



FA

FINANCIAL ARBITRATOR
OF THE CZECH REPUBLIC

ANNUAL REPORT
2009



Member of the all-European network of financial arbitrators and ombudsmen FIN-NET
(Cross-Border Out-of-Court Complaints Network for Financial Services)

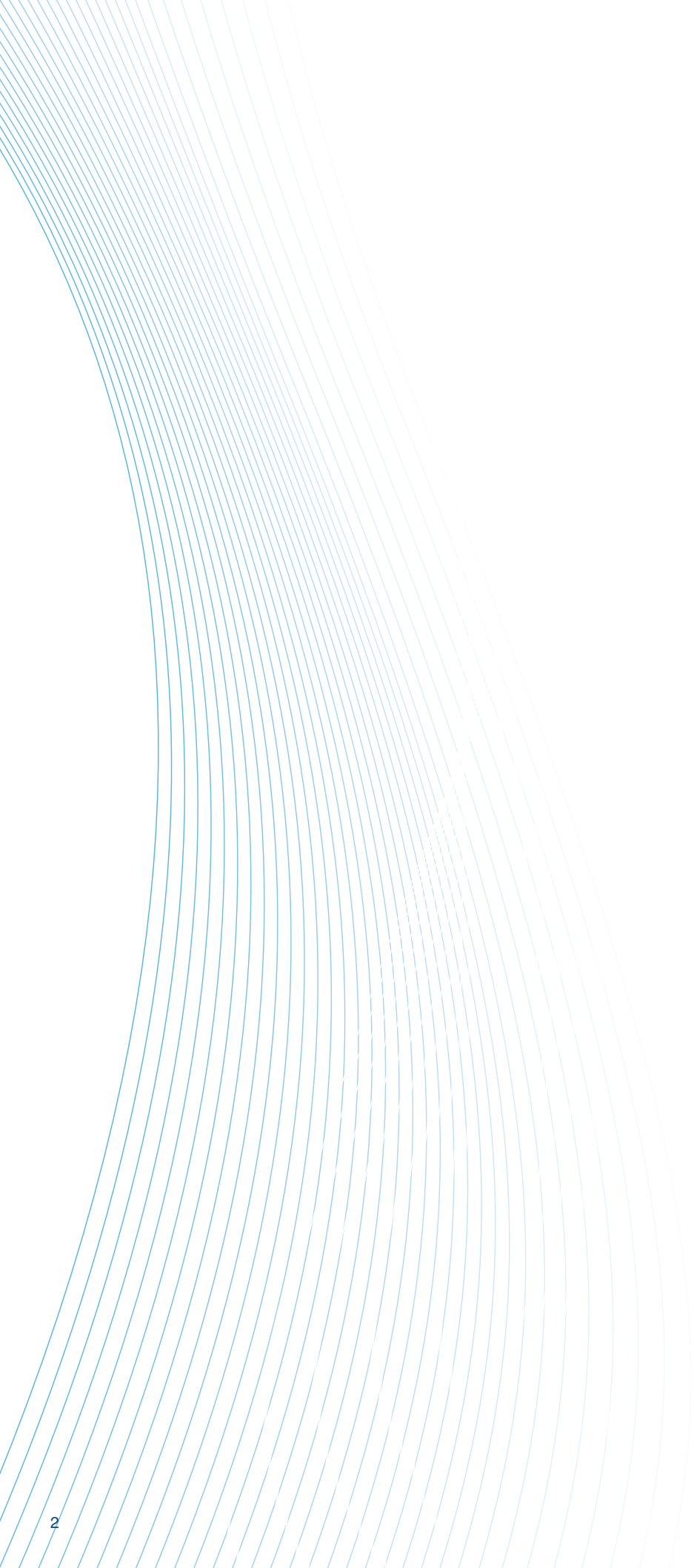


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Word of introduction from the Financial Arbitrator of the Czech Republic

In my word of introduction in the previous Annual Report, I made an effort to express the belief that the actual performance of the Financial Arbitrator's activities combined with the principles of consumer protection would gradually result in the Financial Arbitrator becoming the real protector of the financial rights of consumers in the Czech Republic. The results of our activities published in this Annual Report can show whether we succeeded in launching this process.

While commenting on the year 2009, it is impossible not to mention the legislative changes relating to the activities of the Financial Arbitrator of the Czech Republic in the form of the coming into force of the new Payment System Act, namely as of 1 November 2009. This Act represents a transposition of the Directive of the European Parliament and of the Council on payment services in the internal market. The aim of this Directive was to unify the market of payment services within the European Economic Area. The transposition of this Directive resulted in adoption of new acts or amendments to acts in the individual Member States, the interpretations of which are not always identical, in spite of the fact that this transposition should have been carried out under a 'full harmonisation' regime, not allowing for any significant deviations (also referred to as 'discretions'). Only the reality and application of the new legal norms will show whether consumers, institutions or both parties will benefit from them. Fundamental to our activities was further the amendment to the Financial Arbitrator Act, which came into effect as of 1 November 2009, too. This amendment resulted in a new, broader definition of the Arbitrator's competence: the Financial Arbitrator's jurisdiction newly includes the providers and users of payment services; the Financial Arbitrator Act no longer contains the strict direct reference to the Payment System Act only; the entering into an arbitration agreement no longer precludes the competence of the Financial Arbitrator; the maximum limit for the disputed amount of EUR 50,000 was cancelled; and the principle of conciliatory dispute resolution was enhanced, namely by means of the following provision of the Financial Arbitrator Act: "In particular, the Arbitrator shall strive for any dispute to be settled in a conciliatory manner". This is in direct compliance with our efforts to promote conciliatory and rapid dispute resolution. Such strengthening of the subject-matter and procedural competence of the Financial Arbitrator serves to enhance the principle of consumer protection on the financial market in the area of out-of-court dispute resolution.

In the past year, our Office recorded a repeated rise in petitions received, which reached more than seven years. Over the previous two years, there was more than a one hundred percent rise in petitions received. Public awareness of the Financial Arbitrator's activities is growing and the services of our Office are used ever more frequently. In the previous year, a very positive change of the trend was recorded in the area of the actual process of deciding disputes. This change corresponds with the aforementioned principle of conciliatory dispute resolution. It is a very positive fact that 90 % of all disputes that the Financial Arbitrator decided in the client's favour were resolved in a conciliatory manner, without the necessity to authoritatively impose any sanctions. The institution respected the Financial Arbitrator's opinion and agreed with the petitioners on a settlement. We will strive to maintain this positive trend in the following years, too. In this way only can the Financial Arbitrator become a respected and useful component of the financial market in the Czech Republic, with its services being used ever more frequently.

In 2009, we kept striving to make our institute more visible through the media. In the previous year, we were greatly successful at the international level, too. Under the auspices of the Financial Arbitrator of the Czech Republic, we organised in Prague a meeting of the leading representatives of the FIN-NET network (Cross-Border Out-of-Court Complaints Network for Financial Services), the Steering Committee of which also includes the Financial Arbitrator of the Czech Republic. The meeting was attended by forty banking and financial ombudsmen and representatives of the European Commission from more than twenty countries. The immediate reactions of the attendees of the meeting as well as the numerous subsequent letters of thanks evaluated this meeting as the best and most representative one so far in the history of FIN-NET. I am proud that the meeting promoted in an excellent manner not only the institute of the Financial Arbitrator of the Czech Republic, but also the Czech Republic itself.

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

Introduction

The Annual Report on the Activities of the Financial Arbitrator of the Czech Republic (hereinafter referred to also as the “Arbitrator”) for 2009 has been prepared and presented pursuant to the provisions of Section 21(1) 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 rapid, 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 applicable **until 30 October 2009, the Financial Arbitrator of the Czech Republic was 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 effective date of the transfer order;
- b) between parties that issue electronic payment instruments (hereinafter only the “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 Act, is competent.

Pursuant to Section 1 of Act No. 229/2002 Coll., on the Financial Arbitrator, as applicable **from 1 November 2009, the Financial Arbitrator of the Czech Republic is authorised to decide disputes** between the providers of payment services and the users of payment services during the provision of payment services, or between the issuers of electronic money and the holders of electronic money during the issuance and reverse exchange of electronic money the Financial Arbitrator (hereinafter only the “Arbitrator”) is also competent, insofar as competence to settle such a dispute has otherwise been given to a Czech court of law. The entering into an arbitration agreement does not preclude the competence of the Arbitrator. In particular, the Arbitrator strives to settle any dispute in a conciliatory manner.

The aforementioned shows that the amendment to the Financial Arbitrator Act resulted in a new, broader definition of the Arbitrator’s competence: the Financial Arbitrator’s jurisdiction newly includes the providers and users of payment services; the Financial Arbitrator Act no longer contains the strict direct reference to the Payment System Act only; the entering into an arbitration agreement no longer precludes the competence of the Financial Arbitrator; the maximum limit for the disputed amount of EUR 50,000 was cancelled; and the principle of conciliatory dispute resolution was enhanced in Section 1 of the Financial Arbitrator Act as follows: “In particular, the Arbitrator shall strive for any dispute to be settled in a conciliatory manner”.

Such strengthening of the subject-matter and procedural competence of the Financial Arbitrator serves to enhance the principle of consumer protection on the financial market in the field of out-of-court dispute resolution.

1) Act No. 124/2002 Coll., on Transfers of Funds, Electronic Payment Instruments and Payment Systems (the Payment System Act), as amended. Regulation 2560/2001/EC on cross-border payments in euros.

1a) Section 20(c) of Act No. 21/1992 Coll., on Banks, as amended by Act No. 126/2002 Coll.

1b) Act No. 87/1995 Coll., on Savings and Credit Cooperatives and Certain Related Measures and on the Amendment of Czech National Council Act No. 586/1992 Coll., on Income Taxes, as amended.

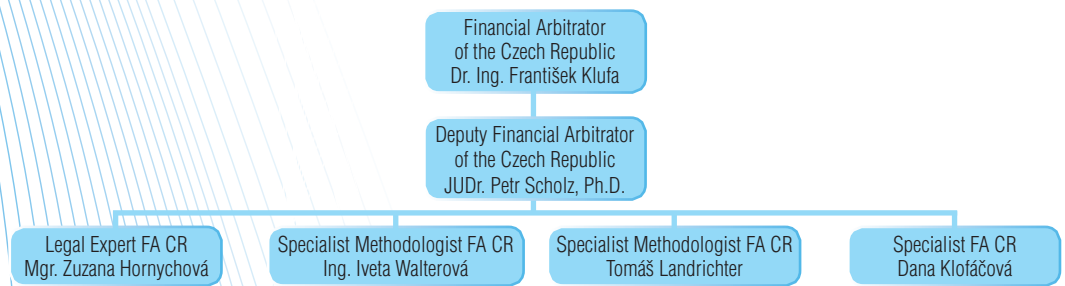
2) Civil Procedure Code. Act No. 97/1963 Coll., on International Private and Procedural Law, as amended.

2

Ensuring the performance of the Financial Arbitrator's activities

The Financial Arbitrator in 2009 was Dr. Ing. František Klufa (whose term of office commenced in January 2008 and shall expire in January 2013); the Deputy Financial Arbitrator in 2009 was JUDr. Petr Scholz, Ph.D. (whose term of office commenced in March 2008 and shall expire in March 2013).

In 2009, **the activities arising from the Financial Arbitrator Act were performed by 4 employees** in addition to the aforesaid **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 persons entrusted pursuant to the Financial Arbitrator Act. As of 31 December 2009, the structure of the Office of the Financial Arbitrator was as follows:



Organisational structure of the Office of the Financial Arbitrator of the Czech Republic

Pursuant to Section 12 of the Financial Arbitrator Act, during the year 2009, the Financial Arbitrator authorised other natural persons, who were not employees of the Czech National Bank, to carry out investigations. In particular, these persons were judicial experts in the field of graphology and attorneys for representation in courts or, as the case may be, for legal assessment of complicated cases.

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

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

Office hours for the public: Monday – Thursday from 8:30 a.m. to 3:30 p.m.
Friday from 8:30 a.m. to 2:30 p.m.

Required services and consultations were also provided even if the Office of the Financial Arbitrator was contacted outside the above specified times.

Pursuant to Act No. 300/2008 Coll., on Electronic Acts and Authorised Document Conversion, the Financial Arbitrator started to actively use a data box when the institution of the Financial Arbitrator was classified in a public authority category. By means of this data box, the Financial Arbitrator communicates with both institutions and petitioners. The Financial Arbitrator's data box system is accessible to the employees of the Office of the Financial Arbitrator delegated by the Arbitrator.

On the basis of the Agreement entered into by and between the Czech National Bank and the Financial Arbitrator on administrative support for the Financial Arbitrator's activities, including compensation of expenditure connected with its activities, the Czech National Bank 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

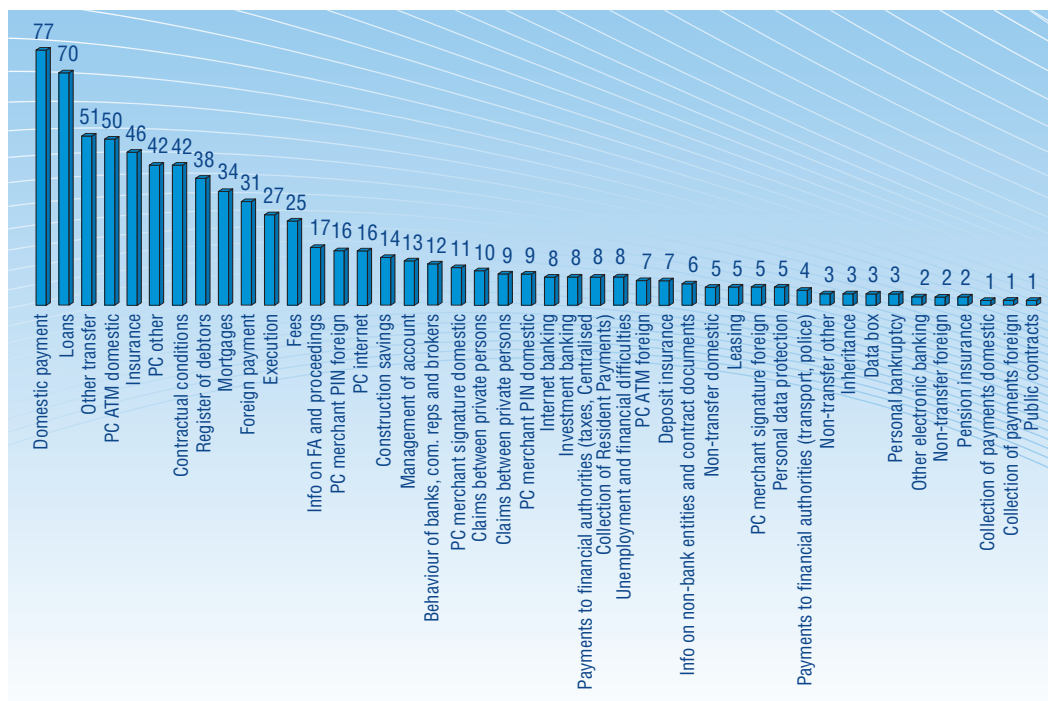
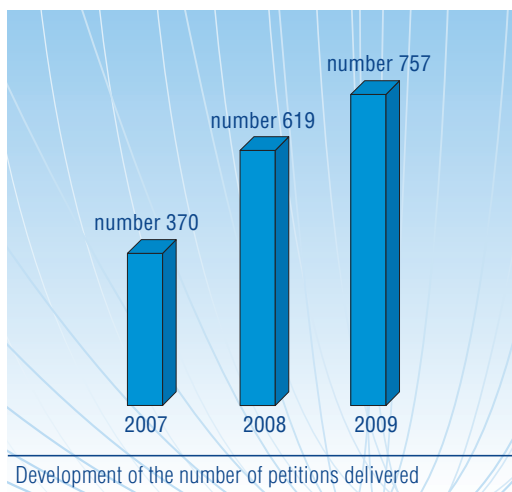
In 2009, the Office of the Financial Arbitrator of the Czech Republic received a total of **757 petitions**.

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 a given problem. Every such petition must be responded to, resolved in the appropriate way and documented. Provided that the petition in question so requires, the necessary administrative act is performed. Various types of documentation are maintained in both administrative and organisational terms for petitions and cases when proceedings are commenced pursuant to the Financial Arbitrator Act on the basis of a delivered petition.

Clients also contacted the Financial Arbitrator with requests the resolution of which did not fall within the defined competence of the Financial Arbitrator. 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 757 petitions, **260 were made in writing, 197 by telephone, 244 petitions were filed via the website** in the section "Ask the Arbitrator" and **56 petitions** were delivered in person. An interesting trend is shown by the nearly fivefold increase in the number of petitions delivered in person. This suggests a greater awareness of the institution and of its registered office.

3.1. Total number of petitions

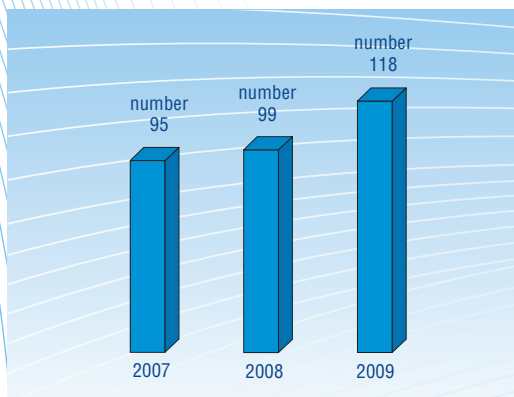


Petitions delivered according to type in 2009

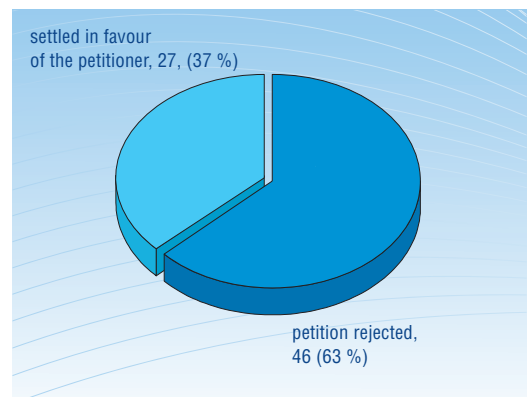
3.2. Number of settled disputes

Of the total number of 757 petitions, **118 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. Out of the total number of 118 accepted petitions for the commencement of proceedings, **86 were justified and 32 unjustified**.

Proceedings are commenced in relation to accepted petitions when they are received. In the case of 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 the 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 due to the inadmissibility of the petition pursuant to Section 9 or pursuant to Section 14 of the Financial Administrator Act, as amended. In all these cases, all administrative deadlines are effective, i.e. for coming into force, for instance.



Development of the number of settled disputes

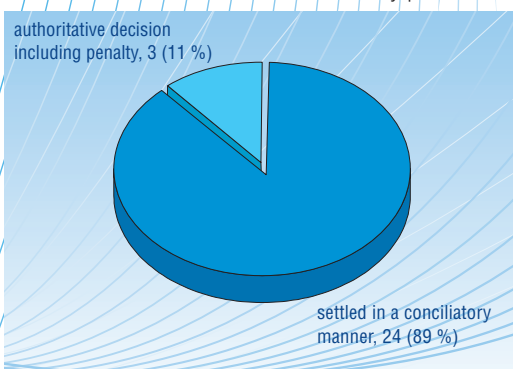


Statistics of petitions rejected v. settled in favour of the petitioner in 2009

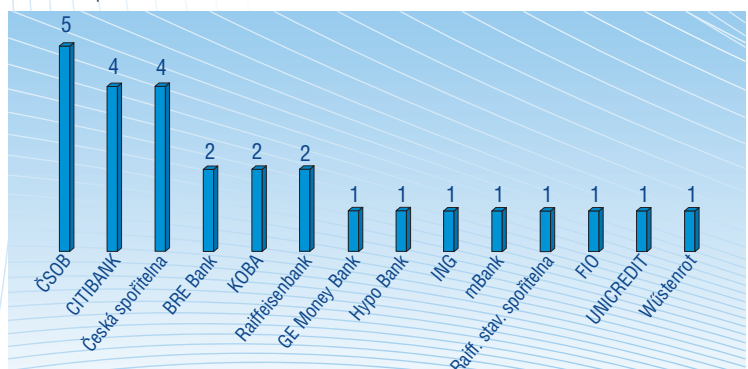
Of the total number of 86 justified commenced disputes, 59 were completed in 2009. Of these 59 cases, 27 were decided **fully or partly in favour of the petitioner (37 %)**, and in 46 disputes **the petition was rejected (63 %)**.

In 2009, a very positive trend was seen in the manner of settling disputes in which it was decided (at least partly) in favour of the petitioner. We succeeded in applying a conciliatory manner of resolution of such disputes between the participants to the proceedings. Out of these disputes, 89% was settled in a conciliatory manner with potential compensation of damage incurred, without the necessity to authoritatively impose sanctions on the institution. Such a dispute is then settled once and for all and there is no risk of an appellate review by a court of law.

The graph provides an overview of the individual institutions which, based on communication with the Financial Arbitrator and the subsequent mediation, agreed to settle the dispute in a conciliatory manner. This trend is very positive in terms of dispute resolution.



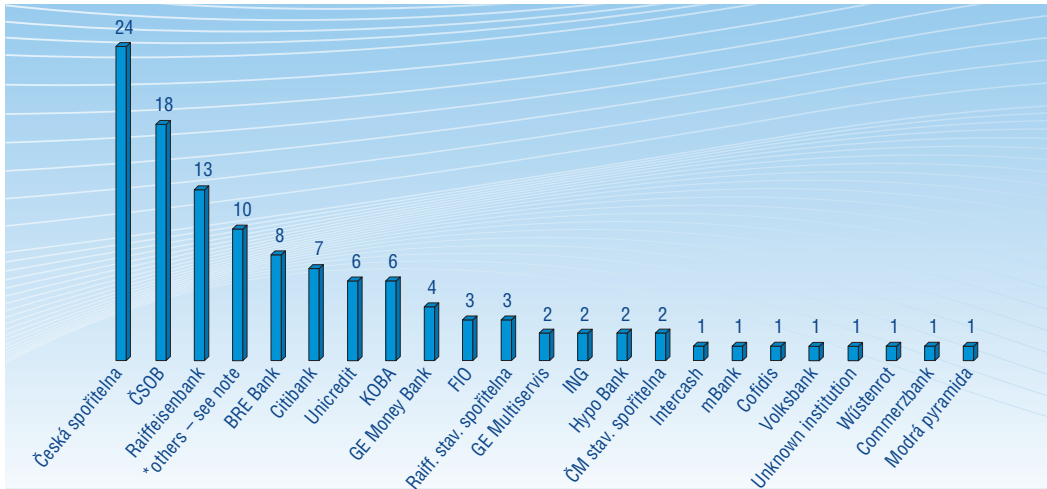
Manner of settling disputes in which it was decided in favour of the petitioner in 2009



Institutions and numbers of disputes resolved in a conciliatory manner in 2009

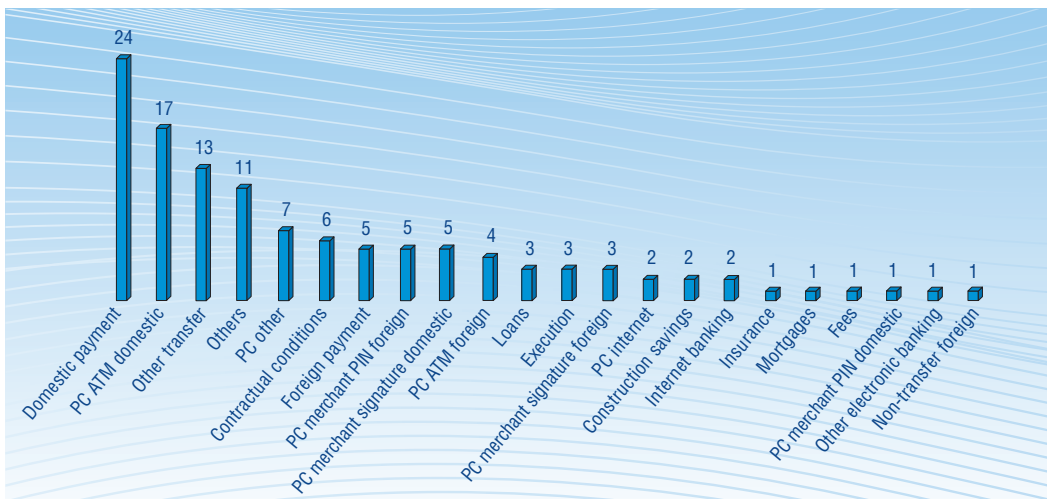
The graph provides an overview and the number of proceedings for the individual institutions. The frequency of disputes is, to a certain extent, affected by the size of the institution's customer base or, as the case may be, even by the process of complaint and dispute resolution used by the institution.

3.3. Overview of participants in disputes – institutions



Participants in disputes – institutions in 2009

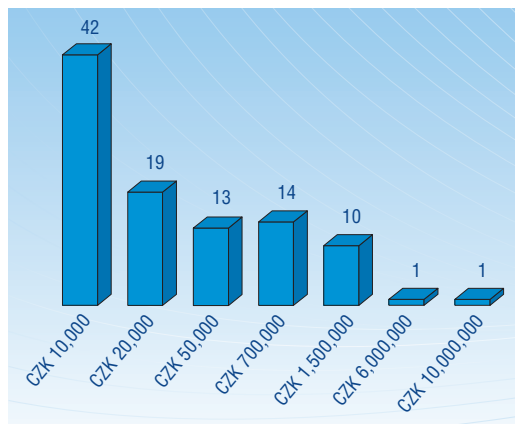
3.4. Overview of settled disputes according to the type of dispute



Settled disputes according to type in 2009

3.5. Financial amounts claimed in settled disputes

The total value of claims sought by petitioners in the 118 cases in 2009 was **CZK 31,450,319**. The average value of a claim in 2009 was CZK 266,528.

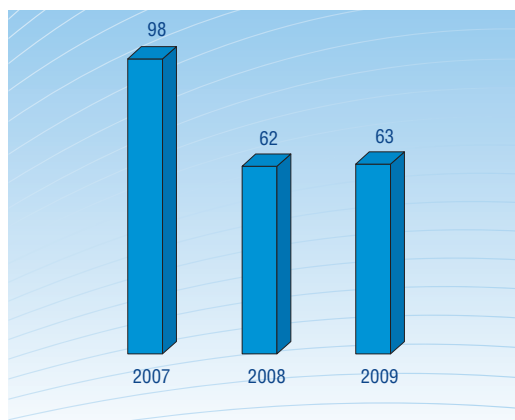


Frequency of financial amounts claimed by petitioners in 2009

3.6. Average duration of proceedings

The average duration of proceedings before the Financial Arbitrator in 2009 was **63 days**.

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



Development of the average duration of dispute resolutions

3.7. Overview of issued findings and resolutions

In 2009, a total of **91 meritorious and procedural decisions** were issued (another 27 cases are in process), of which:

- 32 resolutions to halt the proceedings due to the inadmissibility of the petition;
- 2 resolutions to halt the proceedings due to the failure to remove any defects in the petition (lack of cooperation on the part of the petitioner);
- 20 resolutions to halt the proceedings due to the withdrawal of the petition for the commencement of proceedings (conciliatory resolution of the dispute);
- 4 resolutions to halt the proceedings due to the extinction of the grounds for further proceedings (damage indemnified, but failure to deliver a motion for withdrawal);
- 30 decisions in the form of a negative finding;
- 3 decisions in the form of a condemning finding.

3.8. Overview of challenges filed

In 2009, a total of 11 challenges were filed, of which 9 were submitted by petitioners and 2 by institutions.

3.9. Overview of legal action

In 2009, there were 5 instances of legal action for a court's resolution to cancel a decision of an administrative authority and to refer a case back to the said administrative authority for repeated proceedings. Within the scope of termination of long-standing proceedings, the administrative authority (i.e. the Financial Arbitrator of the Czech Republic) cancelled the previously imposed fines (particularly those dating back to the years 2004 and 2005).

Costs of the performance of the Financial Arbitrator's activities

4

During 2009, just like in the previous year, in addition to the primary performance of his mission (i.e. out-of-court dispute resolution), the Financial Arbitrator also worked hard to **ensure the proper management and control of the costs incurred in 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 performance of the Financial 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 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 the performance of the Financial Arbitrator's activities is always composed of the following chapters:

- a) Operational expenditure in relation to the internal administrative work of the Financial Arbitrator
- b) Consumption limits
- c) 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 relating 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 2009, the total funds of CZK 1.377 million were budgeted for these chapters.

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 the expenditure items of a general nature essential to ensure the activities 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.

Thus, 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 Arbitra-

tor) and calculate the funds that the CNB invested in the Financial Arbitrator's activities during the year in question.

The costs of the performance of the Financial Arbitrator's activities in 2009 amounted to CZK 10.473 million.

In the chapters where the Financial Arbitrator can directly influence the use of funds from the chapters, the costs came to CZK 931,000. Compared to the planned budget, there was a **saving of CZK 446,000** in these chapters **and only 67.6% 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 the chapters, the costs came to CZK 9.542 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. Compared to the planned budget, there was a **saving of CZK 232,000** in these chapters **and 97.6% of the planned budget was used.**

Income from the performance of the Financial Arbitrator's activities

5.

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 Section 17(a) of the Financial Arbitrator Act** (Section 17(a): In an award through which the Arbitrator satisfies, at least partly, the petition of the petitioner, the Arbitrator 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 petitioner under the award, but not less than CZK 10,000) **and fines for non-fulfilment of the obligation to notify pursuant to Section 23 of the Financial Arbitrator Act** (Section 23(1): The Arbitrator 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 Sections 11, 12(6), (7) and (9), and in Section 19. The fine may be imposed repeatedly, should the breach of the obligation persist.).

In 2009, 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 amounted to **CZK 254,089**, of which CZK 139,089 represented penalties imposed on institutions and CZK 115,000 fines for non-fulfilment of the obligation to notify.

6

The Arbitrator's obligation to notify

6.1. Report on the Financial Arbitrator's activities for the Chamber of Deputies of the Parliament of the Czech Republic

Pursuant to Section 5(3) of the Financial Arbitrator Act, the Arbitrator is obliged to submit to the Chamber of Deputies once a year, always within 31 March, a report on its activities in the past calendar year, containing also information about the expenditure incurred in the performance of the activities stipulated in Section 1(2) of the Financial Arbitrator Act. In addition to that, the report contains information about settled disputes, without stating the petitioners' identification data. Stating the institution's identification data in the report does not represent violation of the obligation to maintain confidentiality pursuant to Section 22. In compliance with the aforesaid provision of the Financial Arbitrator Act, the Arbitrator submitted the Report on the Financial Arbitrator's activities in 2008 (parliamentary press no. 755) to the Chamber of Deputies of the Parliament of the Czech Republic on 19 March 2009.

6.2. Annual report on the Financial Arbitrator's activities for 2008

Pursuant to Section 21(1) of the Financial Arbitrator Act, the Arbitrator is obliged, in an appropriate manner, to publish once a year, at the latest within 30 June of the following calendar year, an annual report on its activities, including a description of selected settled disputes, without stating the petitioners' identification data. Stating the institution's identification data in the annual report does not represent violation of the obligation to maintain confidentiality pursuant to Section 22. In compliance with the aforesaid provision of the Financial Arbitrator Act, the Arbitrator published the Annual Report for 2008, which was distributed within the statutory deadline in printed and electronic form. This report was also published on the Arbitrator's website (<http://www.finarbitr.cz/cs/vyrocnizpravy.html>).

6.3. Notification of the supervisory authority regarding failings identified in the activities of institutions

Pursuant to Section 21(2) of the Financial Arbitrator Act, the Arbitrator is obliged to notify the authorities exercising supervision over institutions about any failings identified in the activities of such institutions. In 2009, within the meaning of the aforesaid provision of the Financial Arbitrator Act, the Arbitrator informed the Czech National Bank about the failings identified in the activities of the institutions in a total of three cases. In two of them, failings were identified in the activities of an institution carrying on business on the basis of a foreign-exchange licence to execute transactions with foreign-exchange values and to provide monetary services, issued by the Czech National Bank. In the said cases, the Arbitrator identified failings particularly in terms of security relating to the cash payment of the funds remitted abroad by means of an international money transfer. In the third case, the Arbitrator performed its statutory duty pursuant to Section 21(2) of the Financial Arbitrator Act and informed the Czech National Bank about contradictory or missing provisions in contract documents, particularly in the general commercial terms and conditions of some institutions. Some of the provisions of the institutions did not comply with the requirements of the Payment System Act or, as the case may be, such provisions were not included in these contract documents at all and the documents thus did not comply with the purpose of the Act. Some of the substantial faults related particularly to the provisions of Section 116 of the Payment System Act (the payer's liability for loss resulting from an unauthorised payment transaction). Subsequently, it happened that, in using payment services, clients or, as the case may be, consumers were not protected in the manner assumed by Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market and by the Payment System Act based thereon.

Media activities, promotion, other activities

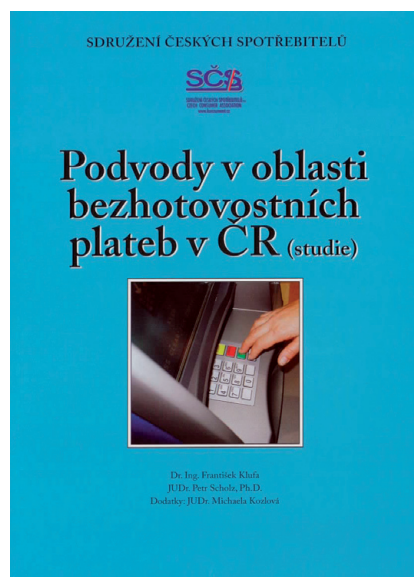
7. □

The main priorities of the Financial Arbitrator in 2009 included efforts to raise awareness of the institute of the Financial Arbitrator and of its function within the framework of the existing consumer protection system in the Czech Republic. In order to achieve this, continuous efforts were made to create promotional articles, newspaper articles, appearances in other types of media, presentations at conferences, the launch of a new website, etc.

In 2009, there were **over 160 interviews, articles, television appearances**, presentations and conference appearances with the aim of increasing the visibility of the institute of the Financial Arbitrator – see the overview on the website at <http://www.finarbitr.cz/cs/media.html>. In addition to that, 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 the field of consumer protection on the Czech market. These activities were also performed by the Deputy Financial Arbitrator.

The Financial Arbitrator of the Czech Republic and his deputy also performed conference and educational activities. In October 2009, the Financial Arbitrator of the Czech Republic organised and hosted an international meeting of the all-European network of financial arbitrators and ombudsmen FIN-NET (Cross-Border Out-of-Court Complaints Network for Financial Services). Further, the Financial Arbitrator of the Czech Republic and the Banking Institute / College of Banking (Bankovní institut vysoká škola, a.s.) organised a successful international conference on “FIN-NET’S ROLE AND POSITION ON FINANCIAL MARKETS”.

Dr. Ing. František Klufa (Financial Arbitrator of the Czech Republic) and JUDr. Petr Scholz PhD. (Deputy Financial Arbitrator of the Czech Republic) were the main co-authors of the publication titled “Fraud in the Field of Cashless Payments in the Czech Republic (a study)”. This publication was prepared and published within the framework of a European project funded by the European Union. The partner and implementer of the project in the Czech Republic is the Czech Consumer Association. Other co-authors of the publication were JUDr. Michaela Kozlová (independent lawyer) and Ing. Libor Dupal (Chairman of the Czech Consumer Association). The Deputy Financial Arbitrator, JUDr. Petr Scholz, Ph.D., also wrote a specialised publication titled “The Financial Arbitrator Act – A Commentary”. The commentary provides interpretation in relation to the Financial Arbitrator Act.



A list of media in which the Financial Arbitrator or his deputy appeared or published in 2009: Aktuálně.cz; Bankovní poplatky.com; Bankovnictví; Bankovnictví.cz; banky.cz; Banking Institute/College of Banking; cardmag (magazine); Cardrevue; cardzone.cz; Týden (magazine); Czech Banking Association; CZECH TELEVISION; Czech Television – Studio 6; ČeskéNoviny.cz; Czech Radio – Regina, Třináctka (programme); Czech Radio 1 – Radiožurnál; ČT 24; deník.cz; Diners Club International Info; E15; E-Bulletin INFSOS; Ekonomika ČT 24; EURO; Evropské noviny; finance.cz; Finanční noviny.cz; Finanční Management; FinExpert.cz; FP–finančníporadce; HalóNoviny; Hospodářské noviny; www.konzument.cz; www.penize.cz; www.spotrebitele.info; www.zlatakoruna.info; HyperStudent.cz; iDNES.cz; iHned.cz; KB Journal; Konkurzní noviny; Liberecký deník; Měsíc.cz; MF Dnes; MojeInvestice.cz; Novinky.cz; penizevip.cz; Právo; právo.cz; Právo-online.cz; Prosperita; Rádio Impuls; Rádio Regina; regio.cz;

7.1. Media activity

Sdružení českých spotřebitelů; Sfinance.cz; teletext ČT; TV Nova – Občanské judo (programme); TV Prima; VŠudybyl (magazine); youtube.com; Z1 TV, etc.cz;

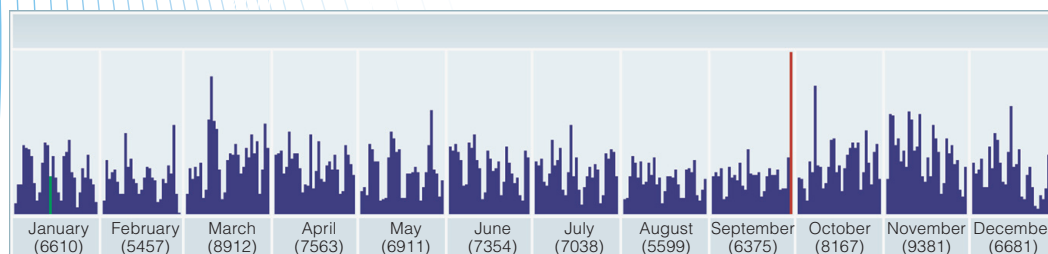
7.2. Conference activity

A list of conferences and other appearances in which the Financial Arbitrator, his deputy or, as the case may be, other employees of the Office were involved in 2009:

- Conference – European Payment System 2009
- Conference – Cards 2009
- Conference – 3 Days for Banks 2009
- Presentation for Citibank
- Presentation for the Security Committee of the Bank Card Association
- Presentation for the Association of Czech Building Savings Banks
- Presentation for the Czech Banking Association
- Presentation for the Association of Financial Intermediaries
- Presentation for the Standing Commission on Banking at the Chamber of Deputies of the Parliament of the Czech Republic
- Consumer Finance 2009
- Trends in Internet Security
- Press conference of the Financial Arbitrator – activities in 2008
- eGovernment Projects in Practice, etc.

7.3. Website, “Ask the Arbitrator” section

In order to promote its activities, the Office of the Financial Arbitrator used the website www.financniarbitr.cz. This website has demonstrated itself to be a very good presentation and communication channel as regards consumers. The website presents information that must be published by law, such as annual reports, a list of payment services providers and electronic money issuers, which can be potential participants in disputes heard before the Financial Arbitrator. In addition to that, the website contains 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 within the European Economic Area. The website also displays the logo of the Financial Arbitrator.



Number of visits to the Financial Arbitrator’s website in 2009

Through the section called “Ask the Arbitrator”, the Office received one third of all its petitions. This section can be used to ask the Financial Arbitrator about anything related to banking. Partner websites and links were also used to promote the Arbitrator’s activities.

7.4. International meeting of the all-European network of financial ombudsmen FIN-NET in Prague

On 20-21 October 2009, the Financial Arbitrator of the Czech Republic organised and hosted an international meeting of the all-European network of financial arbitrators and ombudsmen FIN-NET (Cross-Border Out-of-Court Complaints Network for Financial Services). FIN-NET meets regularly twice a year, once at its seat in Brussels and for a second time in some other Member State. The last meeting outside Brussels was held in October 2008 in Madrid. The meeting in 2009 was held in the premises of the Congress Centre of the Czech National Bank, Na Příkopě 864/28, Prague 1. FIN-NET is an international network established in 2001 at the European Commission in Brussels, which associates national institutions within the European Economic Area that are responsible for out-of-court resolution of disputes between consumers and financial services providers. At present, FIN-NET has 50 members from 30 countries that make up the European Economic Area – see http://ec.europa.eu/internal_market/fin-net/index_en.htm. Within this network, consumers are provided with easier access to the services rende-

red by institutions responsible for out-of-court settlement of disputes between consumers and financial services providers also in so-called 'cross-border cases'. If a consumer in one country has a dispute with a financial services provider based in another country of the European Economic Area, they may refer to a FIN-NET member in their own country and make use of cross-border cooperation among the individual FIN-NET members. The Financial Arbitrator of the Czech Republic is a member of the Steering Committee of the international network FIN-NET.



Welcome in the Exposition premises of the Czech National Bank



Conference in the Congress Centre of the Czech National Bank

On 22 October 2009, the Financial Arbitrator of the Czech Republic and the Banking Institute / College of Banking (Bankovní institut vysoká škola, a.s.) organised an international conference on "FIN-NET'S ROLE AND POSITION ON FINANCIAL MARKETS". The Office of the Financial Arbitrator of the Czech Republic and the Banking Institute / College of Banking held this conference under the auspices of Dr. Ing. František Klufa, Financial Arbitrator of the Czech Republic, and of doc. RNDr. František Jirásek, DrSc., Rector of the Banking Institute / College of Banking, on the occasion of an international meeting of the all-European network of financial arbitrators and ombudsmen FIN-NET in Prague. The conference was held on 22 October 2009 in the auditorium of the College in the Campus Park Stodůlky, Nárožní 2600/9, 158 00 Prague 5 – Stodůlky.

7.5. International conference of the Financial Arbitrator and the Banking Institute/ College of Banking

The topics discussed at the conference included, among others: Manners of alternative out-of-court dispute resolution on the financial market – at present and in the future; Regulation of financial markets – as viewed by an ombudsman; Financial products, consumer protection, financial crisis; New directive on payment services in the internal market and its transposition into national environment. The following persons appeared at the conference: Petr Durdík – Sales Director of the Banking Institute / College of Banking; Klára Hájková – Deputy Minister of Finance of the Czech Republic; František Klufa – Financial Arbitrator of the Czech Republic; David Thomas – Financial Ombudsman of the United Kingdom; Diarmuid Byrne – Financial Ombudsman, Ireland; Francis Frizon – French Mediator for the Insurance Industry; Sussane Nielsen – Secretary-General of the Committee for Mortgage-Related Complaints, Denmark; Dušan Hradil – Ministry of Finance of the Czech Republic; Libor Dupal – Chairman of the



Banking Institute / College of Banking – conference



Conference participants in the auditorium of the Banking

Czech Consumer Association; Eva Černá – Banking Ombudsman, Slovak Republic; Martin Gardavský – former Chairman of the Ethics Committee of the Association of Financial Intermediaries; Petr Scholz – Deputy Financial Arbitrator of the Czech Republic; Markéta Hálová – Czech National Bank; Jiří Beran – Ministry of Finance of the Czech Republic; Josef Tauber – Managing Director of the Czech Banking Association; Milan Řezníček – Citibank. This international conference also included a press briefing attended by representatives of the Banking Institute / College of Banking (doc. Pavelka and Vice-Rector Karel Preuss), David Thomas, Francis Frizon, Libor Dupal and František Klufa.

7.6. 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
- ❑ Member, Academic Board of the Banking Institute / College of Banking
- ❑ Chairman, Ethics Committee of the Association of Financial Intermediaries and Financial Advisors of the Czech Republic – the Ethics Committee deals with clients' petitions and complaints relating to those providers of financial services on the financial market who are members of the Association
- ❑ Member, FIN-NET
- ❑ Member, Steering Committee of FIN-NET for the period 2009-2010
- ❑ Member, International Network of Financial Services Ombudsman Schemes; this network 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 in different countries of the world, consumer protection, information technologies, cross-border cooperation, training and continuous education, development opportunities and the creation of ethical codes of conduct. Other members of this network include institutions and bodies established for the purpose of out-of-court dispute resolution on the financial market in Australia, Austria, Botswana, Canada, Denmark, Iceland, France, Greece, Ireland, Italy, New Zealand, Norway, Peru, South Africa, Switzerland, Trinidad and Tobago, the United Kingdom and the United States of America. The secretariat of the network is based in Australia
- ❑ Member and Chairman, Czech Financial Academy – the expert academic evaluator panel of 'Zlatá koruna', the best financial product competition
- ❑ Member, Bank Board of the Institute for International Research
- ❑ Permanent Guest, Standing Commission on Banking at the Chamber of Deputies of the Parliament of the Czech Republic
- ❑ Permanent Guest, Sub-Committee on Consumer Protection at the Chamber of Deputies of the Parliament of the Czech Republic
- ❑ Expert partner of the Association of Financial Intermediaries of the Czech Republic for the project "Improved & Enhanced Professional Adaptability of Financial Intermediaries and Financial Advisors"
- ❑ Participant in the project "Support for Financial Literacy (financial education strategy)" under the auspices of the Association of Financial Intermediaries
- ❑ Partner to the project "Project for Preventing Fraud During Cashless Payments" under the auspices of the Czech Consumer Association
- ❑ Independent expert for the project "Evaluation of Governmental Arrangements that Influence Healthcare System" (HEZR) of the Czech Healthcare Forum
- ❑ Lecturing and publishing activities in the field of banking
- ❑ Participant in seminars and subscriber to publications of the Centre for Economics and Politics

The Deputy Financial Arbitrator is also a member of the Task Force for Financial Education at the Ministry of Finance of the Czech Republic.



International cooperation

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

In 2009 too, the Financial Arbitrator was a **member of the FIN-NET network** (Cross-Border Out-of-Court Complaints Network for Financial Services), set up at the European Commission in Brussels and associating national institutions in the European Economic Area established for the purpose of out-of-court dispute resolution between consumers and the providers of financial services. For the period 2009-2010, the Financial Arbitrator of the Czech Republic is a member of the FIN-NET Steering Committee. Other members of this committee, elected by the European Commission for this period, 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 on development of 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 individual FIN-NET members arranged by the European Commission.

In 2009 too, the Financial Arbitrator was a **member of the prestigious worldwide network of financial 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 in different countries of the world, consumer protection, information technologies, cross-border cooperation, training and continuous education, development opportunities and the creation of ethical codes of conduct.

9

Information on selected settled disputes

Pursuant to Section 5(3) of the Financial Arbitrator Act, the Arbitrator is presenting below some disputes that he addressed in 2009:

**9.1.
Case No. 1
– domestic
transfer
– petition
rejected –
conciliatory
resolution of
the dispute
during
challenge
proceedings
and
subsequent
termination
of the
proceedings**

Through a petition dated 8 July 2009, the petitioner sought an institution (building society) to transfer an amount saved within the scope of savings for building purposes or purchase of a house (hereinafter the “building savings”) in the amount of CZK 147,917.80 to her account. The petitioner justified her petition by stating that, on 19 March 2009, she and her husband had jointly terminated the building savings contract by giving notice in the registered office of the company; the contract had been made in favour of their son. The petitioner required the saved funds to be transferred. After the expiration of the time limit, the petitioner found out that her account had not been credited with the relevant funds and filed a complaint about this fact with the institution. However, there she learned that the institution had not received her notice and was informed by the institution that the document had probably been lost somewhere. Together with giving the aforesaid notice, the petitioner required the institution to carry out an alteration with respect to another building savings contract, which was carried out as she was charged a fee according to the schedule of charges within 4 days after filing the requirement. The institution informed the petitioner that it was necessary for the contract to be terminated by giving a new notice, but this time directly by her son who had come of age in the meantime. However, for family reasons, the petitioner wanted to avoid such a situation (that is, the funds being made available directly to the son) by giving a timely notice. The petitioner had a copy of the proper notice that she had given with a commercial representative of the institution. Within the scope of complaint proceedings, the institution did not comply with the petitioner’s requirement and did not transfer the funds. The institution informed the Financial Arbitrator that the petitioner had made the building savings contract on behalf of her underage son under the effective General Commercial Terms & Conditions, the termination of the contract being governed by Article 7 thereof. In the aforementioned case, the contract was terminated in cooperation with a commercial representative; however, the notice was not delivered to the head office of the institution, which is why the contract could not have been terminated during the son’s minority. The petitioner sent a message with a copy of the proposal for termination of the contract; however, it was illegible and, at the time of the son’s majority, it was no longer possible for the petitioner to terminate the contract herself. The institution also argued that it happened very frequently that most parents did not realize that the saved amount on a building savings account maintained for a minor belonged to the minor’s property and that they had to respect Section 37 of Act No. 94/1963 Coll., the Family Act, as amended, which implied that they were obliged to surrender the administered property to the child after it had become of age. The state benefits, too, are provided from the state budget directly to a participant in building savings, and not to the participant’s parents. In the course of the substantiation phase, it was found out that the proposal had been duly signed by both statutory representatives of the participant in building savings and that the commercial representative had confirmed the correctness of the proposal for termination and its acceptance by appending her signature. In the course of the proceedings, the institution and the commercial representative were summoned to provide the Financial Arbitrator with an oral explanation. It followed from the hearing that commercial representatives would send processed documents to the head office of the institution collectively in an envelope, without making a list of the documents being submitted in this manner. A representative of the institution said that she had no idea where the document had been lost; however, if it had not reached the person in charge, it could not have been processed either. Further, the representative informed that the saved amount had not been paid out yet. During the hearing, the Financial Arbitrator stated that, regarding the completion of the proposal for termination of building savings, the petitioner had complied with all requirements and the proposal contained all prescribed particulars. In this respect, the Financial Arbitrator requested a legal opinion which showed that, based on the documents submitted, the contracting party was the son, whereas the petitioner represented him with respect to the institution as his statutory representative within the meaning of Section 26 or, as the case may be, of Section 27 of the Civil Code. On 19 March 2009, the son’s parents completed a proposal for termination of the contract as his statutory representatives. Had the funds under the contract been paid out, they would have belonged to the son and the parents would have been – pursuant to Section 37(a) of the Family Act – obliged to administer these

funds with due care (that is, to administer the funds so as to prevent their son from suffering any detriment in terms of his property interests). Thus, when the petitioner stated in the petition for arbitration proceedings that she was not willing to make the money available to her son, her attitude did from the very beginning contradict the cited provisions of the Family Act. As regards the alleged erroneous conduct of the institution or, as the case may be, the institution's liability for damage or, as the case may be, the institution's failure to effect the transfer (as part of the proposal for termination of the building savings contract), no erroneous conduct of the institution was established either, since the provisions of Section 13(2) of the Terms & Conditions clearly stipulated that any filings of a subscriber shall become effective with respect to the building society as of the day of their delivery to the registered office of the building society. Thus, the Terms & Conditions defer the effectiveness of any filings up to the moment of their delivery to the registered office of the institution, irrespective of the fact whether such filings are delivered to the registered office of the savings bank in person or whether they are submitted for delivery to an operator of postal services or to a commercial representative. Regarding the commercial representative's activities, the Financial Arbitrator hereby informs that the relationship between her and the institution is governed by a contract for commercial representation and by the provisions of Section 652 et seq. of the Commercial Code on the contract for commercial representation. Should the represented party incur any damage as a result of violation of the commercial representative's obligations, the represented party would in such case have a right to seek damages. Should a client of the institution incur damage, the represented party shall be entitled to recover the damage from the commercial representative. The underlying documents do not imply, however, that the institution itself or through the commercial representative would have violated any obligation under the contract with respect to the petitioner's son (the obligation of the commercial representative to deliver the clients' written requirements to the institution without delay is not set out in the contract). In this particular case, another precondition for the institution's liability for damage does not exist either, which is the very occurrence of any damage. The son, being the contracting party, does not claim (himself or through his statutory representatives) that he would have incurred any damage at all. It is apparent that the institution did not interfere with the property domain of the son. This implies that no liability for damage exists on the part of the institution under Section 373 or, as the case may be, Section 375 of the Commercial Code. It is possible that, even if the commercial representative did deliver the proposal for termination of the contract to the institution without delay, the institution would not have to accept this draft agreement, as neither the contract nor the Terms & Conditions imply any obligation of the institution to unconditionally accept a draft agreement on termination of the contract. It needs to be stated that no claim to the payment was created, since the contract was not terminated duly under the Terms & Conditions. The underlying documents submitted do not imply that the institution itself or through the commercial representative would have violated any contractual obligation or statutory duty with respect to the petitioner's son and thus withhold the requested funds in an illegitimate manner. The petitioner's petition, through which she sought the payment of the saved amount including late charges since the day of 15 June 2009, stating that the institution was withholding these funds in an illegitimate manner, appeared to be unjustified, since any potential claim to the payment of the saved funds would (in the event of compliance with all statutory and contractual requirements) have belonged solely to the contracting counterparty of the institution, which was no one else but the petitioner's son, irrespective of whether he had been a major or not. The building savings under the contract made in favour of the son does not belong to the parents. The petitioner's statement clearly showed that, in the process of termination of the contract or, as the case may be, in the proceedings conducted before the Arbitrator, she did not represent the interests of her son. On the one hand, the petitioner's requirements contradicted the provisions of the Family Act and, on the other hand, there may in fact be doubts about the petitioner's active legitimacy to conduct any litigation against the institution under the contract without the knowledge of the contracting party (that is, of her son). Based on the substantiation conducted, the Financial Arbitrator arrived at a conclusion that the petition was not justified, as it was not proved that the institution would have violated any legal obligation pursuant to the contract entered into with the petitioner, being a statutory representative of a participant in building savings and, simultaneously, that the institution had not violated the provisions of Act No. 124/2002 Coll. After having received a negative award, the petitioner submitted her challenges and, in the course of the challenge proceedings, a conciliatory settlement was effected between the petitioner and the institution, which the petitioner had been initially unwilling to accept during the proceedings. The institution contacted both the petitioner's son and the petitioner to inform them about the proposed steps and they agreed. The petitioner confirmed this fact by a notification dated 29 December 2009 and withdrew her petition.

**9.2.
Case No. 2
– domestic
transfer –
conciliatory
resolution of
the dispute**

Through a petition dated 21 March 2009, the petitioner sought an institution to return funds that had been drawn from the petitioner's account in an illegitimate manner (namely in the amount of CZK 180,000 and CZK 70,000) including a compensation for damage incurred as a result thereof.

The petitioner justified her petition by stating that, on 18 December 2007, she had personally arrived in a branch office of the institution and requested a right of disposal for Mrs. J.D. in relation to her account to be cancelled. However, on 4 a 5 January 2008, the petitioner found out (through the electronic banking service) that her account had been manipulated with in an illegitimate manner, namely that two transfers had been effected as a result of which funds in the total amount of CZK 250,000 had been drawn from the account. During her personal visit to the branch office of the institution on 10 January 2008, the petitioner discovered that the institution had failed to cancel the access of Mrs. J.D. to the electronic banking service in relation to her account. Therefore, the petitioner filed a complaint regarding the controversial withdrawals with the institution. The petitioner was informed that the institution had invited the owner of the account in favour of which the funds had been transferred to return the erroneously remitted payments; should they have not been returned within 12 September 2008, the petitioner would have had a right to send a written request directly to the institution for the provision of identification data of the recipient of the payment for the purposes of legal enforcement of the outstanding amount, informing her that the said service of provision of identification data was charged by the institution according to the schedule of charges with a fee of CZK 297.50, the payment of which the institution required in advance. Moreover, the form contained the following sentence: "On (date), as a result of my own erroneous instruction, I remitted the following payment by mistake:" However, this was not true. The petitioner declined to accept this notification and required the institution to rectify the situation immediately. Further, the petitioner stated in the petition that she had also incurred further damage.

In the course of the proceedings conducted before the Financial Arbitrator, the institution acknowledged its erroneous conduct and refunded the outstanding amount of CZK 250,000 to the petitioner. Further, the Financial Arbitrator also invited the institution to pay the late charges in the amount of CZK 33,489.11, which the institution subsequently settled to the petitioner. Further during the proceedings, no damage incurred in connection with the aforementioned unauthorized transfers was identified. Subsequently, the petitioner withdrew her petition and the Financial Arbitrator terminated the proceedings.

**9.3.
Case No.
3 – use of
a payment
card in an
ATM – petition
rejected**

Through a petition dated 2 June 2009, the petitioner sought the institution AA to return funds in the amount of CZK 30,000. In his petition, the petitioner stated that, on 9 January 2009, he had attempted to withdraw cash from an automated teller machine (hereinafter the "ATM") of the company CC situated in the OC Globus shopping centre in Liberec. The withdrawal of CZK 10,000 failed, the ATM informed the petitioner that no receipt could have been issued – the ATM returned to stand-by mode, the card was released, but no money was paid out. The petitioner made another attempt (again for an amount of CZK 10,000 but without requesting a receipt) – the monitor showed a message that the requirement was complied with, the ATM released the card and returned to stand-by mode, but no cash was paid out again. Thus, the petitioner made a third attempt (again for the amount of CZK 10,000) but the withdrawal was not successful either – the card was released, the ATM returned to stand-by mode, but no cash was paid out. Subsequently, the petitioner went to another ATM to withdraw the required money – the ATM was in operation, but no cash was paid out to the petitioner due to having reached the limit. Therefore, on the very same day, the petitioner verified the withdrawals through the internet banking service and found out that his account had been debited with the funds of the three withdrawals in the total amount of CZK 30,000 that he had made using the ATM of the company CC. The institution informed the Financial Arbitrator that the claimed withdrawals had been effected properly and that the required cash had been paid out by the ATM. Through the VISA INTERNATIONAL system, the institution also requested the company XX to verify the transactions in dispute. It received a negative reply, since a journal of the claimed transactions was submitted to it, showing that the transactions had not followed immediately one after another, but that one more transaction had been made between the first and the second successful withdrawal, which fact the petitioner had failed to mention in his petition. The institution also submitted a statement of the company BB, a.s., being the provider of replenishing services in respect of the said ATM, according to which everything (that is, the replenishment of the ATM, the filling and emptying of the cartridges) had been carried out in compliance with the procedures laid down in the contract for security services and the number of banknotes had agreed with the numbers declared on the receipts printed out on the replenishment of the ATM. In the course of the relevant replenishment

period, no maintenance action was carried out in relation to the aforementioned ATM. Within the scope of the substantiation proceedings, the Financial Arbitrator authorized an expert to carry out investigation and to prepare an expert opinion in respect of the functionality of the ATM of the company CC. The investigation showed that, on 9 January 2009 (in the period of time between 9:01 and 9:10 a.m.), the petitioner had made attempts to withdraw cash, specifically three attempts during which an erroneous PIN had been entered and three successful attempts. However, the attempts during which an erroneous PIN had been entered were not mentioned by the petitioner in his petition.

The evidence submitted by the company CC showed that, at the relevant time, the ATM had been in operation and no problems had been registered in relation to it. Potential manipulation with money by the company BB was also verified, but no discrepancies were identified either – crews rotate and, in addition to that, they just replace the cartridges and do not come in contact with the cash, which is processed only later by the cash processing centre. A review of the relevant records showed that there had been no differences registered by the ATM on its replenishment. If the ATM did not pay out the cash, it would have subsequently reported a higher balance during an automatic verification, namely by 30 banknotes, which would have represented a several-millimetre difference in the replenishing cartridge. The technical condition of the ATM was verified on the basis of maintenance journals submitted by the company CC. In the period between replenishments, there was no maintenance action carried out in relation to the ATM. This type of ATM meets the common standards, even though it is a low-end device, which is also reflected in its security. Compared to other ATM types, this ATM works rather slowly, banknotes are issued through a slot situated under the ATM's service zone and the issuance of money is lengthy (banknotes are not issued in one package, but piece by piece), which may mislead some clients to think that the ATM has not issued the money to them and thus to leave the ATM. The fact that a transaction has been successfully completed is also confirmed by a receipt (on condition that the client has requested it) that the ATM issues only after the cash has been paid out. The dispenser type used in this ATM does not draw the banknotes back in if they are not collected by the client, which is one of the reasons why banks use different ATM types that comply with the security requirements to the full extent. Usually, ATMs of this type are used by independent organizations that distribute them particularly in shopping centres. As the camera recording was no longer available (that could have clarified the situation in respect of the cash withdrawal), we may in this case just present a hypothesis that the said ATM might have been subject to an attack. This means that the issue slot might have been covered and the ATM might have issued the banknotes into a special-purpose case or, after the petitioner has left the ATM, an unknown person might have seized the money issued by the ATM and not collected by the petitioner. Based on the documents submitted as evidence, no non-standard operation or failure was identified in respect of the ATM; in the said period, the ATM did not report any financial surplus or any other discrepancies, and the disputable transactions were confirmed by entering a valid PIN and were effected in a completely trouble-free manner. Thus, there has been no erroneous conduct on the part of the institution. As regards the behaviour of the petitioner during the transactions in dispute, certain discrepancies were discovered as against the facts stated in the petition for proceedings, namely the petitioner's omission to mention the transactions during which he had entered an incorrect PIN. Moreover, even after the aforementioned experience, the client did not lose confidence in the said ATM and, on 27 February 2009 and on 14 May 2009, he carried out further transactions using the same ATM, which were effected without any problems. Based on the results of the substantiation proceedings, the Financial Arbitrator arrived at a conclusion that the petitioner had failed to prove his claims and, simultaneously, that the institution had not violated the provisions of Act No. 124/2002 Coll.

The petitioner referred to the Financial Arbitrator stating that, on 21 November 2008, the ATM of an institution (situated in a department store) had not paid out the required funds to her.

Based on investigation and the evidence submitted upon request, the Financial Arbitrator found out that, on 21 November 2008, the petitioner had effected two consecutive cash withdrawals from an ATM using her payment card. Having investigated the ATM's journal, which serves to record the ATM's activities, the Financial Arbitrator found out that, in the first instance, a requirement for cash withdrawal in the amount of CZK 2,000 had been entered at 3:09 p.m. According to the record in the ATM's journal, the aforementioned amount was paid out upon authorization. Subsequently, another requirement for cash withdrawal in the amount of CZK 200 was entered by the petitioner at 3:11 p.m. This amount, too, was authorized and the ATM paid out the cash. During both the said transactions, the PIN of the payment

**9.4.
Case No.
4 – use of
a payment
card in an
ATM – petition
rejected**

card was entered correctly, both the transactions were duly authorized and the required items were paid out according to the records submitted.

Further, the petitioner stated that the institution had made a mistake when it had given in its statement a different time of the cash withdrawal from the ATM, which did not agree with the time specified on the receipt issued by the ATM to the petitioner. In relation to this variance, the institution stated that the time on receipts was set by the authorization centre and that the time in the ATM's journal was the system time of the ATM, which was set internally. There may be disagreement between the two times.

To verify the aforementioned, the Financial Arbitrator requested the institution to submit the ATM's journal records on the transactions effected half an hour before and half an hour after the transactions carried out by the petitioner. No erroneous conduct on the part of the institution was proved.

Further, the Financial Arbitrator requested the institution to submit documents on the matters relating to the ATM's journal, its registration and back-up. These matters are regulated in a contract for supply and administration of ATMs entered into by and between the institution and an external supplier. In the aforesaid document, no erroneous conduct on the part of the institution was discovered either.

Within the scope of the substantiation proceedings, the Financial Arbitrator found out that the records available did not reveal any violation of obligations by the institution, since – according to the underlying documents submitted by the institution – the said transaction had been verified and carried out in a trouble-free manner. Subsequently, the Financial Arbitrator made a negative award.

**9.5.
Case No. 5 –
remote use of
an electronic
payment
instrument –
conciliatory
resolution of the
dispute**

Through a petition dated 5 October 2009, the petitioner sought an institution to return funds in the total amount of CZK 20,000 which had been drawn from his account in an illegitimate manner over the Internet using his stolen payment card.

The petitioner justified his petition by stating that, on 22 August 2009 (between 2:00 and 3:00 a.m.), his wallet had been stolen, also containing his payment card issued by the institution. The petitioner discovered the theft in the evening of the same day and went to report the fact to the police immediately. However, at 6:20 and 6:21 a.m. already, the thief managed to make two transactions over the Internet (thus, without using a PIN) with an internet betting shop, in the amount of CZK 10,000 each. As soon as the petitioner found out, he reported the fact to the police and went to the institution where he made a declaration of a card holder regarding a disputable transaction, in which he stated that he had neither made the two payments nor had given consent thereto. However, his complaint was not admitted, even though he referred to Section 18 of Act No. 124/2002 Coll., pursuant to which he was entitled to an immediate return of the funds.

In the course of the proceedings conducted before the Financial Arbitrator, the institution acknowledged that it should have resolved the dispute in accordance with the aforementioned provisions of Act No. 124/2002 Coll., under which – provided that an electronic payment instrument had been used without its physical submission or without the holder's identification using the personal identification number (PIN) – the holder was entitled to an immediate return of the funds drawn in such a manner.

Conclusion

10.

The Annual Report deals with the activities of the Financial Arbitrator of the Czech Republic in 2009 and contains all the information required by law. Its objective is to describe briefly, but aptly the actual activities of the Office of the Financial Arbitrator and the trends in the individual spheres of the Financial Arbitrator's activities. **The year 2009 confirmed the positive trends in the activities of the Office of the Financial Arbitrator of the Czech Republic seen in the previous year.** These may include the following facts:

- We recorded a repeated rise in the number of petitions received – in the period 2008-2009, it rose by more than 100 % (2007: 370 petitions, 2008: 619 petitions, 2009: 757 petitions) – the services provided by the Office of the Financial Arbitrator are used ever more frequently and the Financial Arbitrator's activities enjoy a greater public awareness
- In 2009 too, we succeeded in reducing the costs for the performance of the Financial Arbitrator's activities – compared to the plan by CZK 446,000 (compared to 2007 by CZK 1.462 million). During 2009 too, the total costs for the performance of the Financial Arbitrator's activities testified to economic efficiency in the performance of the statutory activities (2007: CZK 11.8 million, 2008: CZK 10.3 million, 2009: CZK 10.5 million) in the chapters where the Financial Arbitrator can directly influence the use of the funds. Compared to the planned budget, there was a saving of CZK 446,000 and only 67.6 % of the planned budget was used.
- The trend of significant reduction in the costs per petition was confirmed (compared to 2007 by 56 %)
- We succeeded in continuing a constructive communication relationship with participants in the proceedings in order to promote conciliatory and rapid dispute resolution. The year 2009 was a breakthrough year in the fact that nearly 90 % of disputes that the Financial Arbitrator decided in the petitioner's favour were resolved in a conciliatory manner with compensation of the damage incurred and without the necessity to authoritatively impose any sanctions on the institution
- In 2009 too, we aimed our efforts at making the institute of the Financial Arbitrator more visible – there were over 160 interviews, articles, television appearances, presentations, and appearances at conferences
- We succeeded in organising and hosting a prestigious international meeting of the all-European network of financial arbitrators and ombudsmen FIN-NET (Cross-Border Out-of-Court Complaints Network for Financial Services) in Prague; just as successful was the international conference organised in cooperation with the Banking Institute / College of Banking on "FIN-NET'S ROLE AND POSITION ON FINANCIAL MARKETS".

Word of conclusion:

I am pleased that our services are used by more and more consumers. Our primary objective is to be a fair and independent third party that can help participants in proceedings resolve their disputes. Communication remains an indispensable element thereof. It is very encouraging, yet very obligating too that, to an overwhelming extent, we succeed in resolving the disputes in a conciliatory manner and in a very short time. This result supports us in our efforts to become a useful and respected component of the financial market and of the consumer protection system in the Czech Republic. Significance of the year 2009 lies also in the fact that the new Payment System Act came into force, which considerably 'stirred' the existing status quo. However, only the following years will show what fruit such a change will bring.

To conclude, I would like to thank all the partners and institutions we work with. In particular, I would like to thank the Czech National Bank, which by law covers the costs for the performance of the Financial Arbitrator's activities. I hope that our pursuit of economic efficiency in using the budgeted cost items is reciprocally appreciated, too.

Dr. Ing. František Klufa

Right: Letter of thanks from the European Commission for the organisation of a FIN-NET meeting



EUROPEAN COMMISSION

Internal Market and Services DG

FINANCIAL INSTITUTIONS

Retail issues, consumer policy and payment systems

Brussels **29 OCT. 2009** 288817
MARKT/H-3/JS ARES 331572Mr. František Klufa
Czech Financial Arbitrator
Washingtonova 25
110 00 Praha 1
Czech Republic**Subject: FIN-NET meeting in Prague**

Dear Mr. František,

We had an excellent FIN-NET meeting on 21 October 2009 in Prague. I would like to thank you for the great organisation of this event. It is never an easy task to ensure that a full-day meeting runs smoothly but you did it exceptionally well. Please also transmit our thanks to all your colleagues who helped us during the day. We very much enjoyed our time in Prague.

Yours sincerely,

Jean-Yves MUYLLE
Head of Unit

