

Служба финансового уполномоченного в России: недоработанный институт или эффективное решение проблем потребителей?

Митряева Маргарита Анатольевна, студентка 4-ого курса РЭУ им. Г.В. Плеханова,
г. Москва, Российская Федерация

E-mail: mitryaevamargo@gmail.com

Аннотация

В статье обсуждаются достоинства и недостатки функционирования службы финансового уполномоченного в России с точки зрения потребителей финансовых услуг, сопряженные с особенностями правового регулирования деятельности данного института.

Ключевые слова: финансовый омбудсмен, финансовый уполномоченный, рынок финансовых услуг, рынок страхования, защита прав потребителей.

Financial ombudsman service in Russia: immature institution or effective solution to consumer problems?

Mitryaeva Margarita Anatolievna, student, Plekhanov Russian University of Economics,
Moscow, Russian Federation

E-mail: mitryaevamargo@gmail.com

Abstract

The article discusses the advantages and disadvantages of the functioning of the financial ombudsman service in Russia from a perspective of consumers of financial services, which are associated with the peculiarities of the legal regulation of this institution.

Keywords: financial ombudsman, financial services market, insurance market, consumer protection.

Starting from June 1, 2019, in order to settle a dispute with an insurance company under OSAGO, CASCO and DSAGO agreements, citizens of Russia must prior to bringing action in the court apply to the financial ombudsman. This procedure is valid for other types of insurance from November 28, 2019 except for compulsory health insurance.

Financial ombudsman office was created by Federal Law of June 4, 2018, No. 123-ФЗ “On the Ombudsman for the Rights of Consumers of Financial Services” in order to facilitate resolution

of disputes between financial organizations and consumers, encourage pre-court settlement of consumer claims, and ensure and protect consumer rights in the disputes [3, p. 6].

Indeed, many clients face difficulties confronting the decisions made by insurance companies regarding their requests. On different stages of the process, problems may lie in:

- payment delays, payment of the amount less than the damage, simply refusal to pay, low-quality repairs
- collecting documents for complaint/court trial, conducting technical expertise
- simply lack of legal knowledge and knowledge of formal procedural rules
- lack of money for expertise, lawyer, legal expenses

Financial ombudsman service was set to make it easier for citizens to defend their rights on the financial services matters. Still, at present, the scope of activities of the service is mostly limited to insurance organizations, although from 2020 it started accepting applications in relation to microfinance organizations, and from 2021 its jurisdiction will expand to also include credit organizations, non-state pension funds and some other entities.

Within the insurance market, the growth of requests submitted to the financial ombudsmen is quite strong – in the 3rd quarter of 2020 the number of requests increased by 32% compared to the same period in 2019 and amounted to 48,932. 86,4% of cases referred to vehicle insurance, 13,6% - to other types of insurance. The largest number of applications were related to the disagreement of consumers with the amount of insurance payment [4, p. 6].

In general, the service tends to lean in favor of consumers – in 2019 52,4% of decisions were made on full or partial satisfaction of consumer requests [5, p. 6].

Other positive for consumers tendencies are:

1. The new procedure allows to resolve disputes faster. The consumer's request is considered within 15 business days. In case of an expert examination, the process may be suspended for no more than 10 days. [3, article 20] In the court it usually took longer to settle the case.

2. Application to the financial ombudsmen is free of charge. The law stipulates the duty of the financial ombudsman to consider applications on a free basis, with the exception of applications submitted by persons who have been assigned the right of the consumer of financial services to claim to a financial organization. Besides, the financial ombudsman service can conduct an independent examination at its own expense if it needs it to make a decision.

3. Submitting a request is a simple procedure and does not require any special knowledge. The application can easily be done on one's own, and in case of difficulties, the necessary assistance is provided.

4. The activities of the financial ombudsman are transparent, and information about the number of complaints filed against a particular financial organization is publicly available, which puts pressure on the company, its reputation and stimulates it to resolve disputes at its own level. Besides, according to Article 11 of the law, from the date of its inclusion in the register, a financial organization is obliged to pay contributions to support the activities of the Ombudsman for financial services consumers support Service (OFSC). A significant novelty of the law was the relation between the amount of contributions required and the number of requests received by the company. Thus, an incentive has been created for financial organizations to become more client-oriented and get any cases out pre-trial.

5. Out of 851 court decisions as of April 1, 2020 only in 15 cases (less than 2%) the decision of the financial ombudsman was canceled. In 219 cases, the court denied the claim to financial organizations. In 612 (more than 70%) cases, the financial ombudsman's decision was changed due to a reduction in the amount of the forfeit [1, p. 6].

6. Consumers may request a support or consultation from the financial ombudsman service that will advice on the application and clarify the nuances of the procedure.

However, along with the positive sides, there exist certain drawbacks in the functioning of the service:

1. The applicants lost the opportunity to claim penalties for insurance companies. This was previously allowed for consumers in court. Moreover, decisions in this regard were often made in favor of consumers. Now, they cannot claim compensation for the lawyer's work, technical expertise, and most importantly - 50% fine from the total compensation amount for the improper fulfillment by the insurer of the obligation for direct compensation of losses.

2. Out of more than 16,000 decisions made by the financial ombudsman in 2019 in favor of consumers, 30% were appealed by financial organizations in court [1, p. 6]. In most cases, the appeal is caused by the companies' desire to reduce the amount of the forfeit which in their view does not correspond to the amount of damage. Only the court has the authority to reduce this amount, and since the decision of the financial ombudsman cannot be enforced until the end of judicial proceeding, consumers are put in a bad position. Some offended parties are left with damaged property without monetary compensation and have to wait for the results of the insurer's litigation with the ombudsman, which may last for a year or more.

3. Only 30 days are allowed for the appeal of the financial ombudsman's decision in court. Previously, 3 years were given for the judicial appeal against the insurance company's decision – according to the statute of limitations. On the one hand, this facilitates the dispute resolution process and contributes to the efficiency of the service. On the other hand, it can create inconvenience to

consumers if they want to appeal the decision made by the financial ombudsman. One problem here is that if consumers are not satisfied with the ombudsman's decision, they will not be able to start a court trial before the ombudsman's decision comes into force – which is within 10 days after it is signed. So, a consumer is restrained by time - the appeal may not be submitted in less than 10 days after the signature and may not exceed thirty days after the date of its entry into force. If the court leaves the consumer's claim without consideration, it will result in the need to re-file the claim outside the time limit set by the law. This deprives the applicant of the right to satisfy the claim or accept it for production. Also, for various reasons, it may be difficult for the consumer to access the personal account to find out the decision made by the financial ombudsman. In this case, the 30-day deadline may be also missed.

4. Handling of enforcement order is limited to a period of 3 months, although under current legislation, such period is 3 years.

5. According to the current legislation, if a financial institution fails to comply with a decision that has entered into force, the financial ombudsman must hand over to the consumer of financial services a certificate that is an enforcement document, after which the consumer must apply to the bailiff within a certain period of time. Missing the deadline for applying to both the financial ombudsman and the bailiff requires the consumer to send a request to the financial ombudsman. However, if the decision of the financial ombudsman is not executed, it would be more appropriate to send it directly to the bailiff with the consent of the consumer of financial services.

6. When applying to the financial ombudsman, a consumer must specify the amount of underpayment of the insurance company. This requires an independent expertise, which the applicant conducts at his own expense. The applicant can include a claim to the insurance company for compensation for the costs of examination when submitting a pre-trial application, but whether to satisfy it or not is the decision of the financial ombudsman.

7. If the applicant is not satisfied with the decision of the financial ombudsman and he goes to court, asking to appoint an expert examination, it will be more difficult to do this if the ombudsman has already conducted his own independent expert examination – the consumer will need to justify the conduct of this examination, and this examination will be considered as secondary, while the expertise conducted by the ombudsman – the primary one.

8. If the applicant does not provide all the documents necessary for making a decision, the financial ombudsman refuses to consider the application. Previously, in the absence of essential documents, they were requested by the court and the proceedings continued.

Currently, the institution of the financial ombudsman is widely used in the world practice, and significant experience has been gained over the decades of existence of such institutions.

The beginning of the establishment of the financial ombudsman institution in the European legal space refers to the end of the last century and is associated with the understanding that the procedural protection of consumer rights cannot be adequately provided by means of the ordinary procedural law, since its rules and principles do not take into account the real practical interests of consumers.

Analysis of foreign experience shows two approaches to organizing the activities of the financial ombudsman: 1) the establishment of a state organization (for example, in the UK, the financial ombudsman service is a body established by the country's parliament which operates in accordance with the Financial Services and Markets Act 2000); 2) a private organization (in Germany, where this institution first appeared, it was introduced in 1992 by the Union of German banks) [2, p. 6]. Today, the institution of the financial ombudsman is quite widespread and exists, in addition to Germany and the United Kingdom, in France, the Netherlands, Denmark, Sweden, Norway, Portugal, Italy, Ireland and other countries. In the CIS, the first financial ombudsman institution was established in Armenia in 2009.

Principles of the financial ombudsman's activity set forth in European legislation are characterized by the fact that they are filled with specific legal content. In this lies their difference from the principles accepted in the Russian legislation which are mainly declared but not specifically applied.

The Russian law states that the activities of the financial ombudsman are carried out in accordance with the principles of legality, respect for human and civil rights and freedoms, integrity and justice. The principles themselves are not the problem. The issue here is that in the form in which they are set out in the law, they are purely general in nature and do not take into account the specifics of the financial ombudsman institution.

In world practice, regardless of the specifics of the legal systems, a set of special principles relating to the financial ombudsman institution has been developed to ensure its effectiveness. These principles are not just a declaration - they have a specific legal content. This important, fundamental aspect is missing from the Russian law.

Regarding the more particular differences between the two systems, the right of a financial organization to appeal the decision of the financial ombudsman in court might seem puzzling. The established European practice of consumer protection via institution of the financial ombudsman leaves the decision up to consumers: if they agree with the decision of the financial ombudsman, it comes into force and becomes mandatory for the financial organization. If they do not agree, the decision does not come into force and consumers can defend their rights in court. The Russian practice

of appealing the ombudsman's decision by a financial organization is a concept that goes against the nature of the financial ombudsman institution.

Conclusion

Financial ombudsman service in Russia simplifies consumer relations with financial organizations, saves financial and time resources of consumers of financial services, makes it possible to avoid judicial recourse. It also contributes to the improvement of the quality of services to individuals through consulting and educational work.

However, the institution of the financial ombudsman requires improvement, as there are still gaps in the legislation concerning the functioning of the service, unclear and controversial issues and prescriptions that are ineffective for consumers. In some cases, the service helps a consumer to resolve a problem easily and quickly, but in others it only prolongs the time of the appeal to court and imposes certain restrictions on consumers. They may be left with damaged property and no money compensation until the end of court proceedings in case the insurer impugns the decision of the financial ombudsman.

As of today, the clear winner in this new model of regulation is only judicial system.

Список использованных источников

1. Более 95% обращений к финомбудсмену в 2019 году касались ОСАГО // ТАСС [электронный ресурс] – Режим доступа. – URL: <https://tass.ru/ekonomika/8498399> (дата обращения: 09.12.2020).
2. Закон Российской Федерации "Федеральный закон от 4 июня 2018 г. N 123-ФЗ "Об уполномоченном по правам потребителей финансовых услуг"" от 24.05.2018 № 123-ФЗ. Российская газета. 2018 г. № 121(7584).
3. Количество обращений к финансовому уполномоченному в III квартале выросло на треть // Официальный сайт финансового уполномоченного [электронный ресурс] – Режим доступа. – URL: <https://finombudsman.ru/finnews/kolichestvo-obrashhenij-k-finansovomu-upolnomochennomu-v-iii-kvartale-vyroslo-na-tret/> (дата обращения: 09.12.2020).
4. Отчёт о деятельности в 2019 году // Официальный сайт финансового уполномоченного [электронный ресурс] – Режим доступа. – URL: <https://finombudsman.ru/wp-content/uploads/2020/06/Otchet-o-deyatelnosti-v-2019-godu.pdf> (дата обращения: 09.12.2020).

References

1. Bolee 95% obrashchenii k finombudsmenu v 2019 godu kasalis' OSAGO // TASS

<https://tass.ru/ekonomika/8498399>

2. Federal Law of June 4, 2018, No. 123-ФЗ “On the Ombudsman for the Rights of Consumers of Financial Services”. Rossiiskaya gazeta, 2018, No. 121(7584).

3. Kolichestvo obrashchenij k finansovomu upolnomochennomu v III kvartale vyroslo na tret' // The Financial Ombudsman’s official website

<https://finombudsman.ru/finnews/kolichestvo-obrashhenij-k-finansovomu-upolnomochennomu-v-iii-kvartale-vyroslo-na-tret/>

4. 2019 Annual report of the OFSC // OFSC (the Ombudsman for financial services consumers support Service)

<https://finombudsman.ru/wp-content/uploads/2020/06/Otchet-o-deyatelnosti-v-2019-godu.pdf>