubles will be under mandatory financial ombudsmen jurisdiction. However, payments of individuals through non-bank licensed companies are under voluntary ombudsmen jurisdiction, so only if such companies decide to join the ombudsman scheme.

Another group of scholars suggested authorizing the financial ombudsman to consider citizens' complaints about debt collection companies' practices<sup>61</sup>. However, this sensible proposal has unfortunately not yet been implemented.

The practice of some countries, for example, the UK, proves that a number of minor disputes involving small enterprises (micro-enterprises) are more efficiently and more expediently resolved with the help of the financial ombudsman, and not a court case. Therefore, it seems that the right to apply for settlement of a dispute to the financial ombudsman in Russia should be granted to certain categories of small entrepreneurs, setting for them a list of relevant criteria, for example, the maximum amount of disputes and the maximum amount of annual turnover<sup>62</sup>.

This sensible idea has not yet been supported by the Russian legislator but has been partially implemented in Kazakhstan. Under the new Russian law, the ombudsman is entitled to engage in disputes only from those financial services, the receipt of which is not related to the conduct of business activities.

In addition, there is a legislative trend towards a gradual convergence of legal mechanisms for the protection of small entrepreneurs and consumers as recipients of financial services. In particular, a mandatory deposit guarantee (insurance) scheme has been extended to small business deposits (Russia, Kazakhstan, Azerbaijan and Armenia). Therefore, it is likely, within the framework of this legislative tendency, that, in the future, financial ombudsmen could get new powers to consider some B2B disputes in financial services.

Extremely controversial in the process of developing a new Russian legislation is the question of whether a financial ombudsman is entitled to restructure consumer debts. This was strongly supported by Medvedev, who was the voluntary financial ombudsman under the scheme of the Association of Russian Banks before passing the new law. In practice, he often found good compromises between creditors and debtors. Moreover, Medvedev offered to implement into the banking regulation the following reasonable compromise: The ombudsman offers a debt restructuring scheme which is not mandatory for the creditor. If the creditor accepts it, the Central Bank mandatory reservation norms on such debts are softened<sup>63</sup>. Some scholars supported this approach<sup>64</sup>. However, the

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<sup>60</sup> *Chirkov A. V.* Problemy realizatsii zakonodatelstva o natsional'noi platezhnoi sisteme v chasti otvetstvennosti bankov v raschetnykh pravootnosheniakh // *Bankovskoe Pravo*. 2013. № 5. P. 67; *Sevast'yanova Y. V.* Vozmeshchenie ubytkov, prichinennykh nesanksionirovannym spisaniem deneg s kartochnogo scheta // *Iuridicheskaya rabota v kreditnoi organizatsii*. 2013. № 2. P. 89; *Lohmanov D. V.* Vvedenie instituta finansovogo upolnomochennogo v Rossiiskoi Federatsii: voprosy teorii i praktiki // *Bankovskoe Pravo*. 2015. № 2. P. 48–50.

<sup>61</sup> *Ivanov O. M.* Pravovaia priroda i obiazatel'nost' reshenii finansovogo ombudsmena // *Arbitrazhnyi i Grazhdanskii Protseess*. 2013. № 1. P. 2–3; *Tartashev V. A.* Rol' finansovykh ombudsmenov pri uregulirovanii zadolzhennosti // *Bankovskii riteil*. 2010. № 1. (Baza dannykh Garant Garant.ru)

<sup>62</sup> *Shabanova I. I.* Polnomochiia finansovykh ombudsmenov v dosudebnom razreshenii sporov. P. 28–29.

<sup>63</sup> *Medvedev P. A.* Zakreditovannost' naseleniia — ugroza finansovoi sisteme strany. Est' li vykhod? // *Predprinimatelskoe pravo: prilozhenie 'Pravo i Biznes'*. 2016. № 2. P. 3.

<sup>64</sup> *Mikul'skaya M. P.* Sozdanie instituta ombudsmena v Rossiiskoi Federatsii. P. 62.

Russian banking lobby was fervently against giving the ombudsman the competence to restructure the debt on consumer loans. In their opinion, this does not comply with any international experience. The lobbyists said that individuals do not have the right to avoid repaying loans, and no ombudsman can help here<sup>65</sup>. Unfortunately, the approach to not giving the ombudsman the right to make decisions on the restructuring of loans has prevailed so far in the Russian parliament. However, an important caveat needs to be made that, in 2015, personal insolvency legislation for individuals in non-commercial debts finally appeared in Russia.

In addition, now the Russian financial ombudsman can't recover moral damages and lost profits in favor of the consumer. This leads to the fact that the consumer, having won the main dispute in the financial ombudsman system, may then start a separate dispute in court about moral damage and lost profits if they desire to recover their sums. True, in consumer legal relations there is almost never lost profit, but compensation for moral damage is a serious issue.

## Conclusion

The high number of disputes in various Post-Soviet jurisdictions between financial institutions and consumers shows that the courts and already existing alternative dispute resolution mechanisms cannot cope with the task of quickly and efficiently resolving them. So there is demand for new models of resolving consumer disputes in financial markets. Financial ombudsmen, including those acting under the 'umbrella' of the central bank, can indeed help some consumers resolve their dispute with a financial institution, effectively and faster than in court, and also relieve the courts of a burden.

The Russian financial ombudsmen combine elements of both pre-trial dispute resolution, out-of-court dispute resolution and regular litigation. Although ombudsmen are independent by law, the central bank has the power to initiate their dismissal. However, the central bank is not at all interested in their early dismissal, since such dismissal will affect the reputation of the central bank itself. After all, the central bank picked them.

Without questioning the quality of the work of the new Russian financial ombudsmen, I believe that they should be selected through an open contest. There is nothing wrong with the existence of the compulsory ombudsman stage since it provides that the dispute is handled by experienced financial services professionals. However, taking into account the positive historical experience of the German model in Russia, I believe that the consumer should have a choice between ombudsmen under the central bank 'umbrella' and five to seven ombudsmen, appointed by joint decisions by self-regulatory organizations of relevant financial markets and consumer protection unions. In the state courts, the plaintiffs do not have the right to select a judge, but for consumer-oriented alternative dispute resolutions, some of their choices are fundamentally important.

In my opinion, a relatively limited ombudsmen power is reasonable if a judicial appeal against their decisions by financial organizations is prohibited. In conditions under which unlimited court challenges by all parties are possible, it is advisable to increase the ceiling.

Models of financial ombudsmen, applied in the financial markets of Kazakhstan, Azerbaijan, Armenia are softer than the Russian one. Whether in fact the Russian institution of a compulsory financial ombudsman under the Central Bank 'umbrella' will manifest itself positively or negatively will determine the possibility of extending this new scheme to other categories of consumer dispute, not only in the field of financial services. First of all, I mean here such regulated spheres as housing construction and repair, utilities and telecommunications. Furthermore, since a number of post-Soviet countries continue to

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<sup>65</sup> *Ivanov O. M.* Problemnye kredity: dna ne vidno // BDM. Banki i delovoi mir. 2015. № 5. P.65.

rely on the Russian experience, in such countries there may be an expansion of mandatory ombudsmen under the umbrella of regulators as well.

## References

- De Palo, Giuseppe. 2018. *A Ten-Year-Long "EU Mediation Paradox" When an EU Directive Needs To Be More ...Directive*. November. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL\\_BRI\(2018\)608847\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608847/IPOL_BRI(2018)608847_EN.pdf) (accessed: 25.05.2022).
- Chirkov, Aleksei V. 2013. Problems of realization of legislation on national payment system with regard to responsibility of banks in settlement legal relations. *Bankovskoe Pravo* 5: 63–68. (In Russian)
- Gatsalov, Kirill A. 2010. Insurance Ombudsman in Russia: possible ways and prospects of development. *Iuridicheskaja i pravovaia rabota v strakhovanii* 2: 41–51. (In Russian)
- Gatsalov, Kirill A. 2009. Insurance Ombudsman: Insurance Dispute Resolution practice. *Iuridicheskaja i pravovaia rabota v strakhovanii* 4: 91–100. (In Russian)
- Ivanov, Oleg M. 2013. Legal nature and obligatory of financial ombudsman's decisions. *Arbitrazhnyi i Grazhdanskii Protsess* 1: 2–8. (In Russian)
- Kandyba, Maxim A., Chirkin Dmitriy V. 2012. Financial ombudsman: foreign experience. *Bankovskoe Pravo* 6: 14–22. (In Russian)
- Kirkham, Richard. 2018. *A Study into Ombudsman Judicial Review. Online appendix: Evidence of Result*. University of Sheffield. Available at: [https://www.sheffield.ac.uk/polopoly\\_fs/1.792260!/file/researchstudy2018.pdf](https://www.sheffield.ac.uk/polopoly_fs/1.792260!/file/researchstudy2018.pdf) (accessed: 25.05.2022).
- Korovyakovskiy, Denis G. 2014. On certain alternative means of dispute resolution (ADR) of states — members of the WTO (as exemplified by the USA, France, Germany, Great Britain and the Russian Federation). *Rossiyskiy Sudya* 11:16–19. (In Russian)
- Lohmanov, Dmitriy V. 2015. Introduction of the institute of financial ombudsman in the Russian Federation: issues of theory and practice. *Bankovskoe Pravo* 2: 45–50. (In Russian)
- Matteucci, Giovanni. 2022. *Compulsory Civil Mediation in Italy 2011/2021*. 24 May 2022. Available at: <https://www.mediate.com/compulsory-civil-mediation-in-italy-2011-2021> (accessed: 25.05.2022).
- Medvedev, Pavel A. 2016. The creditworthiness of the population is a threat to the country's financial system. Is there a way out? *Predprinimatelskoe pravo: prilozhenie 'Pravo i Biznes'* 2: 2–3. (In Russian)
- Ponamorenko, Vladislav E., Chetverikov, Artem O., Karpov, Leonid K. 2014. *Banking Integration in the EU and CES: Opportunities for Legal Transplantation*. Moscow, Iustitsinform Publ. (In Russian)
- Ruchkina, Gulnara F. 2019. Financial commissioner in the Russian Federation: some issues of legal regulation of activities. *Bankovskoe Pravo* 5: 7–14. (In Russian)
- Sergeev, Valeriy V. 2010. On the meeting of the commission on legislation in the sphere of activities of credit organizations and financial markets of the Russian bar association. *Bankovskoe Pravo* 4: 36–44. (In Russian)
- Sevastyanova, Yulia V. 2013. Compensation for losses caused by unauthorized debiting of money from a card account. *Iuridicheskaja rabota v kreditnoi organizatsii* 2: 85–96. (In Russian)
- Shabanova, Inara I. 2014. Powers of financial ombudsmen in pre-trial dispute resolution. *Iuridicheskaja rabota v kreditnoi organizatsii* 3: 21–28. (In Russian)
- Tjersland, Odd, Gulbrandsen, Wenke, Haavind, Hanne. 2015. Mandatory Mediation outside the Court: A Process and Effect Study. *Conflict Resolution Quarterly* 33: 19–34. <https://doi.org/10.1002/crq.21129>
- Vahrenwald, Arnold. 2000. Out-of-court dispute settlement systems for e-commerce. *Report on legal issues. Part III: Types of Out-of-Court Dispute Settlement*. Joint Research Centre. Available at: <https://tbplaw.com/data/part3.pdf> (accessed: 25.05.2022).
- Van, Rhee C. H. 2021. Mandatory Mediation before Litigation in Civil and Commercial Matters: A European Perspective. 4(12). *Access to Justice in Eastern Europe*: 7–24. <https://doi.org/10.33327/AJEE-18-4.4-a000082>
- Vishnevskiy, Aleksandr A. 2018. Financial attorney vs financial ombudsman: effectiveness of institutional structures for protecting consumers of financial services. *Zakon* 9: 58–65. (In Russian)

## Обязательный финансовый омбудсмен под зонтом регулятора: тестирование новой модели разрешения споров

К. Ю. Молодыко

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В постсоветских странах суды не всегда эффективны в разрешении потребительских споров. В статье сравниваются модели организации работы финансовых омбудсменов в России, Казахстане, Азербайджане и Армении, а также планы по их внедрению в Кыргызстане и Беларуси. Также проанализированы модели обязательной медиации в ряде европейских юрисдикций. В некоторых странах из числа анализируемых наблюдается тенденция к усилению влияния регулятора на работу финансовых омбудсменов. Реформа российского финансового омбудсмена путем его преобразования в финансового уполномоченного является экспериментом по внедрению модели обязательного досудебного порядка рассмотрения потребительских споров на определенном регулируемом рынке. Новая российская модель уникальна, отличается как от моделей, сложившихся в странах Евросоюза (централизованная, децентрализованная, омбудсмен при профессиональном объединении), так и от моделей, реализованных в других постсоветских странах. Российская модель финансового уполномоченного по своей сути является комбинацией итальянской обязательной медиации (по признаку принудительности перед рассмотрением спора судом) и английского финансового омбудсмена (по признаку того, что во главе вертикальной системы находится единоличный руководитель, которого де-факто назначает регулятор финансовых услуг, при этом членство в этой системе финансовых организаций, оказывающих регулируемые услуги, в основном обязательно). От того, положительно или отрицательно проявит себя обязательный финансовый омбудсмен под «зонтиком» Центрального банка РФ, будет зависеть принципиальная возможность распространения этой схемы на другие категории потребительских споров на рынках, где наблюдается большое количество мелких и средних потребительских жалоб, в частности таких, как строительство и ремонт жилья, связь, жилищно-коммунальные услуги. Кроме того, поскольку ряд постсоветских стран продолжает опираться на российский опыт, в таких странах также может происходить внедрение модели обязательных омбудсменов под «зонтиком» регуляторов.

**Ключевые слова:** защита прав потребителей, обязательный финансовый омбудсмен, компетенция контролирующего органа, альтернативное разрешение споров, обязательный досудебный порядок.

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*Молодыко Кирилл Юрьевич* — канд. юрид. наук, доц., Национальный исследовательский университет «Высшая школа экономики», Российская Федерация, 109028, Москва, Покровский бул., 11; [kmolodyko@hse.ru](mailto:kmolodyko@hse.ru)