



FA

FINANCIAL ARBITRATOR
OF THE CZECH REPUBLIC

Annual Report

2008



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WORD OF INTRODUCTION FROM THE FINANCIAL ARBITRATOR OF THE CZECH REPUBLIC

In my word of introduction in the previous annual report I wrote of the emergence and subsequent development of an independent body to decide on disputes in the area of the payment system in an out-of-court manner – the institute of the Financial Arbitrator of the Czech Republic. At the same time I also expressed the belief that the actual performance of the Financial Arbitrator's activities combined with the principles of consumer protection will gradually result in the Financial Arbitrator becoming the real protector of the financial rights of consumers in the Czech Republic.

We can consider the past year, the digits of which included the mystically significant number eight, as an important one from the perspective of the activities and operation of the institute of the Financial Arbitrator of the Czech Republic. Important because we recorded a sharp rise in petitions compared to the year before. I am extremely happy to be able to say that this rise was not caused by the commencement and development of the current financial crisis, with all its specific impacts, but evidently because awareness of our existence and competencies has improved. Making our institute more visible will remain one of our main aims. I consider the palpable shift in the system for resolving the actual disputes as very important, in particular for the future activities of the Financial Arbitrator. We have succeeded in tabling a constructive communication relationship with participants in disputes, both the petitioners as well as the institutions, in an effort to promote conciliatory and rapid resolutions to those disputes. This method should be the primary goal of the decision-making. Back in the middle of the second century BC, during the time of the Roman Republic and, subsequently, also the empire, the activities of lawyers were based around the principle of *AGERE – CAVERE – RESPONDERE*. *AGERE* – legal action, activity – dispensing legal advice in particular regarding the formal aspects of legal proceedings; *CAVERE* – advising – how to avoid conflicts and collisions, guidance for out-of-court negotiations; *RESPONDERE* – responding – public legal aid. It is precisely this *CAVERE* that I am working to implement into the decisions on disputes before the Financial Arbitrator. Such conciliatory methods for resolving disputes also play a dominant role at existing similar foreign institutions set up for the purpose of out-of-court dispute resolution. We have also seen this to be efficient as well as mutually effective in many cases addressed by us last year, in 2008. For this purpose in some cases we employed the principle of mediation to achieve conciliatory resolutions of the disputes. Mediation is an activity whereby a third, neutral party to the dispute (in this case the Financial Arbitrator) aids in the achievement of an agreement with specific effects in the interest of both the parties. It is pleasing to note that institutions are also starting to favour this principle with the result that there is a general move away from subsequent judicial review of the decisions of the Financial Arbitrator. I believe that we will be able to maintain this trend and that this principle will become an inseparable and beneficial procedural component of the Financial Arbitrator's activities.

Discussions related to the strengthening of the competencies of the Financial Arbitrator have also taken a significant step forwards. This goal continues to appear very necessary and sought-after not only by consumers themselves but also, for example, by bodies of the European Commission. The extension of competencies is independent of the needed implementation of all the legislative steps; the actual initiation of a solution to this issue by the body with the legal right to table legislative amendments, in this case the Ministry of Finance of the Czech Republic; the announcement and assessment of public discussions on this matter; the preparation of the necessary impact studies for the proposed solutions; through to the submission of proposals for solutions and the selection of the one to be presented to lawmakers for approval. We have already succeeded in completing the greater part of this process, and a strengthening of the competencies of the Arbitrator is already feasible this year, with a further more extensive strengthening next year. I am very happy that we have achieved this in only the first year of my term of office and I believe that we will implement all the remaining steps needed for a successful conclusion. Thereafter we will be even closer to our vision of the Financial Arbitrator and his team becoming the real protector of the financial rights of consumers in the Czech Republic.

Dr. Ing. František Klufa
Financial Arbitrator of the Czech Republic

1 ■ INTRODUCTION

This annual report on the activities of the Financial Arbitrator of the Czech Republic (hereinafter referred to also as the “Arbitrator”) for the Chamber of Deputies of the Parliament of the Czech Republic for 2008 has been prepared and presented pursuant to the provisions of Section 5 paragraph 3 of Act No. 229/2002 Coll., on the Financial Arbitrator, as amended (hereinafter referred to also as the “Financial Arbitrator Act”).

The main mission of the Financial Arbitrator is to ensure quick, free-of-charge and efficient out-of-court settlement of clients’ disputes with institutions.

Pursuant to Section 1 of Act No. 229/2002 Coll., on the Financial Arbitrator, as amended, the Financial Arbitrator of the Czech Republic is authorised to decide disputes:

a) between parties that execute transfers of funds (hereinafter only the “transferring institutions”) and their clients arising during the execution of:

1. transfers of funds pursuant to a special legal regulation¹⁾ including transfers executed without an instruction from the client,
2. corrective settlement pursuant to a special legal regulation governing the activities of banks^{1a)} and savings and credit cooperatives^{1b)},
3. direct debits within the territory of the Czech Republic,

provided that the disputed amount does not exceed EUR 50,000 on the date the petition is filed. For cross-border transfers effected pursuant to a special legal regulation¹⁾ the stipulated limit shall apply as of the date of effect of the transfer order,

b) between parties that issue electronic payment instruments (hereinafter only “issuers of electronic payment instruments”) and holders of electronic payment instruments arising during the issuance and use of electronic payment instruments,¹⁾

insofar as competence to settle such a dispute has otherwise been given to a Czech court of law²⁾, the Financial Arbitrator, which is the conciliatory body deciding disputes pursuant to this legislation, is competent.

The Financial Arbitrator performs his duties in an independent and unbiased manner. He must refrain from doing anything that could encourage doubts as to his being unbiased. He is responsible to the Chamber of Deputies for the performance of his office.

The main benefits of the existence of the Financial Arbitrator for clients are the speed of his decision-making, the fact that the proceedings are free of charge and the high level of knowledge of the issues involved.

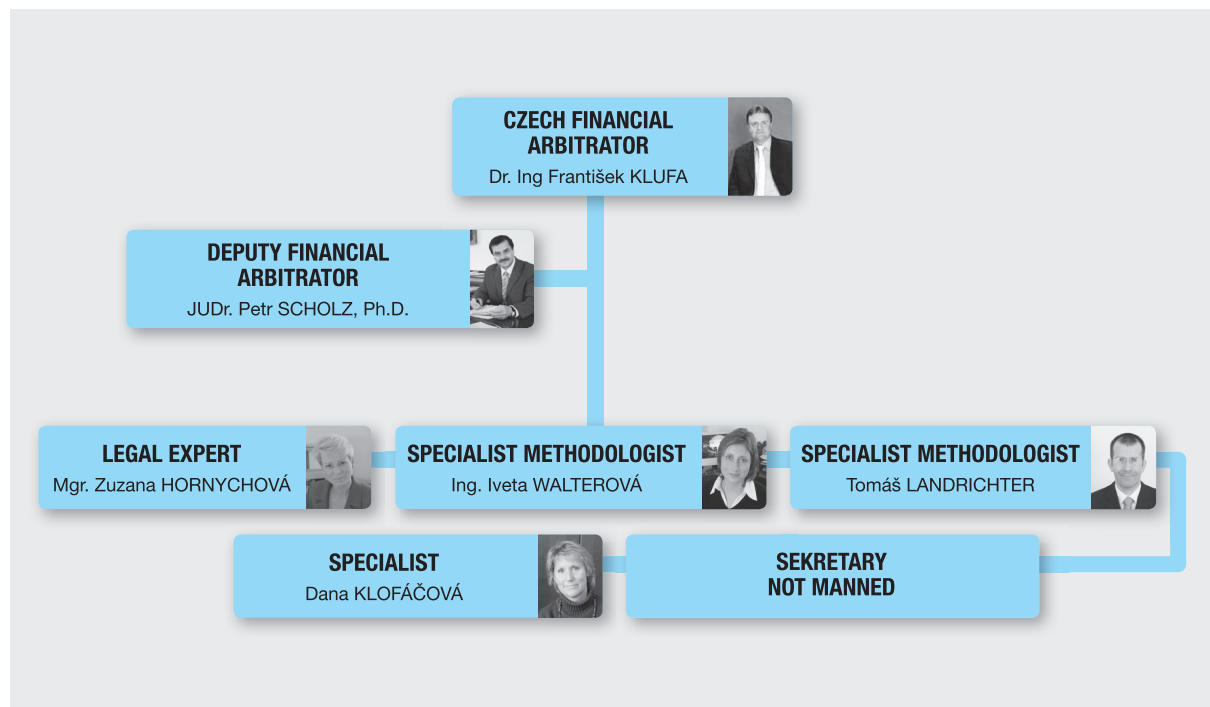
1) Act No. 124/2002 Coll., on Transfers of Funds, Electronic Payment Instruments and Payment Systems (the Payment System Act), as amended. Regulation (EC) 2560/2001 on cross-border payments in euros.
1a) Section 20c of Act No. 21/1992 Coll., on Banks, as amended by Act No. 126/2002 Coll.
1b) Act No. 87/1995 Coll., on Credit Unions and Certain Related Measures and on the Amendment of Czech National Council Act No. 586/1992 Coll., on Income Taxes, as amended.
2) Civil Procedure Code.
Act No. 97/1963 Coll., on International Private and Procedural Law, as amended.

2. ENSURING THE PERFORMANCE OF THE FINANCIAL ARBITRATOR'S ACTIVITIES

Dr. Ing. František Klufa was elected by the Chamber of Deputies of the Parliament of the Czech Republic as the Financial Arbitrator for the 2008 to 2012 period on 25 October 2007 (Decree No. 452) and his term of office commenced on 2 January 2008.

JUDr. Petr Scholz, Ph.D. was re-elected as Deputy Financial Arbitrator by the Chamber of Deputies of the Parliament of the Czech Republic (Decree No. 559) on 6 December 2007, and his second term of office (2008 to 2012) commenced on 6 March 2008.

In 2008 the **activities arising from the Financial Arbitrator Act were performed by 4 employees** in addition to the above **Financial Arbitrator and his Deputy**, such employees providing the necessary expert, specialist and administrative support. All these employees of the Office of the Financial Arbitrator were employed by the Czech National Bank, which is legally authorised to provide justified administrative support for the activities of the Arbitrator at its own cost, including compensation of expenditure connected with the activities of the persons entrusted pursuant to the Financial Arbitrator Act. As of 31.12.2008 the structure of the Office of the Financial Arbitrator was as follows:



The total number of employees of the Office of the Financial Arbitrator was reduced by 1 compared to 2007. The position of expert secretary remained open and these activities were transferred to the other employees at the Office. This step **provided savings in terms of planned personnel costs** – see chapter 3. Costs for the performance of the Financial Arbitrator's activities.

Pursuant to Article 12 of the Financial Arbitrator Act, during the year the Financial Arbitrator authorised other natural persons, who were not employees of the Czech National Bank (hereinafter also the “CNB”), to carry out investigations. These were in particular judicial experts in the field of graphology, a judicial expert in the field of economics, specifically in banking and insurance with a specialisation in the cashless payment system – domestic and foreign payment cards and cheques, international payment systems, computer processing, settlement, security and protective elements in payment card systems; and an attorney.

Financial Arbitrator's registered offices: Washingtonova ul. 25
Prague 1
110 00

Contact information: Tel.: +420 221 674 600
Fax: +420 221 674 666
e-mail: arbitr@finarbitr.cz
<http://www.financniarbitr.cz>

Office hours for the public : Monday – Thursday from 8:30am to 3:30pm.
Friday from 8:30am to 2:30pm.

Services were also provided even if the Office of the Financial Arbitrator was contacted outside the specified times. On the basis of the agreement concluded between the CNB and the Financial Arbitrator on administrative support for the Financial Arbitrator's activities, including compensation of expenditure connected with its activities, the CNB supported the activities of the Arbitrator in the following areas: salaries and other emoluments, personnel, financial, information technologies and material support and services.

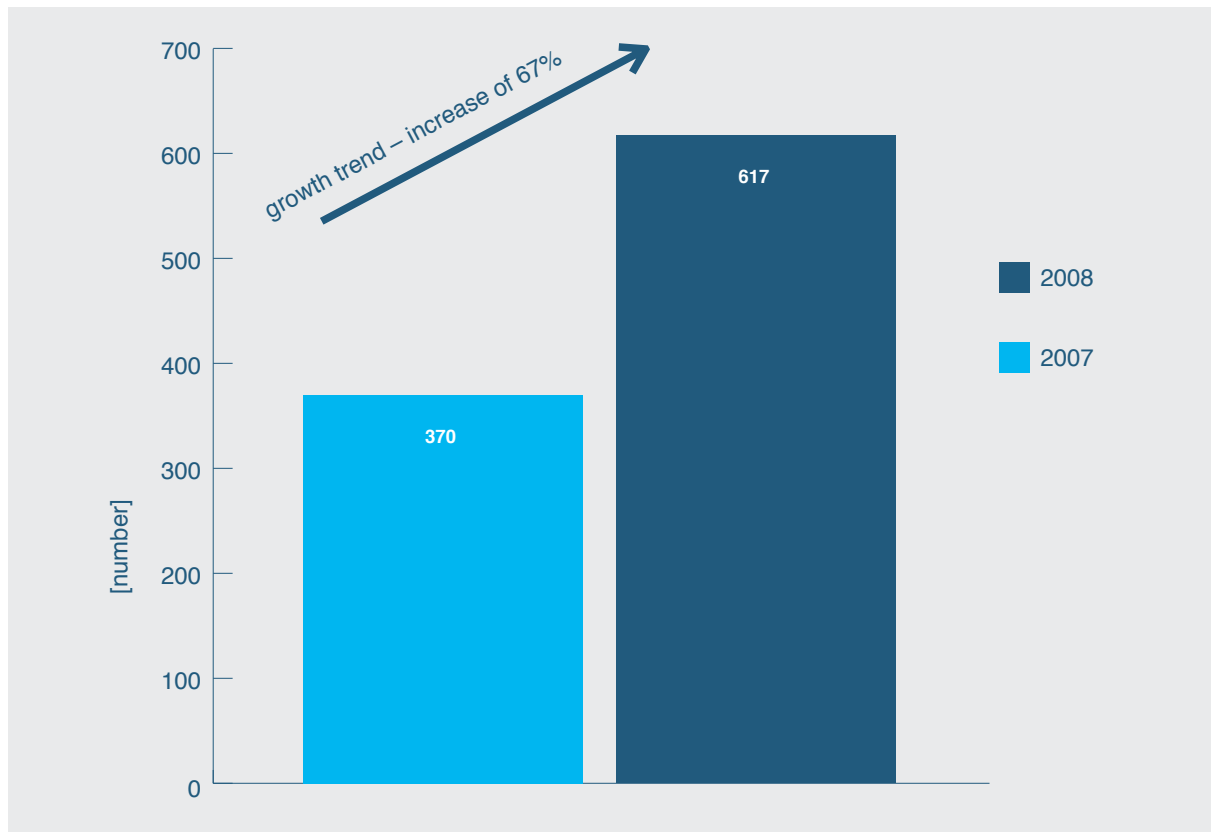
3 ■ GENERAL INFORMATION ABOUT SETTLED CASES

3.1. Total number of petitions

In 2008 the Office of the Financial Arbitrator of the Czech Republic received a total of **619 petitions**.

This was a year-on-year rise of **67% in received petitions**, with 370 having been received by the Office in 2007.

Graph 1: Number of petitions received



A petition is a request or a query delivered in writing, by telephone, electronically or in person relating to a financial issue and where the petitioner is requesting help or advice in the resolution of the given problem. Every such petition must be responded to, resolved in the appropriate way and documented. In the event that the petition in question so requires, the necessary administrative act is performed. Various types of documentation is maintained both administratively and organisationally for petitions and cases when proceedings are commenced pursuant to the Financial Arbitrator Act on the basis of a delivered petition.

Clients also contact the Financial Arbitrator with requests that are not covered by the valid Financial Arbitrator Act. Nevertheless, even these clients received help within the possible scope, either in the form of advice or information, or an outline of the possibilities for a solution.

Of the total number of 619 petitions, **253 were made in writing, 238 by telephone, 117 petitions via the new website** in the section “Ask the Arbitrator” and **11 petitions were delivered in person**.

In 2008 a new electronic system for documenting petitions received was implemented. This system, apart from providing clear records of the petitions received, also provides statistical and graphical outputs and reports relating to such petitions. This system was created in-house without any additional investment costs.

Table 1: The most common types of petition

Type of petition	Number of petitions	Type of petition	Number of petitions
Contractual conditions	53	Construction savings	23
Loans	47	Mortgages	21
Domestic payment	45	PC merchant signature domestic	19
Fees	40	PC merchant PIN domestic	18
PC* other	40	Foreign payment	16
Other transfer	37	Non-transfer domestic	14
Insurance	35	PC merchant PIN foreign	14
PC ATM domestic	32	PC ATM foreign	9

* (PC = payment card)

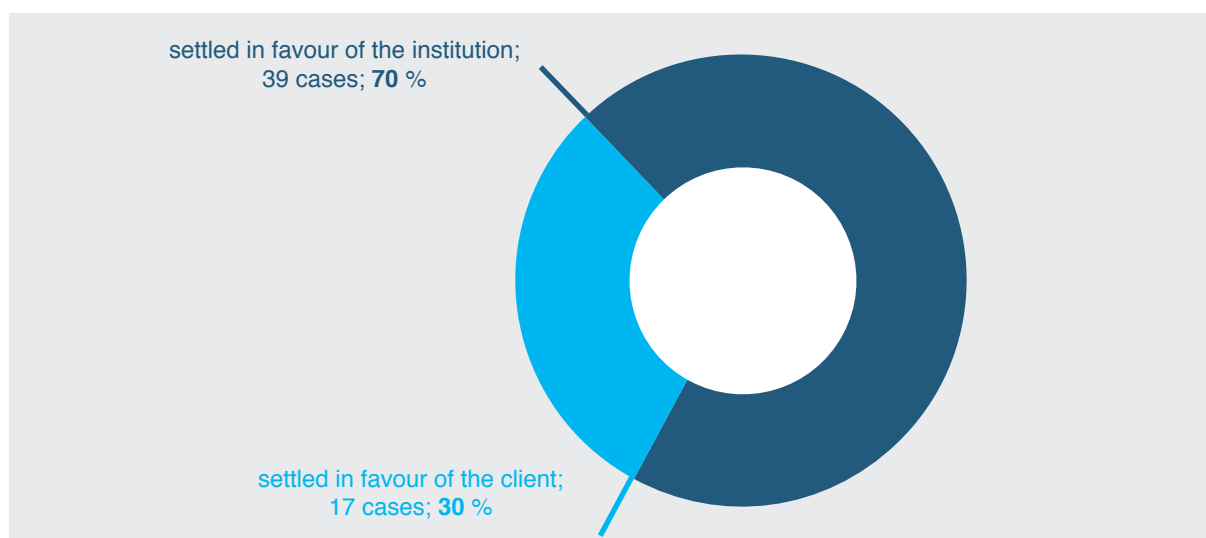
3.2. Number of settled disputes

Of the total number of 619 petitions, **99 petitions for the commencement of proceedings** were accepted and proceedings commenced pursuant to the Financial Arbitrator Act, where proceedings are conducted, to a reasonable extent, pursuant to the Rules of Administrative Procedure. Of the total number of 99 accepted petitions for the commencement of proceedings, **64 were justified** and **35 unjustified**.

Proceedings are commenced for accepted petitions when they are received. For justified petitions the participants to the proceedings are sent a notification of the commencement of the proceedings, and the institution is called to make a statement regarding that petition. Subsequently the proceedings continue pursuant to the Financial Arbitrator Act or, to a reasonable extent, pursuant to the Rules of Administrative Procedure. In the case of unjustified petitions, the petitioner is sent a resolution on the cessation of the proceedings for reason of inadmissibility of the petition pursuant to Article 9 or Article 14 of the Financial Arbitrator Act, as amended. In all these cases all administrative deadlines are effective, i.e. for example for coming into force.

Of the total number of 64 justified commenced disputes, 56 were completed. Of these 56 cases, 17 were decided **in favour of the petitioner (30%)** and **39 in favour of the institution (70%)**.

Graph 2: Justified disputes – settled in favour of the petitioner/in favour of the institution



3.3. Overview of settled disputes according to the type of dispute

Table 2: Settled disputes according to type

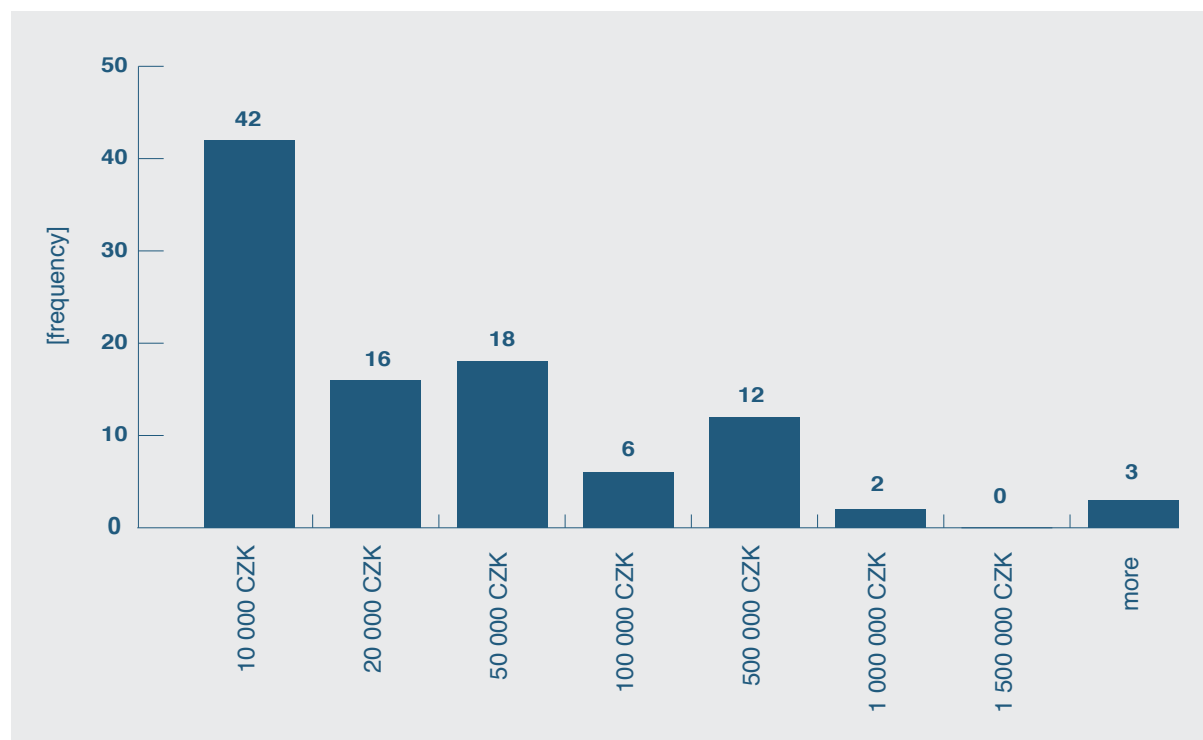
Type of dispute	Number of disputes	Type of dispute	Number of disputes
Domestic payment	11	PC merchant signature domestic	4
PC ATM domestic	11	PC other	2
PC merchant PIN foreign	9	Insurance	2
Other transfer	8	PC merchant signature foreign	2
PC ATM foreign	8	Non-transfer foreign	2
Fees	7	Other	1
Loans	6	Foreign payment	1
PC merchant PIN domestic	6	Execution	1
Non-transfer domestic	6	PC internet	1
Construction savings	5	Non-transfer other	1
Contractual conditions	4	Other electronic banking	1

* (PC = payment card)

3.4. The financial amounts of claims in settled disputes

The total value of claims sought by petitioners in the 99 cases in 2008 was **CZK 10,226,657**. The average value of a claim in 2008 was CZK 103,300.

Graph 3: Frequency of claim amounts



3.5. Average duration of proceedings

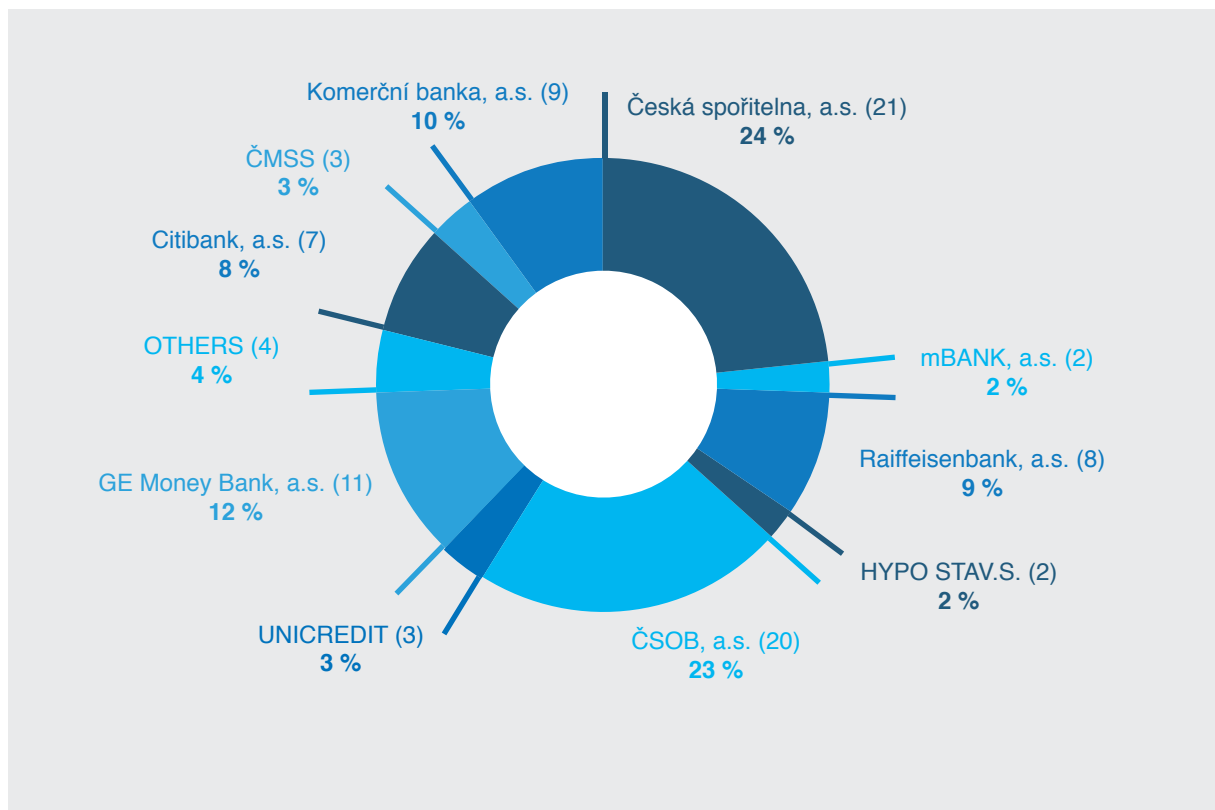
The average duration of proceedings before the Financial Arbitrator was **62 days in 2008**. This represents a **significant reduction** compared to 2007, when the average duration of proceedings was 98 days.

The start of this period is stipulated as the date of receipt of a petition to open proceedings. This period continues through the issuance of a finding and any potential decision on challenges until the finding becomes legally effective or until a decision to halt the proceedings (for example if the petition is withdrawn). This period also includes any potential interruptions and suspensions of proceedings.

3.6. Overview of participants in disputes – institutions

The graph provides an overview and the number of proceedings for individual institutions. Apart from the institutions shown in this graph, one petition was also filed for the commencement of proceedings against Bawag Bank CZ, a.s., Cetelem ČR, a.s., Česká pojišťovna, a. s., eBanka, a.s., ING BANK N.V., Raiffeisen stavební spořitelna, a.s., SPORTTURIST – SPECIAL, spol. s r.o., Volksbank CZ, a.s. and Wüstenrot a.s.

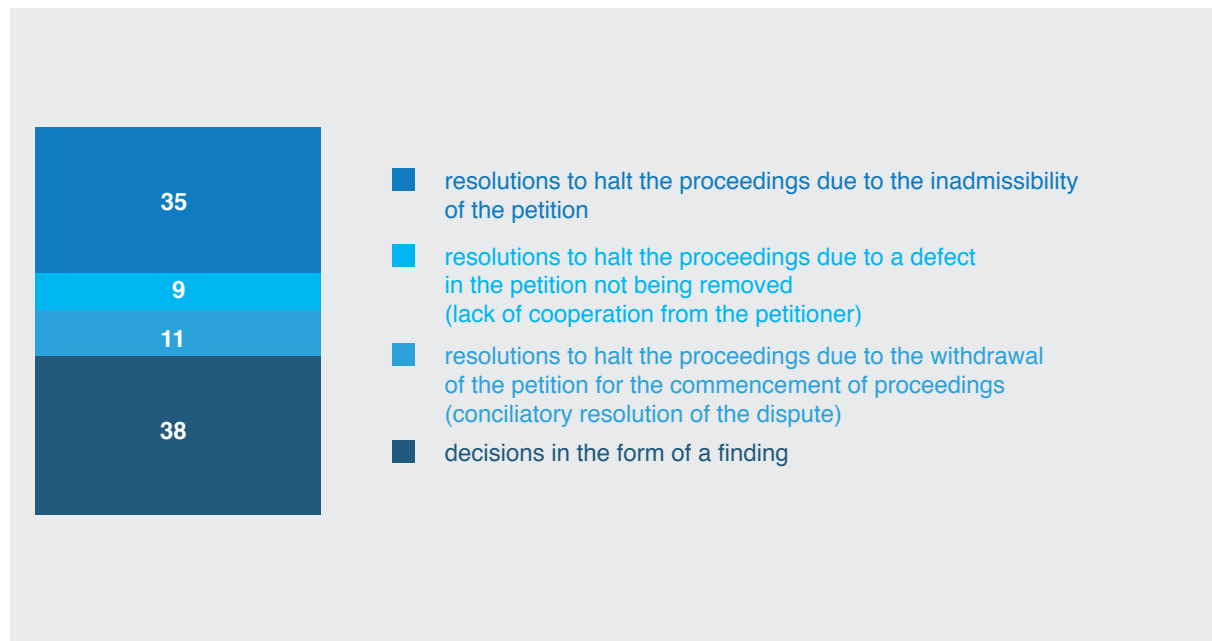
Graph 4: Participants in disputes – institutions



3.7. Overview of issued findings and resolutions

In 2008 a total of **93 meritorious and procedural decisions** were issued, of which:

Graph 5: Number of meritorious and procedural decisions issued



3.8. Overview of legal action in 2008

In 2008 there were 4 cases of legal action in which the Financial Arbitrator was the defendant and an institution the plaintiff. These disputes originated before 2008. The subject of all these disputes was a petition for the cancellation of a decision of the Financial Arbitrator to impose a fine on an institution for non-fulfilment of an obligation pursuant to the Financial Arbitrator Act in force until April 2006. Up to that time, proceedings on the merit of a case and proceedings on the imposition of a fine for non-fulfilment of an obligation were separated.

Regarding the legal action in 2008, the following procedural and meritorious decisions were made by the courts in question:

- 1 case – the court decided to cancel the decision of the administrative body and to return the case for repeated proceedings to the administrative body in question; the administrative body filed a cassation complaint to the Supreme Administrative Court in Brno
- 1 case – the court decided to cancel the decision of the administrative body and to return the case for repeated proceedings to the administrative body in question, the administrative body did not file a cassation complaint to the Supreme Administrative Court in Brno
- 1 case – the court decided to cancel the decision of the administrative body and to return the case for repeated proceedings to the administrative body in question, the administrative body will not file a cassation complaint to the Supreme Administrative Court in Brno
- 1 case – the proceedings were halted for reason of withdrawal of the suit filed by the institution – a landmark procedural decision

4. COSTS OF THE PERFORMANCE OF THE FINANCIAL ARBITRATOR'S ACTIVITIES

During 2008, in addition to the primary performance of his duties, i.e. out-of-court dispute resolution, the Financial Arbitrator also worked hard to **ensure the proper management and control of the costs incurred during the performance of his activities** stipulated in the Financial Arbitrator Act. These costs are budgeted by the Czech National Bank which, pursuant to the Financial Arbitrator Act, provides justified administrative support at its own cost for the Arbitrator's activities, including compensation for expenditure connected with the activities of persons authorised pursuant to this Act. The salaries and other stipulated emoluments of the Arbitrator and his deputy thus represent a cost for the Czech National Bank. The Financial Arbitrator is subject to instruction of the Czech National Bank No. 16/2002 on the budget, basic principles of management and the monitoring of the income of the CNB. This instruction regulates the content and structure of the budget, including the procedures for its preparation, approval, breakdown and the performance of amendments, and in addition stipulates the basic principles for management including the exercise of controlling and the prediction of developments in relation to management.

The prepared and approved budget of costs for ensuring the performance of the Financial Arbitrator's activities is always composed of the following chapters:

- c) Operational expenditure in relation to the internal administrative work of the Financial Arbitrator
- d) Consumption limits
- e) Expenditure in relation to external administration of other budget item administrators

The Financial Arbitrator is the administrator of budget funds only from the chapters:

- a) Operational expenditure in relation to the internal administrative work of the Financial Arbitrator
- b) Consumption limits

Regarding the monitoring of the performance of the budget breakdown, expenditure related to the internal administrative work of the administrator of budget funds in question is always assessed. The administrator of budget funds may exceed the budgeted amount of expenditure and consumption limits by a maximum of 10%, however only on the assumption that it does not exceed the total amount in the relevant part of its breakdown. For 2008 total funds for these chapters of CZK 1.382 million were budgeted – see the table below.

Use of funds from the chapter

c) expenditure in relation to external administration of other budget item administrators

is the responsibility of other CNB organisational units charged with the administration of budget funds through the budget breakdown (**external administrators**). The monitoring of the expenditure in external administration is carried out by the external administrators themselves, while they must ensure that the actual use of their budget proceeds pursuant to the requirements of the individual entitled units, meaning that the expenditure incurred in external administration is assessed by the external administrators of budget funds. Apart from the Financial Arbitrator's expenditure entitlement within the framework of its budget, during the year there is also a series of other expenditure items of a general nature essential to ensure the activity of the whole unit (rent, postage fees, cleaning services and so on), which are automatically included in the expenditure plan for the whole of the CNB.

The Financial Arbitrator may influence the use of these funds only indirectly, and after discussion and approval of any request by an external administrator or the director of the budget and accounting section.

It is possible to comment on **the fulfilment of the expenditure plan** within the framework of the annual assessment, **i.e. the expenditure on the internal administrative work of the Financial Arbitrator**, and calculate the **funds that the CNB invested in the Financial Arbitrator's activities in the year in question**. However, it is not possible to compare this indicator with the values in the plan on a per-item basis.

The costs of the performance of the Financial Arbitrator's activities in 2008 were CZK 10.291 million.

In the chapters where the Financial Arbitrator can directly influence the use of funds from the chapters, the costs came to CZK 1.032 million. Compared to the planned budget there was a saving of CZK 350,000 in these chapters and only 75% of the planned budget was used.

In the chapters that are subject to external administration and where the Financial Arbitrator cannot directly influence the use of the funds from those chapters, costs came to CZK 9.259 million. The planning of these chapters is fully the responsibility of other CNB organisational units charged with the administration of budget funds through the budget breakdown, and are only for guidance purposes for the Arbitrator. In spite of this, once again not all the guideline planned funds were used. **The greatest savings - of CZK 417,000 - were achieved on the salaries item, including compulsory social security and health insurance.**

In 2008 there was thus a reduction in costs for ensuring the performance of the Financial Arbitrator's activities **compared to 2007 of CZK 1.462 million**, when these costs were CZK 11.753 million.

5. INCOME FROM THE PERFORMANCE OF THE FINANCIAL ARBITRATOR'S ACTIVITIES

Income from the performance of the Financial Arbitrator's activities which, just like the above given costs, forms income for the Czech National Bank, was composed only of **income from imposed penalties on institutions pursuant to Article 17a of the Financial Arbitrator Act** (Article 17a: In an award through which the Arbiter satisfies, at least partly, the plaintiff's petition, the Arbiter shall simultaneously impose on the institution the duty to pay a penalty equal to 10 % of the amount that the institution is obliged to pay to the plaintiff under the award, but not less than CZK 10,000) **and fines for non-fulfilment of the obligation to notify pursuant to Article 23 of the Financial Arbitrator Act** (Article 23 paragraph 1: The Arbiter may impose a fine of up to CZK 1 million on the institution for failure to comply with the obligations imposed on the institution in Articles 11, 12 (6), (7) and (9), and 19. The fine may be imposed repeatedly if the breach of the obligation persists).

In 2008 income for the Czech National Bank arising from the performance of the Financial Arbitrator's activities and the connected penalties on institutions and fines for non-fulfilment of the obligation to notify was **CZK 480,000**, of which CZK 50,000 was penalties imposed on institutions and CZK 430,000 fines for non-fulfilment of the obligation to notify. In 2007 fines totalling CZK 215,555 were imposed.

The mission of the Financial Arbitrator is not, however, to fine banks, and in proposals for future legislation we shall promote the cancellation of this legal obligation.

6

MEDIA ACTIVITIES, PROMOTION, COOPERATION, OTHER ACTIVITIES

The main priorities of the Financial Arbitrator in 2008 included efforts to raise awareness of the institute of the Financial Arbitrator and his function within the framework of the existing consumer protection system in the Czech Republic. In order to achieve this, additional efforts were made to create promotional and newspaper articles, appearances in other types of media, presentations at conferences, the launch of a new website etc. Consumers will only use the services the Financial Arbitrator offers if they know about them.

Pursuant to the provisions of Section 5 paragraph 3 of the Financial Arbitrator Act, the Arbitrator has presented to the Chamber of Deputies of the Parliament of the Czech Republic the report on his activities for 2007 (Chamber of Deputies' print No. 447). The obligation to notify of the Arbitrator also includes the publication of its annual report for 2007, which was distributed within the official deadline in both printed and electronic form. This report was also published on the on the Arbitrator's website at <http://www.finarbitr.cz/cs/vyrocnizpravy.html>.

In 2008 there were over 130 interviews, articles, television appearances, presentations and conference appearances with the aim of increasing the visibility of the Financial Arbitrator – see the overview at the website: <http://www.financniarbitr.cz/cs/media.html>. In addition a vast number of meetings with organisations and institutions were held with the aim of promoting the institute of the Financial Arbitrator and establishing possible cooperation in terms of protection for consumers on the Czech market.

6.1. Media activity

A list of the media in which the Financial Arbitrator or his deputy appeared or published in 2008:

ČT1 – news programme	Deník newspaper	www.idnes.cz
ČT2 – Černé ovce, Studio 6 programme	Právo newspaper	www.penize.cz
ČT24 – Týden v ekonomice, Ekonomika programme	E15 newspaper	Bankovníctví electronic newsletter
Nova – Občanské judo programme	Ekonom newspaper	EURO – Online
Prima – news programme	EURO newspaper	www.blisty.cz
Z1 – news programme	FP-Finanční poradce	www.bankovnicees.com
ČTK news programme	Bankovníctví	www.bussinesInfo.cz
Český rozhlas – radiožurnál radio	Finanční magazín – FINMAG	www.financninoviny.cz
Rádio Praha radio	“SOS magazine” magazine	www.financnivzdelavani.cz
Český rozhlas – Regina radio	Květy magazine	www.dumfinanci.cz
Hospodářské noviny newspaper	"cardmag" magazine	www.spotrebitele.info
MF DNES newspaper	OVJ Journal	www.konzument.cz
Lidové noviny newspaper	“Všudybyl” magazine	and more

6.2. Conferences and appearances in 2008

A list of the conferences and appearances in which the Financial Arbitrator was involved.

- Workshop with journalists
- Press conference of the Financial Arbitrator 2008
- Conference – Cards2008 – the new Financial Arbitrator shares his experience with attacks on payment cards seen to date

- Assessment of the results of the ‘Zlatá koruna 2008’ competition – presentation by the Financial Arbitrator
- Conference – 3 Days for Banks – Role of the Financial Arbitrator – between the bank and the client
- Czech Consumer Association seminar – Project for the prevention of fraud during cashless payments
- Czech Chamber of Commerce seminar – the Financial Arbitrator as part of the consumer protection system in the Czech Republic
- Association of Financial Intermediaries and Financial Advisers of Czech Republic seminar – the Financial Arbitrator as part of the consumer protection system in the Czech Republic, etc.

6.3. Cooperation with organisations and institutions

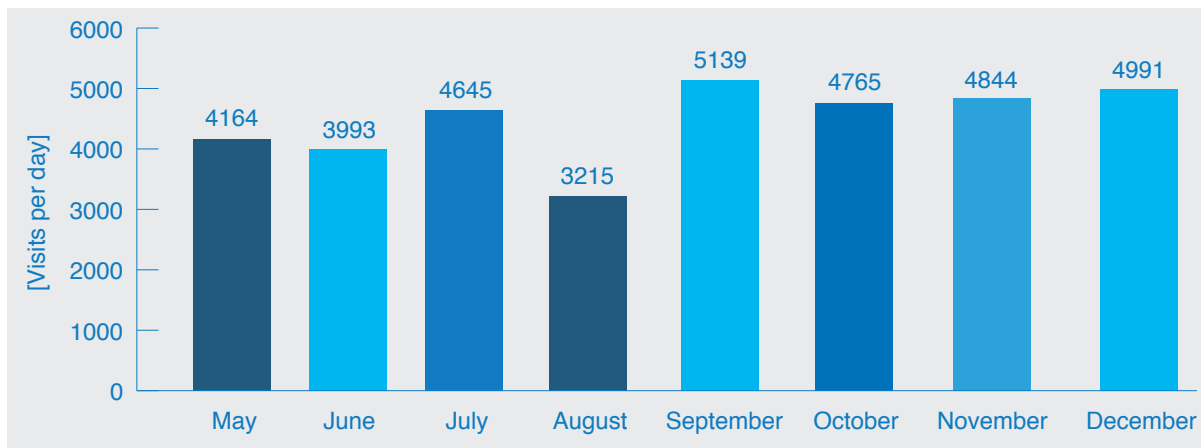
A list of the associations, organisations, partner companies and other entities where the Financial Arbitrator and his deputy have been involved, sometimes repeatedly, in order to promote the institute of the Financial Arbitrator and establish possible cooperation in the area of consumer protection on the Czech market.

- Czech Consumer Association
- Consumer Defence Association
- The Ministry of Finance of the Czech Republic
- The Ministry of Industry and Trade
- Association of Financial Intermediaries and Financial Advisers of Czech Republic (AFIZ)
- Permanent Banking Commission at the Chamber of Deputies of the Parliament of the Czech Republic
- Czech National Bank
- Management of banks in the Czech Republic
- Chamber of Commerce
- Czech Banking Association
- Czech Insurance Association
- Deposit Insurance Fund
- Zlatá koruna, and more

6.4. A new website and new logo for the Financial Arbitrator

In April 2008 a **new website was launched for the Financial Arbitrator** www.financniarbitr.cz. This website has demonstrated itself to be a very good presentation and communication channel as regards consumers. This website is more user friendly, provides more information, and if a client needs to send a petition for the commencement of proceedings it guides and helps him to complete the petition and send it in electronic format. A section entitled “Ask the Arbitrator” has also been set up, and this can be used to ask the Financial Arbitrator about anything related to banking. The website also includes a section entitled “What to do if ... and how does it work?” where users can find advice on how to proceed in the event, for example, their payment card or internet banking has been abused, if they discover unauthorised transactions on their bank account or if they are unsuccessful with a complaint made to their bank. The website also includes information that must be published by law, such as annual reports, a list of transferring institutions and issuers of electronic payment instruments, which can be potential participants in disputes heard before the Financial Arbitrator. In addition, the website includes forms that can be downloaded, a list of the partners of the Financial Arbitrator, an overview of the Financial Arbitrator’s media activities, important links, contacts, legal norms relating to the performance of the Financial Arbitrator’s activities, an overview of settled disputes as well as contacts to other out-of-court bodies in the European Economic Area. The website also displays **the new logo of the Financial Arbitrator**.

Graph 6: Number of visits to the Financial Arbitrator’s website per month from May to December 2008



60% of visits to the Financial Arbitrator’s website were from the Czech Republic. EU countries accounted for 27% of the visits, while 7% were from the USA and 6% from other countries.

Image 1: The new logo of the Financial Arbitrator of the Czech Republic



6.5. Other activities of the Financial Arbitrator and his deputy

The Financial Arbitrator is active in other bodies operating on the financial market in the Czech Republic, such as:

- Member, Financial Market Committee – an advisory body to the Bank Board of the Czech National Bank
- Chairman, Czech Financial Academy, the expert academic evaluator panel of Zlatá koruna, the best financial product competition
- Permanent Guest, Standing Commission on Banking at the Chamber of Deputies of the Czech Parliament
- Permanent Guest, Sub-Committee on Consumer Protection at the Chamber of Deputies of the Czech Parliament
- Expert partner, Czech AFIZ Project for „Improved and enhanced professional adaptability of financial intermediaries and financial advisors“
- Participant in the pilot project “Support for Financial Literacy (financial education strategy) under the auspices of AFIZ
- Expert partner, Czech Consumer Association project “Project for Preventing Fraud During Cashless Payments”
- Independent expert for the project “evaluation of economic and social arrangements influencing Healthcare system“ (HEZR) at the Czech Forum for Modern Health Care, and so on.

The Deputy Financial Arbitrator is also a member of the Working Group for Financial Education (PSFV) at the Ministry of Finance of the Czech Republic.

7 ■ INTERNATIONAL COOPERATION

In the sense of the provisions of Section 20 paragraph 1 of the Financial Arbitrator Act, the Arbitrator cooperates on a reciprocal basis with similar bodies in other European Union Member States and in other states that make up the European Economic Area.

During the year **the Financial Arbitrator** was also **a member of the FIN-NET** network (Cross-Border Out-of-Court Complaints Network for Financial Services), established at the European Commission in Brussels and associating national institutions in the European Economic Area for the purpose of out-of-court dispute resolution between consumers and the providers of financial services. For the 2009/2010 period the **Financial Arbitrator of the Czech Republic** is a **new member of the FIN-NET steering committee**. Other members of this committee, elected by the European Commission for the next two years, are the representatives of similar institutions from Greece, Ireland, Portugal, the United Kingdom, France, Spain, Malta and Italy. The main aim of the steering committee is to work to develop out-of-court systems for resolving disputes between consumers and institutions on the individual financial markets, and also organisational activities connected with the regular meetings of the FIN-NET members arranged by the European Commission.

In cooperation with the Czech National Bank, the Financial Arbitrator and **his office will hold a session of the leading representatives of FIN-NET** (Cross-Border Out-of-Court Complaints Network for Financial Services) **in Prague in October 2009**.

In 2008 **the Financial Arbitrator** became **a member of the prestigious worldwide network of ombudsmen** (International Network of Financial Services Ombudsman Schemes). This network was established in 2007 and associates institutions and bodies established for the purpose of out-of-court dispute resolution on the financial market in countries all over the world. The mission of this network is above all the exchange of information and experience in methods of out-of-court dispute resolution around the world, consumer protection, information technologies, cross-border cooperation, training and permanent education, development opportunities and the creation of ethical codes of conduct.

Pursuant to Section 5 paragraph 3 of the Financial Arbitrator Act the Arbitrator is presenting below some disputes that he addressed in 2008:

Case No. 1 – domestic transfer – petition rejected

The petitioner sought the return from the institution of funds to the value of CZK 35,000 and CZK 9,000 withdrawn from his account. In justification of this petition he alleged that cash withdrawals of CZK 16,000, CZK 35,000 and CZK 9,000 had been performed by the branch of the institution in question without his knowledge. His complaint against these withdrawals was rejected by the institution.

In its statement the institution indicated that a Current Account Contract had been concluded between it and the petitioner, on the basis of which the institution ran the account for the petitioner. The petitioner had contacted the institution, stating that cash withdrawals of CZK 16,000, CZK 35,000 and CZK 9,000 had been made from this account, but not by him, and requested that the institution investigate the matter. The institution rejected the complaint because the withdrawal documents had been signed according to the petitioner's signature sample. The petitioner then contacted the Czech police, which did not proceed with the case as there was no suspicion of a crime. In addition, the statement by the institution also indicated that in spite of the above, the petitioner had again contacted the institution with a request for it to investigate the withdrawals once again, but not even this investigation confirmed any other fact that the withdrawal documents in question had been signed in accordance with the petitioner's signature sample.

During the evidentiary proceedings the Financial Arbitrator found that during their investigation the police had used an expert witness from the field of graphology, who had prepared an expert's report. The conclusion of the expert's report was that the three disputed signatures on the three till documents were the genuine signatures of the petitioner. On the basis of the evidentiary proceedings carried out, the Financial Arbitrator concluded that the institution had not breached any provisions of the Payment System Act and therefore decided to reject the petitioner's petition.

Case No. 2 – domestic transfer – proceedings stopped as groundless – conciliatory resolution of the dispute

The petitioner submitted a petition for the commencement of proceedings, in which she indicated a mistake made by the institution when performing a transfer. The petitioner stated that the institution had withdrawn funds from her account without authorisation and thereby caused her damages of CZK 500,000. This had occurred because, when the payment order was to be signed the employee of the institution had given the petitioner a form with the space for the account number left blank, and which the petitioner had signed in good faith. Subsequently the employee of the institution allegedly filled in his own account number in the space for the beneficiary's account number, and the funds were then transferred. The Financial Arbitrator summoned all three parties separately: the petitioner, the (now former) employee of the institution and a representative of the institution. The investigation discovered that the employee of the institution and the petitioner had come to a personal agreement regarding a financial investment. This activity was a private affair and the institution knew nothing of it, while the petitioner was aware that this personal agreement was not a financial product of the institution. On the basis of the questioning and investigation the Financial Arbitrator concluded that the institution had not been at fault. After clarification of the basic facts, the petitioner signed an agreement on the acknowledgement of a debt with the former employee of the institution and withdrew her petition for the commencement of proceedings, as it had become groundless. The Financial Arbitrator thereafter stopped the proceedings. The dispute was in this case resolved in a conciliatory manner.

Case No. 3 – cross-border transfer – petition rejected

The Financial Arbitrator addressed a case of a transfer of funds from the United Kingdom of Great Britain and Northern Ireland (hereinafter only the "UK") to the amount of GBP 14,596.32. The petitioner sought from the institution compensation of damages that he had incurred because on 25.10. 2006 the amount of GBP 14,026.84 had been credited to his account and not the amount of GBP 14,596.32 as given on the transfer order, meaning that he incurred a loss of GBP 569.48.

The Financial Arbitrator requested a statement from the institution, subsequently the Terms of Trade of the institution in their wording valid on the date of the disputed transaction, and also a copy of the sender's payment order. The institution provided the Arbitrator with a copy of the SWIFT electronic message report and the clearing report for the

transfer between the correspondent domestic bank and the institution. From the submitted and requested evidence the Financial Arbitrator found that on 19.9.2006 the petitioner had concluded a Contract on Bank Products and Services with the institution. On the basis of this contract a current account was set up for him in GBP. On 20.10.2006, the amount of GBP 14,596.32 was sent to the account of the petitioner from the account of the payer held abroad. The transaction currency was CZK. The sending bank converted the amount of GBP 14,596.32 into CZK at a rate of GBP 1 / CZK 41.4061, which gave CZK 604,376.69. The payer specified "BEN" as the type of fee for this transaction. "BEN" means that all the fees are to be paid by the beneficiary, and therefore the bank deducted a fee of CZK 1,161.16 from the amount of CZK 604,376.69 and on 24.10. 2006 sent to the petitioner's account via the domestic correspondent bank CZK 603,215.53. The domestic correspondent bank deducted, again based on "BEN", a fee of CZK 300 for the completion of this transaction. After the deduction of these fees the amount of CZK 602,915.53 was transferred to the petitioner's account held at the institution in GBP. This amount was converted by the institution at the current sell exchange rate, which at that time was GBP 1 / CZK 42.983, and on 25.10. 2006 credited the amount of GBP 14,026.84 to the petitioner's account.

Pursuant to the institution's General Terms of Trade of 1.11. 1999, in the wording valid from 1.7. 2006 (hereinafter only the "GTT"), Article 138a, if "BEN" is indicated on a payment order from abroad, meaning "all fees to be borne by the beneficiary", the institution's client will receive an amount reduced by the fees of the institution and the fees of the foreign banks. Article 124 of the GTT then stipulates, regarding payments received in a different currency than the currency of the account, that regarding funds received to the benefit of the client in a different currency than the currency of the account, the institution will credit to the account the amount converted using the exchange rate announced by the institution for the day on which the institution receives from the payer's bank the funds in question and the documentation essential for the debit, unless an individual exchange rate has been arranged between the institution and the client.

The Financial Arbitrator assessed each piece of evidence individually and then all the evidence together. During this activity the Financial Arbitrator complied with the discretionary weighing of evidence principle. On this basis it concluded that the institution was not in breach of its legal obligations arising from the contractual relationship concluded with the petitioner and that the petition was unjustified. It therefore rejected the petitioner's petition.

Case No. 4 – cross-border transfer performed by an institution that performs transfers on the basis of a foreign exchange licence – petition rejected

The petitioner sought the return of the amount of a transfer and the related fee totalling CZK 135,300 from the institution AA. She justified her petition by stating that on 5.5. 2008 it deposited at a branch of company CC, which represents company BB, the amount of CZK 130,000 and a fee of CZK 5,300. The father of the petitioner, Mr XY, intended to withdraw this money in London. An employee of CC contacted the office of the institution AA by telephone, which then sent a confirmation of the acceptance of the amount of the transfer by fax, including a control number for the financial transfer. Subsequently the petitioner discovered from the company BB that the amount of the transfer had been withdrawn on 7.5.2008 using apparently valid documents. On 9.5.2008 the petitioner visited CC, where after a lengthy discussion she obtained a complaints form. The petitioner, together with her father, also informed the Czech police of the whole situation. On 12.5.2008 the petitioner personally submitted a request at the premises of the institution AA for the return of the funds; when she asked what identity document had been used in order to withdraw the funds, the representative of institution AA informed her that this was the institution's confidential information and that he could not tell her; only if there was a request from the police. Due to fear of further possible abuse of her identity documents, the petitioner and her father applied for replacements of their identity cards. The complaint from the petitioner was rejected.

In its statement, institution AA indicated that the actual conclusion of the contract with the petitioner was carried out in the name of institution AA by company CC on the basis of a contract of mandate that permitted the mandatory to provide the service in question. In addition, the institution stated that it provides the financial service in question with competency for the whole of the Czech Republic as a representative of company BB, which provides such services worldwide via such representatives. Institution AA provides transfers of funds to other countries, but does not actually pay out the funds in the other country and is not responsible for releasing the funds, as the release of the

funds is performed by the representative of BB in the country to which the funds in question are sent on the basis of the instructions of the client. The amount in question should have been paid out at a branch of BB in London to the person who could identify himself using identity documents as Mr XY and who, at the specified location for the release of the funds, could provide the control number for that money transfer. As demonstrated on the document issued at the location where the funds were released, labelled "To Receive Money", the recipient identified himself using an identity document made out in the name of XY, and in addition the recipient knew the full name of the sender, the sending country, the amount that was sent, i.e. that should be paid out, and the relevant control number, which was also given on that document. This means that in the case in question all the conditions for the release of the funds to the recipient were fulfilled.

During the evidentiary proceedings the Financial Arbitrator found that the transferred amount was withdrawn at a branch of BB in London using an identity card that was valid according to information from the Czech police, that belongs to a young woman from Moravia and that contains different issue and validity dates and also a different birth date of the owner of the identity card.

In addition, during the evidentiary proceedings it was found that institution AA, when performing transfers, complies with the valid Terms of Trade issued by company AA for operating the money transfer services of BB (hereinafter only the "Conditions"). These Conditions stipulate the procedure to be taken by the institution in point 2 when sending funds and in point 3 when releasing those funds. Pursuant to point 3 of the Conditions, the payment location abroad proceeds in the same way when releasing the transferred funds.

Pursuant to point 3 letter a) of the Conditions, when funds are to be released the client must fill in the appropriate form for the release of the funds, and must fill in their name and surname as the recipient of the funds, their address, the name and the surname of the sender of the funds, the town where the sender lives, the amount sent (in the currency the amount was sent in or that the amount is to be released in), the town and country the funds were sent from, the release date and must also sign the form; non-compulsory information includes the full address of the sender, telephone contact information to the sender or the recipient, and the control number of the transfer.

Pursuant to point 3 letter b) of the Conditions, the client must present a valid identity document that allows the verification of the name and surname of the recipient, the appearance of the recipient, their address, date and place of birth or their birth ID number. In addition, pursuant to point 3 letter c) of the Conditions, in the event that the information, namely the name and surname of the recipient, the name and surname of the sender, the country the funds were sent from or the amount sent, entered on the form differs from the information in the BB system, the institution will refuse to release the funds. And pursuant to letter d) of the same point of the Conditions, it will also refuse to release the funds if the information entered on the form differs from the information given on the identity document presented, or if there is any doubt as to the validity of the identity document.

Pursuant to point 10 sentence two of the Conditions, institution AA is liable to the client for damages that it causes to him during the provision of services of BB through the breach of an obligation arising for it from generally binding legal regulations or from the contractual relationship in question.

The Financial Arbitrator noted that although the amount of the transfer (CZK 130,000) was released at a branch of BB in London to a third party on the basis of a forged identity document, it was not demonstrated that institution AA, when processing the funds transfer, had breached its terms of trade, namely the contract for sending funds.

On the basis of the evidentiary proceedings performed, the Financial Arbitrator concluded that institution AA had not breached the provisions of the Payment System Act, and therefore decided to reject the petition of the petitioner.

At the same time however, the Financial Arbitrator considers that the security of this system of cross-border transfers operated by the institution in question, which performs transfers on the basis of a foreign exchange licence, is insufficient, and therefore he informed the body performing supervision over the institution - in this case the Czech National Bank about this fact - in the sense of Section 21 paragraph 2 of the Financial Arbitrator Act.

Case No. 5 – use of a payment card at a domestic merchant – proceedings stopped as unjustified – conciliatory resolution of the dispute

The petitioner sought the return of funds that were withdrawn through transactions made with a stolen payment card. The amount of the damages was CZK 50,000. Regarding this case, it is important to add that the previous Financial Arbitrator had started working on it. During the proceedings, the Financial Arbitrator found that an error had been made by the institution as the merchants had not properly checked the signature against the signature sample and had permitted the transactions made using the stolen payment card. An expert witness in the field of graphology confirmed that the receipts feature signatures that are not the signature of the petitioner. As stated above, the previous Financial Arbitrator had started working on this case, and had issued a finding imposing the obligation on the institution to repay the petitioner the amount, including lost interest. In addition, the institution imposed a fine of CZK 10,000. The institution submitted objections and these were addressed by the new Financial Arbitrator. He in addition found that the petitioner had also made an error, as she had not blocked the card in time and for a certain period of time was completely unaware that the payment card was no longer in her possession. In this case the Financial Arbitrator subsequently decided on mediation and called both the parties for talks. The result of this mediation was conciliation, with both the parties sharing the damages incurred. The institution then informed the Financial Arbitrator that it had concluded a settlement agreement with the petitioner. The petitioner, on the basis of the said agreement, withdrew her petition for proceedings before the Financial Arbitrator. The Financial Arbitrator was thus able to cancel the original decision of the previous Financial Arbitrator, including the imposition of the fine, and issued a new decision to halt the proceedings. This dispute was thus resolved in a conciliatory manner.

Case No. 6 – use of a payment card at a merchant (car hire) – conviction

Petitioner AA sought from institution ZZ the return of funds totalling CZK 50,000 because the funds had been withdrawn from his account of owner CC through an unauthorised payment using the petitioner's payment card. The petitioner justified his petition by stating that on 18.4.2008 he had hired a BMW X3 from the company CAR for a trip abroad. On 19.4.2008, i.e. the day after he hired the car, when petitioner AA checked the account of owner CC, he found that the institution had withdrawn the amount of CZK 50,000 without authorisation, as he had not given his agreement for this and CAR had not informed him in advance of the withdrawal of these funds. In addition, the transaction was carried out when the petitioner was on holiday abroad. CAR subsequently informed the petitioner that the withdrawn amount of CZK 50,000 was a penalty for a breach of contractual conditions by the petitioner. The petitioner made a complaint about the disputed transaction at the institution in the proper way, but this complaint was not recognised as justified by the institution.

In its statement, institution ZZ indicated that the retail location did not have a contract to accept payment cards concluded with institution ZZ, and so the institution had initiated a complaint at the contractual bank MM. From the submitted documents and pursuant to a statement from the merchant it was found that the petitioner had breached the conditions relating to the choice of transit countries during his holiday. All the necessary documents to perform the transaction were submitted by the merchant, and this transaction was performed pursuant to the conditions of the company CAR, which include: "if the person who hires a vehicle uses it in contradiction to the arranged conditions or in a manner that causes damages to the lessor, or does not have a properly extended contract pursuant to Article 1, or took the vehicle without authorisation to a foreign country, the lessor has the right to terminate the hire contract with immediate effect. The lessor may also terminate the contract, for example, in the event the client does not pay the hire fee at the agreed amounts and at the agreed times. In such cases the lessor is authorised to charge fees of up to CZK 50,000 to cover costs it incurred for example in relation to a search for and recovery of the vehicle. By signing this contract the client confirms that he is aware of this penalty and agrees with it."

During the evidentiary proceedings the Financial Arbitrator found that the disputed transaction to the value of CZK 50,000 was performed without the authorisation of the petitioner. The reason for the application of the fine of this amount was, pursuant to the submitted documents, non-compliance with the contractual conditions as a result of the petitioner travelling through different transit countries than those accepted by the merchant. In the contract that the petitioner concluded with the merchant the transit countries are not listed; it is only stated that the vehicle can be used within the territory of the Czech Republic, Italy and Spain. In the contractual conditions that form part of the car hire contract and to which both the merchant and also the institution refer in their statements, it is not stated which transit

countries the petitioner must use for his journey. The Financial Arbitrator considers that it is not possible to maintain that the contractual conditions were breached in this case, as the petitioner had not breached the conditions. The Merchant had, pursuant to the given conditions, the right to terminate the contract with the petitioner, however it did not exercise this right nor did it in any way explain why it had imposed the maximum possible penalty on the petitioner.

The Financial Arbitrator also did not agree with the statement that, pursuant to the submitted documentation and explanation from the merchant, the petitioner had breached the conditions regarding the transit countries, as these are not stated anywhere in the contractual documentation, or in any other documentation submitted by either the institution or the petitioner during the proceedings. In addition, the Conditions for Payment Cards of Clients of ZZ were breached, namely Article 23, where it is stated that in the event of a cashless payment a signature on the receipt is required identical to that on the signature strip of the payment card. From the submitted original receipt it is clear that it was not authorised by the petitioner, in spite of the fact that the Instructions for Accepting Payment Cards, which form part of the Contract for Accepting Payment Cards for Payments for Goods and Services (hereinafter only the "Contract") concluded between the processing bank and the merchant expressly state that if the receipt features a strip intended for the signature of the business partner, the business partner must add his legible signature to the document. In addition, they also impose an obligation on the merchant to verify that the signature is the correct one. The institution also submitted Schedule No. 1 and Schedule No. 3 to the Contract, which give special arrangements for car hire companies – it is not stated in either of these schedules that a merchant is authorised to deduct any financial amount as a penalty without the agreement of the petitioner.

On the basis of the evidentiary proceedings performed, the Financial Arbitrator concluded that the petition was justified, as it was demonstrated that the institution breached the legal obligation arising from the contractual relationship with the petitioner, because through its behaviour, even through this was through a third party, it breached the basic regulation for the use of a payment card by permitting its use in contradiction to Section 15 of Act No. 124/2002 Coll., the Payment System Act, which in relation to the use of a payment card assumes the identification of its holder in another way, i.e. through his signature. Pursuant to Section 375 and Section 331 of Act No. 513/1991 Coll., as amended, the institution is liable for the damage incurred by the petitioner and will therefore be obligated to return the funds withdrawn from the petitioner's account without authorisation, totalling CZK 50,000.

In his decision the Financial Arbitrator took into account the standpoint of the institution provided in relation to the issue of withdrawing funds from client accounts, in which it informed the Financial Arbitrator that: "... with supplementary settlement, it is not true that the client cannot influence this situation. The client is either contacted through his parent bank before the performance of the whole operation, or he has the right to challenge the amount in question, and in such a case the bank will return the funds to him. When assessing these procedures, the institution pays close attention to the protection of client rights and thoroughly investigates individual cases". The Financial Arbitrator considers that in this case the institution did not sufficiently protect the client's rights and performed the transaction on the basis of documents that were insufficient for such a withdrawal of funds. Pursuant to the provisions of Section 17a of Act No. 229/2002 Coll., on the Financial Arbitrator, as amended, in findings where the Arbitrator complies with the petition of the petitioner, it also imposes on the institution the obligation to pay a penalty of 10% of the amount that the institution must pay the petitioner pursuant to the finding, however a minimum of CZK 10,000.

The institution did not submit any objections against this finding and it is now final and conclusive.

Example No. 7 – the use of a payment card in an ATM in a foreign country (phishing) – petition rejected

The petitioner sought the return of funds from the institution to the amount of CZK 15,306.10 withdrawn from the petitioner's account at an ATM in a foreign country using a payment card issued by the institution on the account in question. In his petition the petitioner stated that funds totalling CZK 15,306.10 were withdrawn from his account (including transaction fees) through a withdrawal from an ATM in Romania. The petitioner submitted a proper complaint at the institution, as he had never been to Romania and had not performed the transaction in question. The institution rejected his complaint as unjustified.

In its statement the institution indicated that the petitioner had been contacted through a fraudulent e-mail that was intended to give the impression that it had been sent directly from the institution, in which it asked him to supply

information about his payment card, including his PIN. The petitioner had replied to this and had also given his PIN, in spite of the fact that the unknown offender had also copied the security notice from the institution warning clients not to provide their personal information, passwords or codes. Pursuant to the information from the institution, it is clear in this case that the transaction had the features of a fraud, or so-called phishing, where transactions can be performed only if information about a payment card is revealed. The institution stated that for this reason the petitioner cannot consider the institution liable for the damages he has incurred, in spite of the fact that the unknown offender copied the website of the institution. In addition, the fact that the petitioner always had his payment card with him does not change anything as regards the standpoint of the institution, as the provision of the information by the petitioner was sufficient for the offender to produce a fake card and for the subsequent performance of the transaction. On its website the institution warns (e.g. the web pages of the Servis 24 and Internetbanking services) clients of the danger of phishing (i.e. precisely this method of misusing confidential information about a payment card, including the PIN). The petitioner, as a user of the internet and the Servis 24 service, is exposed to the internet environment and must be aware of the risks related to this. He should therefore behave circumspectly towards e-mails intended to obtain personal information. The institution also stated that in the case in question it had submitted a criminal complaint against the unknown offender.

On the basis of the petition from the petitioner, during the proceedings the Financial Arbitrator contacted the Czech police with a request for information as to whether there had been cases of skimming during the period in question (i.e. when an unidentified person attaches copying equipment to an ATM) at the ATMs that the petitioner indicated as those he uses to make cash withdrawals (the Radlická metro station and Národní třída Street). The Czech police informed the Financial Arbitrator that they had no record of any criminal complaints relating to skimming at the ATMs in question. This fact was also confirmed for the Financial Arbitrator by the institution, which was subsequently called to provide a standpoint relating to this check of the ATMs in question. The Financial Arbitrator then called Telefónica O2 Czech Republic, a.s. to provide it with a statement of e-mail correspondence received by and sent from the petitioner's computer. The company refused to comply with this call, as the Financial Arbitrator is not included in the list of parties authorised to request or perform interception or otherwise investigate the content of transferred messages, but recommended as a possible solution that the petitioner himself could present this evidence. The petitioner did not do this during the proceedings before the Financial Arbitrator.

From the submitted evidence, apart from other things it was clear that the petitioner used his payment card in the period from January to March 2008 only to make withdrawals from ATMs at the Radlická metro station, where no case of skimming according to the above information was recorded, and so it is not possible to agree with the allegation of the petitioner that his payment card had been copied and subsequently used without him being aware of it. To support this allegation the petitioner sent as evidence an article from the daily press reporting the arrest of a Bulgarian national who had installed copying equipment on an ATM on Wenceslas Square in Prague. The Financial Arbitrator cannot use the submitted article as evidence as in the incriminating period the petitioner had not withdrawn any cash at the ATM in question, and so his payment card could not have been copied there. Within the framework of the evidentiary proceedings the Financial Arbitrator found that from the available records it is not possible to state that any obligation of the institution was breached, as all the unauthorised transactions totalling CZK 15,306.11 performed at the ATM in Romania were confirmed through the use of the valid PIN and were completed without any problems. The evidence showed that the petitioner breached the Conditions where it is stated that: "the client is responsible for all transactions and the costs and damages connected with them, that arise as a consequence of revealing the PIN to another party, even if this was unintended" and that "in the event of the misuse of a card when the PIN was used, the client is responsible for all transactions, damages and costs, even after the inclusion of such card on the black list".

On the basis of the evidentiary proceedings, the Financial Arbitrator concluded that the petitioner had not proved his allegations and also that the institution had not breached the provisions of Act No. 124/2002 Coll., on Transfers of Funds, Electronic Payment Instruments and Payment Systems (the Payment System Act), as amended. The petition for the return of the funds withdrawn totalling CZK 15,306.10 was rejected.

9 ■ CONCLUSION

This report addresses the Financial Arbitrator's activities of the Czech Republic for 2008 and contains all the information required by law.

We can consider 2008 as a very successful year. The reasons leading me to this conclusion are contained in this report and are in particular the following:

- We recorded a rise of almost 70% in the number of petitions received
- We succeeded in significantly reducing the costs for the performance of the Financial Arbitrator's activities (by the amount of CZK 1.462 million compared to 2007)
- The cost per petition was significantly reduced (by 48% compared to 2007)
- A constructive communication relationship was established with market participants – to promote conciliatory and rapid dispute resolution
- In some cases we used the principle of mediation leading to a conciliatory resolution of disputes – see chapter 8. Information about selected settled disputes
- There was a sharp increase in activities intended to raise the awareness of the institute of the Financial Arbitrator – over 130 interviews, articles, television appearances, presentations, and appearances at conferences
- There was significant progress in discussions towards strengthening the competencies of the Financial Arbitrator.

At the same time, since the commencement of my term of office as Financial Arbitrator, I have tried to be a genuine “third party” that can help participants in proceedings resolve their disputes. The Financial Arbitrator Act, as amended, also includes a provision that the Financial Arbitrator is a conciliatory body. In many cases it is necessary to make an authoritative decision on a dispute, yet communication with both sides to the dispute is essential and more effective in finding a solution. Communication is a necessary investment in order for the institute of the Financial Arbitrator to be able to become a respected and desirable member of our financial market in the future.

To conclude, I would like to thank all the partners and institutions I work with as Financial Arbitrator. In particular I would like to thank the Czech National Bank, which provides the necessary administrative and financial support for the performance of the Financial Arbitrator's activities.

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