

Dispute resolution in numbers - focusing on courts and consumers

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Abstract: The aim of the European Online Dispute Resolution (ODR) platform operated by the European Commission is to make online shopping safer and fairer by providing the possibility of high-quality dispute resolution. The purpose of this article is to present the European consumer protection online dispute resolution based on recently concluded statistics, as well as the Hungarian court dispute resolution in the light of the number of cases started and closed. We aim to discuss the situation of alternative dispute resolution in Hungary in 2022. It proceeds this aim on the basis of the EU ODR platform and the Court Mediation statistics of the Court of Justice. Mediation - which nowadays is organically integrated into European legal practice - strives for compromises, its goal is to find a common solution with the least "loss" for both parties. The main outcome of the article is to emphasize the dividing lines between dispute resolution, mediation and judicial mediation by presenting recent statistical results.

Keywords: dispute, resolution, court, consumer, mediation

1 Introduction

The consumer, as a legal category, is strictly regulated in Hungarian law, in return, the state "have a say" to a certain degree in these legal relationships. The definition of the consumer is clearly contained in the current Civil Code and the Consumer Protection Act, and if one of the parties is considered a consumer, a number of special rules are also applicable to the legal relationship between him and the company.

In addition to the preliminary information burdened by businesses, the current legislator also provides certain guarantees to the consumer during consumer legal disputes. First of all, it is important to emphasize that the contract between the consumer and the business is also a private, civil law contract established on the

basis of the Civil Code. If the business does not violate one of the laws protecting the consumer, the court is the forum entitled to make a decision in the legal dispute.

The conciliation bodies want to reduce the burden on the courts, which are also entitled to investigate and, where appropriate, decide on issues arising in connection with the contract. It is important to emphasize that cooperation with the conciliation board, such as appearing at the hearing, is an obligation of the enterprise. If it does not comply, the conciliation board reports this to the first-level consumer protection authority, which fines the company for this.

However, if the business violates the other party "in its capacity" as a consumer - for example, it does not respond to a consumer complaint within 30 days - then the already mentioned first instance consumer protection authority, which in Hungary are the district offices of the consumer's place of residence, is entitled to take action.

The rise of big data in the global economy has led to concerns about antitrust and consumer protection, but policy makers often treat the two areas separately. (Zhe-Jin&Wagman, 2021)

2 Court Mediation

Alternative dispute resolution procedure, court mediation, has been available in Hungarian courts since the second semester of 2012, and is an effective tool of enhancing customer satisfaction and timeliness in civil litigious and non-litigious cases. From 1 January 2018, the parties will have the possibilities to approve the mediation agreement in court in a settlement attempt at a very low fee to make it enforceable. Also from 1 January 2018, in administrative court proceedings, the judge may, with the agreement of the parties, impose a court mediation procedure in the cases in which the law does not preclude it. At the same time the order is suspended until the end of the proceedings, but for a maximum of two months. Its benefit is that the time and date of the hearings and the substance of the agreements reached with the participation of the mediator can be adjusted to the needs of the parties. In the court mediation procedure, the parties are not bound by the content of the application (except in administrative cases), however, if the parties so request, the part of the agreement that is in line with the application is approved by the court as court settlement, and therefore its effect will be identical to that of a judgment passed in a litigation. A further benefit of the procedure is that it is duty-free, and no hourly rates need to be paid or costs reimbursed for its performance. Depending on in which stage of the procedure the litigation is closed based on the agreement reached, the parties may also request a duty benefit. (birosag.hu/court-mediation, 2022.11.10.)

The role of the mediator is very important to resolve consumer disputes. Paper, as Dewi's et al (2022) discusses the role of the mediator in terms of the perspective of consumer protection law.

Arbitration – a binding private third-party adjudication – has been the primary legal way for resolution of consumer disputes. Consumers, however, rarely use arbitration to resolve their disputes while evidence suggests that their disputes remain unresolved. Contrary to the current prevailing emphasis on who is winning in arbitration, this study aims to establish that consumers believe that the court is more just than arbitration, regardless of the outcome. This study further establishes that consumers' perceived poor legitimacy and lack of familiarity, not cost calculation, are what drive their justice perception. (Ghodosi&Sharif, 2021)

3 Conciliation Board 2021

Although the human epidemic causing mass illness caused by the COVID-19 infection and the pandemic situation mainly affected the world and, of course, our country in the year 2020, but with this related challenges and difficulties also left their mark on the year 2021. Conciliation bodies however, the effective and functioning measures provided a great help in life. Digitalization, the Fourth Industrial Revolution have an impact on consumer protection. (Howells, 2020)

Such was the application of the "Emergency Procedures" developed in 2020, which provides an opportunity provided for conciliation bodies to receive by the parties by telephone or e-mail information, consumers can submit their complaints by post or electronically, while a with the majority of enterprises, it took place using the office portal/company portal or via e-mail contact.

These alternative solutions were specifically needed for private customers, since many consumers - referring to the virus situation - did not dare or could not appear in person at the hearing, the preliminary consultation, despite the fact that he wanted the complainant's case will be satisfactorily settled with the help of the work of the conciliation board.

In addition, Paragraph 29/A (2)-(3) of the Consumer Protection Act, effective from January 1, 2021, already stipulated that business organizations obliged to maintain electronic contact, and obliged to electronic administration according to the Electronic Administration Act, according to § 2 point a) to the consumer for qualifying organizations, the documents are sent electronically as defined in the E-Administration Act must be delivered by road. A natural person not obliged to maintain electronic contact and a consumer who does not qualify as a business organization according to the E-Administration Act has the right to choose electronic communication.

Accordingly, from January 1, 2021, the conciliation board must pass through the official gate maintain contact with businesses and initiate the conciliation board procedure also with the consumer, if the consumer requests this.

In order to smoothly transition to a new type of contact, the Innovation and Technology the Deputy State Secretariat of the Ministry Responsible for Consumer Protection and the MKIK as early as 2020 drew the attention of the presidents and secretaries of the county (capital) chambers in December to fulfill the obligation that each conciliation body is independent from the chamber, it must have an independent office gate.

In order to support the professional work of conciliation boards, involving board presidents MKIK continued the development of the bekeltetes.hu website in 2021, and the related professional consultation as well. By the end of 2021, there will be more bekeltetes.hu interface, ITM added a function requested by the State Secretariat of the Deputy Responsible for Consumer Protection, thus a conciliation bodies can now use an interface that better suits the user's needs fulfill their duties.

In addition to the website operated by the MKIK, all bodies constantly update their own content on its website, and accordingly, consumers interested in the topic you can find up-to-date information on these interfaces.

Professional report and analysis of the activities of the conciliation bodies in 2021

In the year 2021, a name change took place at one of the boards. The Csongrád County Conciliation Board in December 2021, informed the MKIK that the new Chamber was registered by the court name, so from the end of the year it will officially be the Csongrád-Csanád County Chamber of Commerce and Industry they continue to operate under the name, which change is of course the Conciliation Board it also appears in its name from now on.

Although the year 2021, burdened with pandemic periods, cannot be called an ordinary year either,

this year also had many similar and new challenges to the previous year, but overall it can be established that the conciliation bodies were efficient and effective in this period as well completed their work, since they continued their proceedings in a similar number of cases as in the previous year, because in 2021, a total of 10,016 cases were closed nationwide.

At the same time, it can also be stated that this is already the fourth year since the operation of the conciliation bodies, when the annual number of cases is slightly lower than the number of cases completed in the previous year (10,119) shows a decrease. While, in 2019, there were 2,480 fewer units compared to the previous year and in 2020, another 382 cases were closed, and in 2021, nearly 100 fewer cases were closed.

Out of the twenty boards, the number of cases decreased in twelve, among which the largest drop was experienced in Szabolcs-Szatmár-Bereg county, where instead

of 246 completed cases in 2020, in 2021 only 157 conciliation cases were closed, which is a decrease of almost 36 percentage points.

The number of closed cases increased in 8 counties: Pécs-Baranya, Budapest, Jász-Nagykun-Szolnok, Nógrád, in Pest, Somogy and Tolna counties. The largest increase in the number of cases was in Borsod-Abaúj-Zemplén occurred in the county, where more than 18 percentage points (+93 cases) were closed in 2021.

In 2021, among the procedures, conciliation bodies made recommendations in 1,415 cases, 1,915 settlement was reached in 27 cases, and the procedure ended with an obligation in 27 cases, 1,471 times was rejected.

There is some difference compared to previous years, as the conciliation bodies in 2021 the largest number in the post and telecommunications category (telephone, post, courier service, TV, internet) they acted in disputed cases, in a total of 1,053 cases. At the same time, for many years "at the forefront "walking" category was relegated to second place due to the number of complaints related to footwear -there were a total of 985 in 2021. (MKIK Szakmai beszámoló és elemzés a Békéltető Testületek 2021. évi tevékenységéről, [www.bekeltetes.hu, https://bekeltetes.hu/tartalom/40/menu/56](https://bekeltetes.hu/tartalom/40/menu/56))

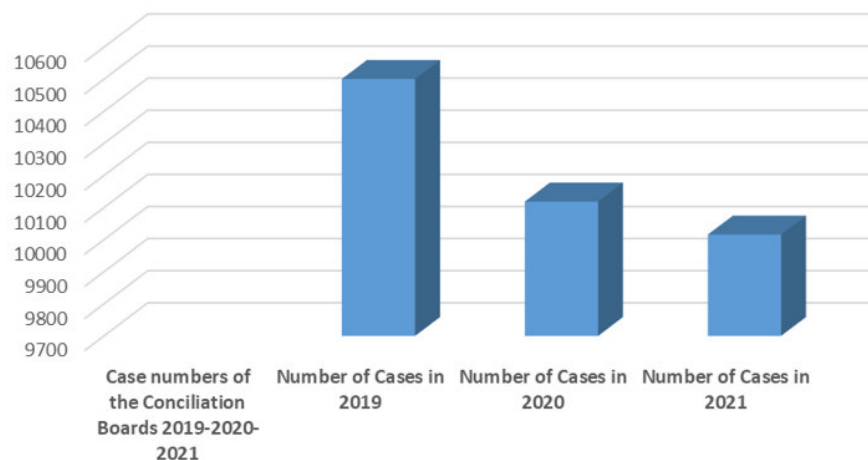


Figure 1. Development of the number of cases of Conciliation Boards in the last 3 years

Source: MKIK Szakmai beszámoló és elemzés a Békéltető Testületek 2021. évi tevékenységéről, [www.bekeltetes.hu, https://bekeltetes.hu/tartalom/40/menu/56](https://bekeltetes.hu/tartalom/40/menu/56)

4 Alternative dispute resolution for consumer disputes

The United Nations set a milestone in the development of consumer law when it adopted the United Nations Guidelines for Consumer Protection in 1985 (UNGCP), establishing for the first time a set of international consumer law principles. Since then, with the emergence of the digital era, the landscape has experienced dramatic changes, and consumers have been facing an expanding range of global challenges, especially in the financial services sector. To reflect this changing landscape, new provisions were added by revised Guidelines in 1999 and again in 2015, which included recommendations on good business practices, financial protection and e-commerce. However, the Guidelines are only soft law provisions, as they are not legally binding on Member States. The question therefore arises of how effective they can be in promoting consumer law at the national and global levels. This article will argue that a comprehensive international consumer law framework is essential in the current context, and that there has been some advancement towards this since the adoption of the Guidelines. (Benöhr, 2020)

Buettner (2020) argues, that European Union expends a lot of effort on institution-based consumer protection initiatives, so I have evaluated their effectiveness in terms of explaining the online shopping behavior of Europeans. By applying a logistic regression model analysis to a large official dataset from the European Commission, I found that user trust in consumer protection only had a limited influence on online shopping behavior, showing the ineffectiveness of past initiatives and strengthening the need for a Digital Single Market EU-strategy. (Buettner, R., 2020)

Directive 2013/11/EU on alternative resolutions for disputes between traders and consumers has the aim to ensure that EU consumers can submit their contractual dispute with an EU trader over a product or service to an alternative dispute resolution (ADR) entity — a recognised body whose role is to resolve disputes by means of ADR procedures, without going to court.

It sets out binding quality requirements for ADR entities and procedures to ensure aspects such as transparency, independence, fairness and effectiveness.

Compliance is ensured by national competent authorities designated by EU countries.

It obliges traders to inform consumers about ADR when the former have committed or are obliged to use ADR and when they cannot bilaterally resolve a dispute with the consumer.

EU countries must ensure that all contractual disputes that arise from the sale of goods or provision of services — between consumers residing in the EU and traders

established in the EU — can be submitted to an ADR entity. It applies to both online and offline sales and services.

The goal of this legislation is to ensure the proper functioning of the EU's single market.

ADR offers consumers an affordable, simple and fast way of resolving disputes, such as when a trader refuses to repair a product or to make a refund to which a consumer is entitled.

ADR entities involve a neutral party, such as a mediator, ombudsman or complaints board, that attempts to resolve the dispute through an ADR procedure. Depending on the form of ADR procedure that a given ADR entity operates, the neutral party can either: propose or impose a solution; or bring the parties together to help them find a solution.

All ADR entities must meet binding quality requirements, guaranteeing that they operate in an effective, fair, independent and transparent way.

Each EU country must designate one or several competent authorities, which have national oversight over ADR entities and ensure their compliance with the quality requirements. The competent authorities establish national lists of ADR entities. Only disputes resolution entities that comply with the quality requirements can be included as 'ADR entities' in those lists.

Traders who agree or are obliged to use ADR must inform consumers about ADR on their websites as well as in their general terms and conditions. They must also inform consumers about ADR when a dispute cannot be settled directly between the consumer and the trader.

In the interest of transparency, EU countries must ensure that ADR entities' websites provide clear and understandable information. This includes contact details and the types of disputes that these entities can deal with, as well as costs, average length and legal effect of the outcome of the ADR procedure. ADR entities must also make publicly available on their websites the annual activity reports containing information on the disputes that they have handled.

ADR entities must cooperate in the resolution of disputes within the EU. They must also exchange best practices among themselves and with national authorities about the settlement of disputes.

This directive applies to all market sectors, with the exception of health and higher education.

NetNeutrals EU is an approved ADR entity, operating in the UK and EU. The information that follows is intended to provided consumers & traders with the means to electronically file a claim with the European Commission ODR Portal, should they so choose not to proceed using NetNeutrals EU. This information is in

compliance with the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015.

'Your Europe' portal gives individuals and businesses practical information on their rights and opportunities in the EU. It focuses on real-life, cross-border situations, e.g. European citizens wishing to work or study in another country in the EU, or European businesses wanting to move to or open a new branch in another country in the EU. (<https://eur-lex.europa.eu/EN/legal-content/summary/alternative-dispute-resolution-for-consumer-disputes.html>)

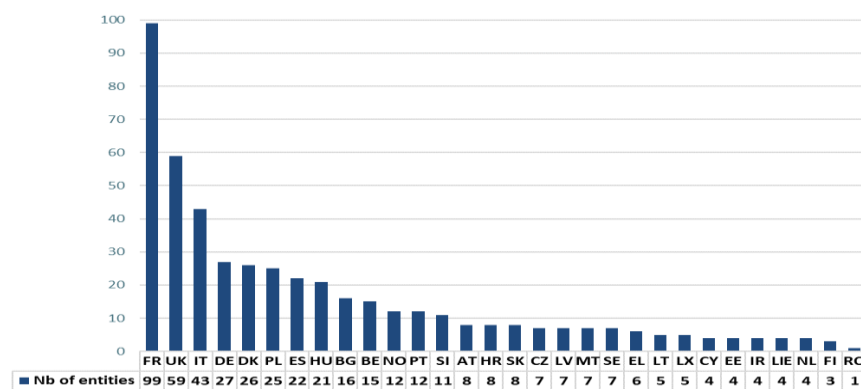


Figure 3.: Alternative dispute resolution coverage - number of notified alternative dispute resolution forums per country/ ADR coverage – number of notified ADR entities per country

Source: Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes

Dispute type	Number of complaints (Domestic)			Number of complaints (Cross-border)			Totals
	Accepted	Rejected	Received	Accepted	Rejected	Received	
INCORRECT AMOUNT CHARGED							
Consumer Goods							
ITEM/SERVICE NOT AS DESCRIBED							
Consumer Goods		3	3		5	5	8
General Consumer Services		1	1				1
Electronic / Communication		4	4		3	3	7
Travel / Accommodation							
ITEM/SERVICE NOT RECEIVED							
Consumer Goods							
Travel / Accommodation		2	2		17	17	19
OTHER							
Consumer Goods							
Timeshare					1	1	1
Domain Names	5	4	9	3	2	5	14
FRAUDULENT TRANSACTION							
Consumer Goods							
General Consumer Services							
Leisure Services							
TOTALS	5	14	19	3	28	31	50

Figure 3: Types of disputes (2020)

Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1569491348132&uri=COM%3A2019%3A425%3AFINNetNeutrals> - CCPC-

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Conclusion

This article can draw the conclusion that according to the statistics of the year 2021, a decrease in the number of consumer protection cases initiated before the Conciliation Boards can be seen in Hungary. In a European context, based on the statistics on the availability of the online consumer protection dispute resolution tool system, Hungarians can assert their consumer protection cases in 21 forums - we belong to the forefront. Among the types of validated consumer protection cases, the data of the individual forum shows the most common types of cases in the travel and accommodation area, while the European Commission's report highlights that on the ODR platform - consumer complaints by top retail sectors: airlines, clothing and footwear, ICT goods.

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