

Possibilities for Modernization of Conciliation Board Procedures in the Countries of Central and Eastern Europe - Online Dispute Resolution and Electronic Communication

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Abstract

Conciliation bodies are the main European forums for alternative dispute resolution for consumer disputes, providing an institutionalized opportunity to remedy consumer infringement cases quickly, cheaply and efficiently. The institution has excellent dispute resolution efficiency not only in Hungary, but also at the international level, which greatly contributes to the enforcement of the consumer protection legislation of the countries concerned. The scientific examination of the work of the bodies and the legislation related to them, the number of domestic and international scientific works resulting from them are modest, while the efficient operation of the bodies depends not only on practical and legal factors, but also on the theoretical basis. Although legislative reforms in this area have led to a number of innovations and modernizations, they have left untouched a number of theoretical and practical issues that also pose significant problems in law enforcement, such as the satisfactory settlement of cross-border disputes, electronic communication and even communication, that it is possible to involve artificial intelligence, other software solutions in decision-making or online dispute resolution within the framework of the procedure. Applied research on the operation of conciliation bodies covered bodies and bodies in Hungary, Romania and Slovakia. Due to the large number of consumer legal relations, the significance of these research results in the national economy cannot be considered negligible either. The research supported by the ÚNKP-20-3 New National Excellence Program of the Ministry for Innovation and Technology from the source of the National Research, Development and Innovation Fund.

Keywords: consumer disputes, alternative dispute resolution, conciliation bodies, ODR, artificial intelligence.

Introduction

How can we capture the importance of conciliation bodies in consumer disputes? These are bodies which, in an ad hoc manner or in an institutionalized form, serve the purpose of settling disputes arising out of small, pity consumer disputes outside the judicial and administrative enforcement proceedings by agreement between the parties (Smith, 1977, pp. 205-207).

Accordingly, given their cross-border consumer disputes and regulatory difficulties (Hill, 2008, pp. 43-68), their activities are extremely important, non-negligible and economically incidental to the overall consumer protection system (Bates, 2003), especially in times such as the current coronavirus epidemic and the associated epidemiological situation (COVID-19-Consumer Law Research Group, 2020).

The operation of these bodies (Plevri, 2020, pp. 367-392), the applied alternative dispute resolution methods and the economic, business scientific analysis of the bodies (Jespersen, 2018, pp. 21-32; Kirillova et. al., 2016) have been of great interest in scientific forums and publications for many years. Related to this, the issues of electronization, digitization, and automation in organizations have already been addressed in international scientific research, but a number of issues remain that are undeservedly overlooked by scientific attention and fundamentally define the practices of these bodies. This is especially true if we consider the institutionalized bodies of the countries of Central and Eastern Europe, which carry out their activities with a certain territorial competence, according to state regulation (Hodges et. al., 2012, p. 167).

In these countries, especially in Hungary, state regulation basically creates the conditions for their operation, but in many cases dictates rigid operating conditions and legal requirements for conciliation bodies, which hinder or even make it impossible to use modern infocommunication technologies and tools in their proceedings. However, the untapped use of these techniques and modern infocommunication opportunities can mean a loss of efficiency of their procedures, a lack of response to legal cases in the modern environment, and problems with cooperation with the European Union or other online dispute resolution platforms.

In this context, this article seeks to examine the processes of state-established, institutionalized conciliation bodies and procedures, and the possibilities for applying the modern solutions mentioned in the title, to highlight areas for improvement and to identify risks and obstacles. To this end, it examines the role of electronic communication in corporate dispute resolution processes, the compatibility of traditional procedures with online dispute resolution solutions in the European Union, and, finally, the applicability of algorithmic decision-making solutions in these procedures. The article essentially seeks to answer the legal and technical requirements that must be met in order for them to be applicable in institutionalized conciliation panel proceedings. The research is based on the hypothesis that these conditions are not yet fully available in the studied systems today. Applied research on the operation of conciliation bodies covered bodies and bodies in Hungary, Romania and Slovakia.

Electronic communication - one step forward, two backwards?

Given the mass of consumer relations and contracts (Marques, 2017, pp. 211-220), the Internet, which created the possibility of electronic communication, and its appearance in the world, soon developed the possibilities of electronic communication for settling disputes related to consumer relations. This applies primarily to contracts concluded between the consumer and the business between distant parties (Dumitru, & Tomescu, 2020, pp. 226-230). These online dispute resolution options - not only instant messaging with e-mail exchange - have led to a major improvement in the enforceability of consumer rights (Scott, 2019), as online consumer transactions typically involve cross-border contracting (Stewart &

Matthews, 2001, p. 1111). In the case of these transactions, it is characteristic that the value of the consumer product or service in the event of a fault is disproportionate to the elimination of the infringement and the costs of enforcing consumer rights on the consumer's side (Brownsword, 2017, pp. 165-204). That is why a lot of attention has been paid to the possibility of so-called *direct dispute resolution*, ie. to the consumer to look for the trader instead of official or court enforcement, and in this process all factors should work in the direction of reaching an agreement (Magoń, 2017, pp. 91-106), according to Distance Selling Directive (97/7/EC) and Directive on Consumer Rights (2011/83/EU) requirements.

On the other hand, account must be taken of the fact that, typically for Central and Eastern European countries, the procedure of traditional, institutionalized conciliation bodies has remained a conservative process in many respects similar to official, administrative consumer protection procedures (Malik, 2016, pp. 103-110). An excellent example of this is the Act CLV of 1997, which regulates the subject in relation to Hungary (Fejős, 2018, pp. 116-120). The mentioned Act on Consumer Protection and related implementing regulations and ministerial instructions, which in many respects regulate the communication between the conciliation body and the complaining consumer or between the consumer and the trader during the proceedings. All this, of course, also helped to settle the disputes in some respects, as clarified communication conditions are one of the most important preconditions for mediation and conciliation processes. However, it should also be noted that for several countries, these rules were designed for traditional procedures with the personal appearance of the parties. An important element in these proceedings is the joint personal hearing, which is the most intensive stage of conciliation in the proceedings. This is difficult or impossible at all to resolve cross-border disputes, disputes arising from online consumer transactions, because the consumer and the trader are located or operating in different countries. Thus, they cannot be expected to incur costs in excess of the value of the product or service due to the claim.

The situation, which is already regular and difficult to resolve due to established procedural rules, has been exacerbated by the emergence and spread of the coronavirus epidemic in Europe. The parties to the dispute were no longer able to participate personally in individual conciliation proceedings not only because they had originally resided or operated in other countries, but also because the role of social distance had increased in order to prevent the epidemic from spreading further (Riefa, 2020, pp. 451-461). Institutional conciliation bodies, which would have waited for the parties to a personal hearing, have no choice but to discontinue these hearings and switch to written procedures. This in itself would not have resulted in a deterioration in the effectiveness of their activities. However, for most of the conciliation bodies examined, there was a legal requirement to contact the parties by post during the written procedure. Strictly speaking, in the realities of the field, this would have meant that the parties and the bodies would have had to wait weeks for each other's response and counter-response to the other party's position. This would obviously have made effective conciliation impossible due to the procedural deadlines, which were also fixed and otherwise short. Examining the case law of the conciliation bodies, it was found that instead of the above solution, they switched to e-mail and electronic administrative notification systems for communication with the parties. This clearly violated the legal requirements applicable to them, but they remained fit to conduct an effective procedure and achieve conciliation even in the face of a critical epidemiological situation. On the other hand, this may also result in the near future that one or the other party in a civil court may even effectively challenge the

validity of the decisions and agreements reached by the bodies. This may be the case if the party succeeds in proving that the case has been adversely affected by the failure to comply with the notification rules and that damage has ultimately resulted.

Legitimately raised as a matter for the parties and the conciliation boards not have been more appropriate parallel ordering of the written proceedings to temporarily repeal or amend the provisions of the notification by the legislature? And looking ahead - it would not be important to take steps to allow for rapid, electronic communication between the parties in the future if, for any reason, a face-to-face meeting between them cannot be established? The lack of this calls into question in many respects the real effectiveness of the procedure in terms of the effectiveness of conciliation between the parties. Another aspect that may be of interest may be the emergence of the above practice: for decades, there has been a serious scientific debate among some authors in the literature about how to reach a more effective, faster agreement between the parties in dispute, either in writing or at a hearing (Agustin et al., 2018, pp. 179-196). Professional opinions differ, but based on the author's observations in his own conciliation proceedings and the case law of the conciliation bodies examined, it appears that although the settlement rate did not fall during the epidemic period, it was difficult to clarify became time-consuming, which made it difficult to carry out the procedures successfully.

The relationship between traditional conciliation board procedures and EU online dispute resolution system

In the light of recent experience, another very topical issue has arisen in relation to the relationship between the procedures of the institutionalized conciliation bodies and the online dispute resolution platform operated by the European Commission. The Commission operates this particular, OVR platform in accordance with Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes. It is important to note that in cases initiated on the online platform, conciliation bodies are an important forum for reaching an agreement between the parties, which can act on the disputed consumer transaction at the discretion of the parties. The two procedures (the traditional conciliation body procedure and procedure via the online platform) should seem to work best together under the rules of the Regulation. However, based on practical experience, a number of problematic issues (van Gelder, 2019, pp. 219-226) have emerged in the recent period, which have been further exacerbated by the phenomenon of the coronavirus epidemic due to the social distance, the breakthrough of ODR solutions.

Let's take a closer look at these problems.

Among the first: in some countries, especially Hungary and Romania (Chereji & Pop, 2014, pp. 185-204), the consumer protection legislation does not necessarily make it clear that the use of the ODR interface is mandatory or optional for the parties in the case of online consumer contracts or cross-border disputes. Examining the Hungarian case law, it can be stated in this issue that in such cases some bodies terminate or do not initiate the procedure and direct the applicant consumer to the online platform, while other bodies also conduct their proceedings in these cases. Through the online interface, the consumer can finally get a joint decision with a business to have their dispute resolved by a traditional conciliation body.

In the issues of the case on the online dispute resolution portal, the question of whether the company should appear at the personal hearing could also have become problematic. In the case of the legislation of some of the States (especially Slovakia and Hungary) examined, this

could not be established and, in the end, the situation could only be resolved on the basis of Article 10 of the Regulation. Under Article 10 (b) of the Regulation, an undertaking is required to appear only if "(b) if the rules of procedure of the [dispute settlement body] so provide and the parties agree". Since, pursuant to Section 29 (11) of the Hungarian Act, the undertaking removes from the cooperation obligations the provision of the participation of the person authorized to enter into the settlement in this procedure, therefore the Hungarian conciliation proceedings did not oblige the undertaking to provide it in online dispute resolution. Nevertheless, it should be noted that Member States' regulations may even require a personal appearance, which, in terms of its final meaning, may run counter to the original purpose of the Regulation and the benefits of the online procedure.

The question also arises in cases initiated directly on the online dispute resolution portal that conciliation bodies must conduct a written procedure, as the parties are not obliged to appear in person? Although one requirement would follow from the other, in several of the conciliation bodies examined, a traditional case was initiated instead of a written procedure to deal with cases from the platform, which could lead to incorrect application of the law.

Examining the scope of each Member State's legislation, is it also vague to regulate how the conciliation body is to communicate with the parties in the context of online dispute resolution? It does not matter that the parties and the bodies may communicate during the proceedings only and exclusively on the interface or may lawfully communicate outside it if there is a need to do so. And related to this: how should the decisions and orders in the proceedings be communicated to the parties - is it possible on the interface or on their traditional contact details? And if it is only possible to make these notifications on the interface, how do the rules and presumptions related to delivery change? These issues are usually not subject to requirements in either the Member States' rules or the Regulation, so in our view they should be dealt with in accordance with the Conciliation Body's own rules, which should be extended to the online platform.

In connection with the online procedure, due to the nature of legal transactions, language issues also arise legally. In which language should the procedure or conciliation be conducted between a consumer or business domiciled in a different Member State? The Decree only stipulates that in one of the official languages of the Union - however, in Hungary, for example, the language of conciliation proceedings is, as a general rule, Hungarian (Section 20 (6) of Act CLV of 1997). Can the Parties agree to choose another language? If they do not agree, but the company has its registered office or establishment in a different Member State, how should the information and decisions related to the procedure be communicated to it? What should be done if the conciliation body does not have a suitable linguistically competent person in relation to this agreement?

Based on the Regulation and the information materials on the online interface, in this case the Parties may communicate in the official language of their country and the European Commission is obliged to provide translation services. This is to enable all parties, including the Board, to understand all parts of the procedure and to communicate their views and decisions in their own language.

Summary

Conciliation bodies in the European Union and Central and Eastern Europe are unquestionably important parts and forums of the consumer protection system of a given Member State. These

bodies provide free, fast and efficient procedures for consumer disputes that have become a dispute, which can provide an appropriate solution for both the consumer and the business in the final settlement of their dispute. However, how institutionalized, permanent conciliation bodies can adapt to change will become a key issue in this priority. It is also crucial how they can deal with the characteristics of e-consumer transactions, which are becoming massive in the 21st century, and how they can put their own operations in a modern framework. The coronavirus epidemic, and with it the outstanding increase in the number of electronic purchases and the resulting consumer complaints, have highlighted in recent times the critical points at which almost immediate changes in regulation and practice are needed to maintain effective and legitimate corporate decision-making.

In this case, too, differences in the application of the law between and within states can increase the distrust of market participants, divert them from these alternative dispute resolution solutions and turn them back to the traditional means of redress. This should be avoided at all costs, as they could involve significant costs and difficulties for both the consumer and the business in the context of a possible dispute. This, in turn, could mean harmonization expectations and obligations for Member States' legislators so that the European single market can truly function as a common market - not only in terms of the free movement of goods and services, but also in terms of enforceability of legal claims.

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