

Actual problems of rights' protection of individual clients in the market of banking services

Liliya Zavyalova

Abstract

The article deals with the protection of the rights of borrowers - individuals in the banking market. The active involvement of the Russian population in the banking credit operations necessitates the state regulation. Russian legislation and banking regulations give priority to the control and protection of the rights of individuals - consumers of banking services. However, in practice cases of violations of these rights are observed by credit institutions. In this regard, the article presents an assessment of the level of protection of borrowers' rights and financial literacy of the population in the sphere of banking services. The assessment was made on the basis of comparatively legal analysis of Federal and banking legislation in the field of regulation of credit relations, normative verification of the content of credit contracts and questionnaire survey of the Bank's customers. Evaluation of the questionnaires' data is based on the use of behavioral approach. The results of the questionnaire reflect the level of perception of the rights and rules of banking legislation by individuals-users of banking services. The data, which obtained in the course of the study, made it possible to actualize the urgent problems and to determine the priority directions of their overcoming.

Key words: the market of credit services, protection of the borrower's rights, the terms of the credit contract, financial literacy.

JEL Code: G18, G21, B26

Introduction

This article focuses on the study of the question of consumer protection in the area of banking services, in particular, the borrowers' protection – that is, individual clients who carry out credit transactions. At the current stage of economic development, the protection of the rights of the investors and consumers of market services is a worldwide trend. And the Russian Federation is no exception here. Nevertheless, there are cases, in practical terms, when individual borrowers' rights are violated. This is related to both a lack of financial literacy and a lack of awareness of rights and duties of the citizens of the Russian Federation and unscrupulous behavior by a

commercial bank in providing credit services. In order to determine the priorities for the enhancement of banking legislation and to carry out high-quality supervision of respecting the rights of borrowers, authorities need to know a particular perception of credit relations which have already been established by borrowers in the financial market. At the core of obtaining and assessing of this information we can use a behavioral perspective, which makes it possible to determine "what we have in human behavior today", "what we have to change in behavior", and "what exactly should be made for this". The same information can be useful for a commercial bank in order to serve its clients better and to improve their image. Moreover, this information can be used for setting the major orientations for improving the financial literacy of the Russian population. All the above explained the relevance and the overriding importance of studies in the considered field.

1 The theoretical background

At the current stage of global economic development and in conditions of the available time gap between the need for money and their actual availability, need to improve the credit relations and to search for optimal forms of collaboration between the lender and the borrower become more relevant and essential. Linked to this is the particular attention of scientists to consider the trends and tendencies of the loan element in the financial market. Modern economists are exploring in detail issues such as the assessments of demand and supply of a bank loan (Perevyshina & Perevyshin, 2015), regulation of access of banks to the credit market (Mamonov, 2017), research of banks' credit ratings and banks' credit risk (Karminsky & Kozlov, 2013; Zhivaykina & Peresetsky, 2017; Radova & Garkyscha, 2018), the study of banks' credit activity in the segment of the credit market of an individual borrower (Mamonov, 2018) and others. It should be emphasized that banks are professional participants of credit relations. Moreover, the high-level competition in the credit services' market contributes to further improving the competence in building relationships with borrowers and the protection of corporate interests among bank staff. However, there is a lack of financial literacy and competence among individual borrowers. The impossibility of the rapid changing in prevailing situation explains the need for the protection of rights of borrowers in implementing the credit operations.

This issue is an interdisciplinary interest and is considered by researchers in the field of financial, legal, psychological, political and other sciences. It is given major attention in the works of E.S. Rashchevsky (2007), A.P. Kulinich (2009), E.G. Khomenko (2012), V. Iacovoiu and A. Stancu (2017), G.A. Galimova and N.V. Firsova (2018), O.A. Yusupova (2019), Ye. Tupitska, V. Piddubna and Riabchenko Ya. (2019) and other researchers.

The interdisciplinary nature of the issues of protecting the rights of borrowers and their state priority determined the focus of this study, the purpose of which is to assess the level of protection of the individual borrowers' rights and the level of financial literacy of the population in the field of credit banking services.

To achieve this goal, the following tasks were formulated. Firstly, the identification of the rights of individual borrowers on the basis of a study of legislative and regulatory documents governing the issues of credit relations. Secondly, the determination of compliance of the loan agreements' conditions of the Bank with the requirements of Russian legislation. Thirdly, the study and description of the results of the questionnaire survey of borrowers. Finally, the definition of the main directions of positive transformations in the issue under study on the basis of the research.

2 Research methods

For this study, the data were collected in January-March 2019. The study was conducted in 3 phases. The first phase included a comparative legal analysis of federal and the banking laws in the area of regulation of loan-borrowed relations.

In the second phase, regulatory verification of compliance of the content of credit contracts provided on the banks' web site with the requirements of the current legislative and regulatory acts was applied, as a research method.

In the final stage, a questionnaire survey was conducted among residents of the Omsk city in order to identify the level of protection of borrowers' rights and financial literacy of the population in the sphere of banking services. For these purposes, an online questionnaire was used. The study was based on a random non-repetitive sampling. The calculation of the sample' size was based on the following formula (Shmoilova, Minashkin, Sadovnikova, & Shuvalova, 2004):

$$n = \frac{N \times p \times (1 - p) \times t^2}{N \times \Delta^2 + t^2 \times p \times (1 - p)} \quad (1),$$

where n – sample size;

N – the volume of the General totality (615 300 citizen of the city of Omsk at the age of 15-72 years, as these residents can be potential borrowers of the Bank);

$p \times (1 - p)$ - the maximum variance for the share of potential borrowers of banks in the total number of residents of Omsk at the age of 15-72 (0,25);

t – the coefficient of confidence (for 95% confidence level it is 1.96);

Δ - the maximum sampling error (5%).

The sample size was estimated at 384. A total of three hundred and eighty seven completed questionnaires were included in the analysis.

3 Research findings

In Russia, the loan relations are governed by norms of general civil legislation and specialized banking legislation. Within the framework of general civil legislation, the relations between the lenders and the borrowers are governed by the Civil Code of the Russian Federation. The specialized banking legislation is represented by federal laws "On Banks and Banking Activities", "On Consumer Credit (Loan)" and instructions of the Bank of Russia. A comparative legal analysis of civil and banking legislation allowed two groups of loan agreement terms. The first group includes unconditional obligatory parameters of contract stipulated by the norms of the general and special law. These include, for example, the term of the contract, the interest rate, the frequency and amount of payment under the contract, ways of changing the obligations under the contract by the borrower and others. These conditions must always be written in the text of the contract. The second group contains optional obligatory terms that are included in the contract on the initiative and agreement of the parties. This group includes a condition on the assignment of rights under the contract, territorial jurisdiction and the obligation of the borrower to enter into contracts (for example, life insurance).

In the second phase, the regulatory verification of compliance of the content of credit agreements presented on the banks' web site with the requirements of the current regulatory and legislative acts was made.

To assess the completeness of all unconditional mandatory parameters in the loan agreements, the sites of 35 banks were studied, which accounted for 7.4% of the total number of operating banks as of April 1, 2019 (473 credit institutions are operating in Russia as of April 1, 2019).

The content analysis of loan contracts of examined banks showed that they contain all parameters that are required by the legislation.

At the same time, some banks initially include optional obligatory terms in loan agreements, which are not subsequently discussed and agreed with the borrower but are perceived by them as an integral and unalterable part of the agreement.

Thus, one-fifth of the studied banks (19%) in the loan agreement prescribes the obligation of the borrower to enter into a life and health insurance contract, which, in fact, is an additional expense for them. In this case, the client often does not know and does not use his right to refuse to conclude such an agreement, since, in accordance with Art. 935 of the Civil Code of the

Russian Federation, personal life and health insurance is voluntary and cannot be imposed on the citizen as a liability.

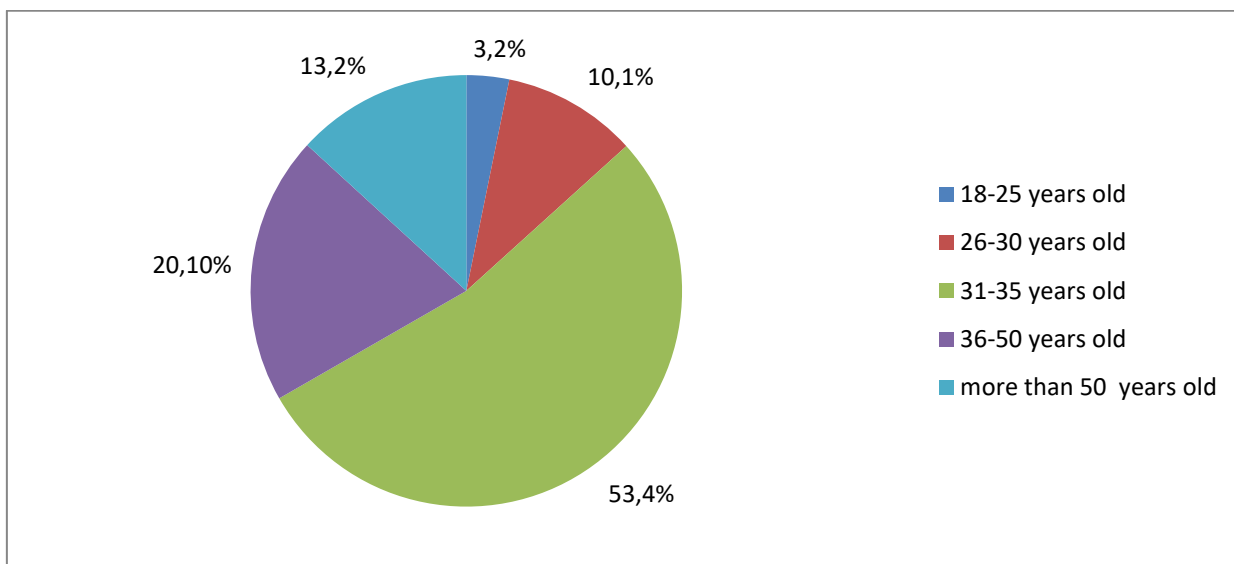
Almost half of examined contracts (47%) contain a on assignment by the Bank of the rights to claim the debt under the agreement without the borrower's consent to third parties. In this case, the citizen has the right to fix in the contract the need for prior notification of the assignment.

In 57% of the studied loan agreements include the condition for the coordination of territorial jurisdiction. At the same time, 15% of the contracts noted indicate a specific court. The borrower in this case according to Art. 13 of the Federal Law "On Consumer Credit (Loan)" may, in agreement with the bank, change the territorial jurisdiction.

At the final step of the research, a questionnaire survey was performed. The questionnaire included three sets of questions: information about the respondent, questions to assess the borrower's awareness of the terms of the loan agreement, and questions to identify the level of financial literacy of the population.

In total, 387 respondents were interviewed, 63% of whom were women. More than half of the respondents (53.2%) were young people of working age 31-35 (fig. 1). At the same time, the majority of respondents (83.2%) have a higher education.

Fig. 1: Distribution of respondents by age



Source: author

Analysis of the data obtained during the questionnaire survey showed that only 29.5% of the respondents had read terms of loan agreement before its signing. What is even more serious is the fact that 8.5% of the remaining borrowers signed an agreement without first getting

acquainted with its content. The consequence of this is the lack of a complete and correct understanding of the obligations and consequences of non-fulfillment of the terms of the contract for the borrower. In addition, in this case, the borrower deprives himself of the opportunity to reconsider and coordinate with the bank disadvantageous positions, which may contain additional or non-optimal costs at the stage of execution of the contract.

It should be emphasized that only 5.9% of the respondents became familiar with possible reasons for failure of the extension of credit by reading the terms of the contract. 70.5% of interviewed borrowers got this information from bank staff. Almost a quarter of respondents (23.5%) didn't know those reasons. Only 29.5% of respondents while reading the contract drew attention to the amount of the penalty upon default or improper performance of the monetary obligations and 35.4% of respondents got this information from the bank staff. Other borrowers (35.1%) don't pay attention to the possible financial sanctions for the violation of conditions of the repayment of monetary obligations.

It is often when bank staff doesn't inform customers of the essential parameters of future financial relationships before the conclusion of a credit contract (tab. 1). Thus, as a result of the survey, it was found out that more than half of the respondents (52.9%) were not informed about the consequences of loss of security or deterioration of its conditions due to circumstances for which the lender is not responsible, 64.6% were not informed about the consequences of non-return of credit and 76.5% did not receive explanations about the obligation to compensate the creditor for losses caused by the provision of false information or about the obligation to pay the penalty stipulated by the contract. These financial penalties are provided for in Art. 813 and 431.2 of the Civil Code of the Russian Federation. The situation is compounded by the fact that only 17.6% of the respondents had read in the contract about the consequences of the loss of security by themselves and 5.9% of the interviewed citizens - about the consequences of not repaying the loan and about providing of false information to the creditor.

Tab.1: Distribution of respondents' answers to the questionnaire

The response options	The questions on the form		
Have you been notified about the possible consequences of the loss of security or the deterioration of its conditions in circumstances for which the lender is not responsible?	Have you been notified about the possible consequences of non-fulfilment of the obligation to ensure the repayment of the loan amount?	Have you been notified about the obligation to pay compensation to the creditor at his request losses caused by the provision of false information or to pay the penalty stipulated by the contract?	

Yes, the bank staff have clarified this to me	11,8%	11,8%	17,6%
No, this information wasn't clarified to me	52,9%	64,6%	76,5%
No, I've examined this information by myself	17,6%	5,9%	5,9%
Not sure	17,6%	17,7%	-

Source: author

It is significant that the majority of borrowers don't have an idea about the obligations of banks, defined by the Russian legislation in order to protect their interests and rights (tab. 2). Thus, 64.6% of respondents don't know that a credit institution doesn't have the right to unilaterally change the term of contracts unless otherwise provided in the contract. Only 5.9% of participants in credit relations study this condition independently by reading the text of the contract, while in 11.8% of the cases of conclusion of the credit agreement this condition is explained by the Bank's staff. 64.6% of respondents find it difficult to answer how long from the date of receipt of the loan the borrower has the right to return the entire amount of the consumer loan ahead of time without prior notice to the lender with payment of interest for the actual loan period. Among the rest, only 11.8% of respondents gave the correct answer. In addition, in 70.5% of the survey cases, a negative result was obtained, indicating that respondents were not aware of the absence of the credit institution's right to unilaterally increase the interest rate and (or) change the procedure for its determining unless otherwise provided by the contract. A minor part of borrowers (11.8%) study this parameter in the contract, 17.7% own this information thanks to the independent study of the requirements of banking legislation.

Tab.2: Distribution of respondents' answers to the questionnaire

The response options	The questions on the form		
	Do you know that a credit institution does not have the right to unilaterally reduce the term of the contract, if it is not provided for in the contract?	Do you know how long from the date of receipt of the loan the borrower has the right to return the entire amount of the consumer loan ahead of time without prior notice to the lender with payment of interest for the actual loan period?	Do you know that a credit institution does not have the right to unilaterally increase the amount of interest and (or) change the order of their accrual, if it is not provided for in the contract?
Yes, the bank staff have	11,8%	-	-

clarified this to me			
Yes, it is written in the contract	-	-	11,8%
No, this information wasn't clarified to me	64,6%	23,6%	70,5%
No, I've examined this information by myself	5,9%	11,8%	17,7%
Not sure	17,7%	64,6%	-

Source: author

The situation is aggravated by the fact that the clear majority of borrowers (76.5%) are not aware of their right to coordinate with the bank the court which would deal with emerging disputes and disagreements.

According to questionnaire data, it is advisable to conclude that the borrowers pay insufficient attention to improve their financial literacy. Thus, 23.3% of respondents don't know the content of the concept of "full cost of the credit", 13.7% of respondents can't give the correct definition of "credit history".

Conclusion

This study analyzes the conditions of credit relations between individual borrowers and banks. The first conclusion is that the regulation of relations between creditors and borrowers is a priority area of state control in Russia.

Secondly, as a result of the conducted research the compliance of credit agreements' terms with the requirements of the Russian legislation was revealed. Nevertheless, the study of the content of loan agreements showed that despite the disclosure of the necessary information by banks in accordance with the requirements of the legislation, there may be certain "traps" in the Bank documents, the consequence of which is a violation of the rights and interests of borrowers.

In addition, data from a questionnaire survey of individual borrowers showed low interest of citizens in studying the terms of the loan transaction and low awareness of the terms of the signed contract, which can lead to negative consequences for both the lender and the borrower. This situation is aggravated by the insufficient level of financial literacy of the population in modern Russian society, which often does not allow borrowers to fully exercise their rights in the credit transaction.

On the basis of these conclusions, the following directions of overcoming the identified problems can be formulated:

- it is necessary to improve the financial literacy of the population. According to the author, the issues of financial education should be included in the school curriculum;
- it is necessary to determine the state, public and professional institutions that will carry out work to educate the population on financial issues;
- special attention should be paid to the education of the population of older age groups, as they actively enter into credit relations;
- it is necessary to carry out selective supervision over the terms of loan agreements and transactions;
- it is necessary to conduct periodic sociological studies of the level of financial literacy of the population and their satisfaction with the quality of credit services.

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Contact

Liliya Zavyalova

Omsk F.M. Dostoevsky State University

Russia, Omsk Region, Omsk, 55A Mira prospect.

zavlil@yandex.ru