ALTERNATIVE DISPUTE RESOLUTION IN HEALTHCARE SECTOR IN HUNGARY: THE ROLE OF CONCILIATION BOARDS

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ABSTRACT:*The aim of this study is to examine alternative dispute resolution methods for conflicts and damages arising from healthcare services, with particular emphasis on the procedures of conciliation boards. While the primary function of conciliation boards is to handle consumer disputes out of court, their procedures may also be applicable to certain healthcare-related conflicts. The paper outlines the specific conditions that allow for the application of this procedure and highlights recent legislative developments that have improved the efficiency of conciliation board proceedings. These developments may also serve as a model for the reform and improvement of the healthcare mediation procedure as well.*

KEYWORDS: *alternative dispute resolution; conciliation board; healthcare mediation; arbitration; conciliation; consumer protection; healthcare services*
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1. INTRODUCTION

Conflicts and adverse events are an inherent part of all areas of life, and this remains true even in the context of using healthcare services. Therefore it is essential to have mechanisms that ensure the resolution of conflicts, the protection and enforcement of legally recognized rights, and the compensation for any harm incurred. The classical means of enforcing rights is through litigation, however, there are other methods for resolving legal disputes, collectively referred to as alternative dispute resolution (ADR) mechanisms. (Dézsi, 2009, p. 1.) This study focuses on these avenues of legal protection.

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First, we aim to explain why alternative dispute resolution mechanisms are advantageous and thus important. Next, we examine how the system of legal remedies is currently structured in Hungary for resolving conflicts related to healthcare services, and what alternative options are available to patients besides the traditional litigation process. This is followed by a focus on two main avenues: the healthcare mediation procedure and the procedure of the conciliation board.

The legislator has established the framework for a mediation procedure specialized in healthcare. However, the application if it has regrettably not become widespread, and a reform of the procedural framework appears increasingly urgent. Although to a much more limited extent, in certain cases patients may also turn to consumer protection conciliation boards. The study focuses on the current role of consumer protection conciliation boards in the field of healthcare services, as well as the potential future applications of this mechanism—including the possible incorporation of certain procedural elements into the regulatory framework of healthcare mediation. Conciliation boards have become a widely used and popular method for resolving consumer disputes, so their procedure may rightly serve as a model for the out-of-court resolution of legal conflicts related to healthcare services as well.

2. THE SYSTEM OF ALTERNATIVE DISPUTE RESOLUTIONS FOR RESOLVING CONFLICTS RELATED TO HEALTHCARE SERVICES

Two fundamental models have emerged for compensating harm arising from the use of healthcare services. In both models, alternative legal remedies play a role, albeit to differing extents: one model relies entirely on such mechanisms, while in the other they appear in a complementary manner. The majority of countries operate under the classical litigation-based system, characterized by the application of tort law provisions of their civil codes to compensate for harm arising from healthcare services, and the proceedings are taking place before the courts. Complementing this, in jurisdictions following the traditional model, there also exist alternative dispute resolution mechanisms that provide legal protection outside the court system. The other model, applied by the exemplar country New Zealand, as well as in the Scandinavian countries and, to a limited extent, in France, is the so-called no-fault compensation system (also known as the administrative system). In this model, separate legislation governs the compensation process, the procedure takes place before a specialized administrative body established specifically for this purpose, and compensation is provided through a dedicated accident compensation scheme. (Zákány, 2015, pp. 16-17.)

In Hungary, the classical litigation-based compensation system is in operation. If a patient suffers damage or a violation of personal rights as a result of unlawful conduct by a healthcare provider, they may claim compensation or non-pecuniary damages through civil proceedings. Civil proceedings must be initiated by a statement of claim, and legal representation is usually required during the process.

In addition to the traditional, litigation-based model of legal enforcement, a range of alternative dispute resolution options are also available. These can be classified into two

categories. On the one hand, there are the classical forms of alternative dispute resolution, namely healthcare mediation and the conciliation board procedure, which constitutes the focus of this study. With these, the compensation is available too, so these are alternative possibilities for compensation. Furthermore, there are alternative possibilities of handling conflicts that provide ways for complaints and investigations. Typically, these do not lead to compensation for the complainant, the aim is to discover the facts, the cause of the problem, and to conclude the lesson and to avoid the similar cases in the future. This category includes the representative of rights of patients, various complaint procedures, such as complaint towards the healthcare institution and the conservator, complaint to the healthcare administrative agency as well as complaints lodged with the Commissioner for Fundamental Rights. The study focuses on the alternative possibilities for compensation with particular emphasis on the conciliation board procedure.

3. THE ROLE OF ALTERNATIVE DISPUTE RESOLUTIONS IN ADDRESSING CONFLICTS RELATED TO HEALTHCARE SERVICES

Before delving into the examination of specific alternative dispute resolution methods, it is essential to highlight the question of what is the significance of alternative legal remedies This question can be most accurately addressed by comparing the classical and the alternative remedies along factors that are particularly important for those seeking legal recourse.

One of the key factors to consider is the temporal aspect. Although the current Hungarian Code of Civil Procedure explicitly names the principle of concentration of actions[1] at the level of fundamental principles, litigation proceedings remain significantly more time-consuming than alternative dispute resolutions. (Szépvölgyi, 2019, p. 116)

Another crucial aspect to consider is the issue of costs. Civil litigation proceedings entail substantial expenses compared to alternative legal remedies, which may be accessible at a lower cost or even free of charge for the parties involved. Furthermore, the so-called emotional costs should be considered, referring to the emotionally burdensome effects of litigation. (Tótth-Szamosi, Szabóné Bánfalvi, 2013, p. 12) Although not directly related to the legal process, the phenomenon of defensive medicine stands out in the terms of costs. This refers to situations where healthcare providers order unnecessary tests to substantiate their adherence to professional standards in case of potential litigation. Beyond the financial burden it imposes on the healthcare system, this practice also affects patients.

It is important to highlight that litigation typically represents a classic 'win-lose' conflict resolution strategy. The adversarial nature of the process inherently positions the parties against each other, designating them as plaintiff and defendant—opposing sides in the dispute. The court's decision customarily favors one party, rendering them the prevailing

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party, while the other loses the case. (Sasfy, 2018, p. 47.) This often intensifies the antagonism between the parties rather than resolving the conflict, despite the fact that cooperation between them remains essential due to the healthcare services. Therefore, it is important to maintain a good relationship between the parties. In contrast, alternative legal remedies enable the parties to reach a mutually beneficial resolution, thereby strengthening their relationship.

The question can also be approached from the perspective of what injured patients typically seek to achieve - what are their primary concerns. According to research findings, patients place significant importance on understanding the circumstances surrounding the incident—what occurred, how, and why—as well as identifying who is responsible for the events. (Lester, Smith, 1993, pp. 270-271.) Naturally, financial compensation is also of significant importance to them. Furthermore, many patients express a desire, following an adverse event, to ensure that similar incidents do not occur to others, aiming to prevent comparable events in the future. (Haiman, 2009, p. 13.) It can be concluded that the aforementioned objectives can be achieved through alternative dispute resolution methods, and in certain cases, even more effectively than through civil litigation, where the focus is solely on the legal aspects of the case. (Glavanits, Wellman, 2020, p. 15) Frequently, litigation is determined by evidentiary issues rather than focusing on the substantive problem at hand.

Effective management of conflicts and adverse events arising from the use of healthcare services necessitates a range of legal protection mechanisms operating at various levels. It is evident that conflicts arising from keeping a patient waiting necessitate a different approach compared to incidents involving severe health deterioration resulting from healthcare services. While the availability of traditional litigation remains indispensable within the system, alternative dispute resolution methods also hold significant legitimacy. A substantial portion of cases can be addressed more effectively through these avenues, if they function properly.

4. THE ROLE OF THE CONCILIATION BOARD WITHIN THE SYSTEM OF ALTERNATIVE LEGAL REMEDIES

Since 1999, consumers in Hungary have had the opportunity to resolve disputes with businesses through the procedure of the conciliation board, which offers an out-of-court alternative to litigation. The establishment of them in Hungary was inspired by foreign models, and the requirements imposed by European Union legal harmonization aimed to create a cheap, fast, and effective out-of-court method for resolving consumer disputes. (Kupecki, 2023, p. 92) According to professional reports, the popularity of conciliation boards has been increasing year by year. (Bihari, 2017, p. 83) It has become a highly effective and popular means of enforcing consumer rights, as it is a swift, cost-efficient procedure based on negotiation and aimed at reaching a settlement. Moreover, even if such a settlement is not achieved, the conciliation board renders a decision that, under appropriate conditions, is legally binding.

In this way, conciliation serves as a transitional model between two other forms of alternative dispute resolution: mediation and arbitration. In arbitration, an arbitrator chosen by the parties renders a final and legally binding decision on the dispute presented. As the parties fully relinquish their decision-making authority and transfer it to the arbitrator, this method cannot be classified among conciliatory procedures; rather, it closely resembles judicial proceedings. (Nádházy, 2005, p. 51) However, the arbitrator is not a professional judge, they possess significant discretionary authority and are obligated to resolve the dispute between the parties while upholding the principles of neutrality and impartiality.

In contrast, mediation is a collaborative and peaceful form of conflict resolution, wherein an impartial individual, the mediator, facilitates the parties in reaching an agreement. The mediator's role is to manage the problem-solving process, thus, they do not judge, evaluate, or decide the legal dispute between the parties. The mediator's role is to bridge the parties' positions and improve their relationship. (Turcsán, 2021, p. 162) In conciliation, the primary objective is to facilitate peaceful communication and reach a settlement between the parties, however, if this proves unsuccessful, the conciliation board is authorized to render a decision in the legal dispute. (Decastello, 2007, p. 151.) Recent legislative amendments have expanded the range of cases in which the decisions of the conciliation board are legally binding, thereby enhancing the efficiency of the procedure. Conciliation boards are professionally independent bodies operated by the county (or capital) chambers of commerce and industry.[2] Following the legislative changes in 2024, eight conciliation boards operate now in Hungary, each with regional jurisdiction. These boards are composed of a president, a vice-president, and members. Each conciliation board comprises at least 12 members, whose qualification requirements, as well as grounds for exclusion and incompatibility, are defined by Act CLV of 1997 on Consumer Protection (hereinafter: Fgytv.).[3] Members are appointed for four years and perform their duties for remuneration. However, unlike mediation procedures, these costs are not borne by the parties involved, the conciliation board's procedure is entirely free of charge for the consumer.

5. THE COMPETENCE OF THE CONCILIATION BOARD IN DISPUTES RELATED TO HEALTHCARE SERVICES

The competence of the conciliation board shall cover the settlement of consumer disputes out of court. In order to determine under what circumstances one can turn to the conciliation board with grievances arising from healthcare services, it is necessary to clarify some basic concepts. This includes clarifying the concept of a consumer dispute. A consumer dispute concerns, on the one hand, contentious matters related to the conclusion or performance of a sales or service contract, and, in the absence of a contract, disputes

[2] Act CLV of 1997 18. § (2)
[3] Act CLV of 1997 22-26. §

connected to the quality or safety of the product, the application of product liability regulations, or the quality of the service.[4]

A crucial element of a consumer dispute is the determination of its parties in accordance with the legislation. One of the parties is the consumer mean any natural person, civil society organization, ecclesiastical legal entity, condominium association, housing cooperative who is acting for purposes of purchasing, ordering, receiving and using goods or services which are outside his trade, business or profession, or who is the target of any representation or commercial communication directly connected with a product.[5] In conflicts related to healthcare services, according to established conciliation board practice, the patient may be regarded as a consumer only if they have paid directly for the healthcare service. This means, for example, if they used private healthcare services, received extra services at a public healthcare provider for an additional fee,[6] obtained dental care not covered by health insurance, or purchased health maintenance or therapeutic products.[7] If the service is financed by the National Health Insurance Fund, a consumer contract does not arise according to the practice of the conciliation boards. The other party involved in a consumer dispute is the business, a professional entity—either a legal or natural person—who acts within their professional or commercial scope when entering into a contract with the consumer. (Hajnal, 2017, p. 69)

The annual reports of the conciliation boards provide information on the types and number of cases in which patients turn to the boards regarding the use of healthcare products and services in practice. There are proceedings related to health maintenance products and medical devices, in 2024 there were 45 cases and in 2023, 46 cases nationwide before the conciliation boards, accounting for 0.79% of all product-related conciliation board cases in both years. Secondly, there are proceedings related to healthcare services. In 2024, there were 12 cases nationwide, and in 2023, 28 cases in which patients turned to the conciliation boards. These accounted for 0.23% of all service-related conciliation board cases in 2024 and 0.5% in 2023. The statistics reveal that only a minimal percentage of the cases before the conciliation boards involve the healthcare sector. (Annual Report 2023, 2024) Examining it from the other perspective, it can also be concluded that the vast majority of legal disputes related to healthcare services are not resolved before the conciliation boards. This is closely related to the fact that the conciliation boards have jurisdiction over disputes concerning healthcare services only in a limited scope, since a patient is considered a consumer and may initiate proceedings only if they have paid directly for the healthcare product or service. Thus, public healthcare services are excluded from the scope. Another reason for this phenomenon is that the conciliation board procedure is designed to resolve consumer disputes and serves as a widely used mechanism for that purpose. Although the current healthcare legislation has

[4] Act CLV of 1997 2. § 14.
[5] Act CLV of 1997 2. § 10.
[6] For instance, a single-bed hospital room or a special diet not medically justified by the patient's health condition.
[7] In accordance with the annual professional report of the conciliation boards. Available on the following website: https://bekeltetes.hu/tartalom/40/menu/56 (downloaded: 2025. 05. 09.)

fundamentally transformed the doctor-patient relationship and, through its extensive catalogue of patient rights, has contributed to greater patient awareness—leading to an increasingly consumer-oriented approach in relation to healthcare services—conflicts arising in the context of healthcare provision still cannot be equated with the typical disputes stemming from consumer contracts.

The question may arise: why do we still need to deal with a dispute resolution method that plays a marginal role in the field of healthcare. The answer will be explored in the following section, where we examine fundamental procedural rules of conciliation board dispute resolution that may be useful in improving the effectiveness of mediation procedures in the field of healthcare. Currently, in Hungary, there is one classical alternative dispute resolution procedure specialized in healthcare-related legal disputes: the healthcare mediation procedure, which is governed by Act CXVI of 2000. It is a positive development that such a procedure exists, however, the data unfortunately indicate that, despite its specialization in healthcare, it is used in only a very limited number of cases. (Decastello, 2010, pp. 117-118) In our view, one reason for this is that several aspects of the procedural framework require revision for which the recently reformed rules of the conciliation board procedure could serve as an excellent source of inspiration. (Zákány, 2015, Medicina, pp. 146-147) Let us not forget that the conciliation board procedure is a well-functioning, popular, and widely utilized dispute resolution method in the field of consumer protection, which certainly holds valuable lessons for resolving legal disputes related to healthcare services as well. Moreover, as previously mentioned, alternative legal ways possess numerous strengths alongside the classic path, affirming their legitimacy in resolving disputes.

6. THE MAIN STAGES OF THE CONCILIATION BOARD PROCEDURE

The following section provides an overview of the main stages of the conciliation board procedure, drawing parallels with the rules governing healthcare mediation. This comparison will help to identify those procedural elements that may serve as advantageous models for enhancing the effectiveness of the healthcare mediation process. The procedure before the conciliation board may be initiated upon the consumer's written request; thus, unlike in healthcare mediation, there is no possibility for the other party—the healthcare provider—to initiate the proceedings.[8] However, when examining legal disputes related to healthcare services, it may be justified to grant healthcare institutions the opportunity to initiate peaceful dispute resolution in response to a problematic case. A particularly commendable feature of the conciliation board procedure is the mandatory attempt at prior consultation with the business entity concerned before initiating the procedure. The more opportunities the parties have for dialogue and negotiation, the greater the likelihood of resolving the conflict amicably.

Another key difference regarding the initiation of proceedings—compared to mediation—is that mediation may only proceed if the other party also consents to it, meaning that both parties must agree to this form of dispute resolution. In contrast, in the

[8] Act CLV of 1997 28. § (1)

case of conciliation board proceedings, if the consumer initiates the process, the board proceeds with the case regardless of the other party's consent. Cooperation from the opposing party is required, but not their agreement to the procedure itself. In this respect, the rules governing conciliation board dispute resolution are more advantageous, as mediation requires mutual consent for the procedure to go forward—a condition that often proves to be a stumbling block. Indeed, statistical data indicate that the lack of such consensus has frequently led to the failure of out-of-court dispute resolution. (Decastello, 2010, p. 119)

Following the examination of jurisdiction and competence of the board, as well as remedying the deficiences if it is necessary, the chair of the conciliation board - provided there is no reason to terminate the procedure without a hearing - schedules the hearing and notifies the parties accordingly. Firstly, the chair or the conciliation board has to examine the jurisdiction and competence of the board, and – if it is necessary – he orders the remedying of deficiences. After that, if there is no reason to terminate the procedure without a hearing, he schedules the hearing and notifies the parties accordingly.

In the notification sent to the business, the chair of the conciliation board also obliges the party to file a written statement specifying the facts and evidence supporting their claims and attaching relevant documents. (Fazekas, 2022, p. 198.) It is important to note that recent legislative amendments, adapting to contemporary needs and circumstances, have established as a general rule that hearings are conducted online, thereby making the procedure more flexible and cost-effective.[9]

Hearings of the medical mediation process are held in person, however, offering an online option would certainly be worth considering. As a general rule, the conciliation board member proceeds individually and must hold a university degree in law. However, if the complexity of the legal dispute justifies it, a three-member council may be appointed by decision of the board's chair. In contrast, healthcare mediation is always conducted by a council, which, in our view, is necessary in the context of legal disputes related to healthcare services.

The primary aim of the conciliation board procedure is to facilitate a settlement between the consumer and the business. If such an agreement is reached and it complies with legal requirements, the conciliation board approves it by way of a formal decision. If the parties fail to reach a settlement, the conciliation procedure still results in a decision, which is issued by the acting member or panel. This is a particularly advantageous feature of the conciliation board procedure compared to the healthcare mediation process, in which the parties do not reach an agreement, the procedure ends without results.

The conciliation board will reject the consumer's claim in its decision if it is unsubstantiated,[10] however, if the claim is substantiated, the board may issue a binding decision or make a recommendation. Whether the decision is binding or recommendation, depends on whether any of the conditions required for issuing a binding decision are met. A favorable development in the legal framework is that, as of January 1 2024, the range of cases in which the decision of the conciliation board carries legal binding force has been

[9] However, according to the Consumer Protection Act, the arbitration boards shall provide the possibility of personal interview for consumers upon request once a week as appropriate in cities with county rights situated in their area of jurisdiction.

[10] Act CLV of 1997 32/A. §

expanded. The decision becomes binding if the business entity makes a legal statement acknowledging the decision of the conciliation board as binding upon itself. This may be done in advance through a general declaration of submission,[11] in response to the notification of the initiation of the procedure, or at any point during the proceedings up until the decision is rendered. The decision of the conciliation board will also be binding even in the absence of a declaration of submission by the business entity if the consumer's claim does not exceed 200.000 HUF the time the decision is made. This category has been newly introduced into the regulation. Apart from the aforementioned cases, the decision of the conciliation board will constitute a recommendation.[12] If the business fail to discharge the binding resolution of the panel, or the negotiated settlement approved by resolution within the prescribed time limit, the consumer may request the court to append an enforcement clause to the resolution of the board. Even in the case of a recommendation, the omission by the business entity does not remain entirely without consequences, as the conciliation board publishes the essence of the dispute and the outcome of the proceedings. (Fazekas, 2022, p. 201)

The binding resolution or recommendation of the panel may not be appealed, however annulment of the resolution by court order may be requested. Such a request may only be based on the grounds specified in the Consumers Protection Act, which may include, for instance, fundamental procedural errors, an improperly composed panel, lack of jurisdiction or competence, or the fact that the content of the decision does not comply with the applicable statutory provisions.[13] In addition, despite the decision or recommendation of the conciliation board, the consumer may still initiate court proceedings in the matter. In such cases, however, a rule deviating from the general principle applies to the allocation of litigation costs under the provisions of the Hungarian Code of Civil Procedure. If either party later brings the matter before a court after a consumer dispute has been resolved through a settlement approved by the decision of the conciliation board, the plaintiff shall bear the defendant's litigation costs.

7. CONCLUSION

Proceedings of the conciliation board have been available for resolving legal disputes related to healthcare services since May 2004. Prior to this, Section 53 of the Consumer Protection Act contained a provision that excluded healthcare services from the scope of the Act. However, this provision has since been removed, and as a result, the Act now extends to healthcare services as well, thereby including the possibility of dispute resolution before the conciliation board.

According to the data provided in the annual reports of the conciliation boards, proceedings related to healthcare services constitute only a minor percentage of their overall cases. Each year, only a few cases are brought before the boards concerning healthcare services, dental care, private medical care, or other types of human healthcare. As previously discussed, the majority of consumers turn to the boards with complaints related to health maintenance products and medical devices.

[11] Act CLV of 1997 36/C. §
[12] Act CLV of 1997 32. §
[13] Act CLV of 1997 34. §

A contributing factor to this phenomenon is the lack of information regarding this dispute resolution avenue, as patients frequently do not realize that under specific circumstances, they qualify as consumers when accessing healthcare services. Although the increase in healthcare-related compensation claims partly reflects a strengthening of consumer awareness regarding healthcare services, the consumer protection perspective cannot be regarded as widespread in this sector. Furthermore, the limited jurisdiction of conciliation boards in relation to healthcare services—specifically their exclusion of publicly funded care—has significantly constrained the broader utilization and acceptance of this alternative dispute resolution mechanism within the sector.

Despite these challenges, the importance of examining conciliation board dispute resolution is clear, as it could play a crucial role in the realm of legal disputes related to healthcare services. Firstly, these procedures offer an out-of-court mechanism for resolving disputes and, where applicable, securing financial compensation, thus embodying the full range of benefits associated with avoiding litigation. For instance, the procedure is significantly faster, as the legislation imposes strict deadlines for conducting the process. In contrast to the mediation procedure, this process guarantees a decision within a short period, which is binding in certain cases. In addition to the time factor, cost-efficiency represents a significant advantage. A further positive aspect is that the procedure is free of charge, in contrast to the costs associated with mediation. Moreover, it is essential that the primary objective of such proceedings is to resolve the dispute between the parties through negotiation, ensuring a thorough and satisfactory investigation of the issue from the consumer's perspective, and achieving a resolution acceptable to both parties. The negotiation process is guaranteed to occur on multiple occasions between the parties, as this is not only the goal of the conciliation board's procedure, but also a prerequisite for initiating the procedure, requiring the consumer to attempt to settle the dispute with the business prior to commencement. It is also important to note that, the initiation and conduct of the procedure do not require the mutual consent of the parties, if the consumer turns to the conciliation board, the business is obliged to participate in the proceedings.

Currently, two classic forms of alternative dispute resolution based on conciliation procedures are available in Hungary for resolving conflicts related to healthcare services: the proceedings of the consumer protection conciliation boards and the healthcare mediation procedure. In our view, such a single procedure would be sufficient, but fundamental changes are needed regarding its operation and procedural rules. In addition, raising public awareness, enhancing accessibility, and fostering trust in the procedure are essential objectives—both for patients and healthcare providers. In the case of healthcare mediation, healthcare-related disputes are already distinguished from the general mediation procedure through specific rules. In contrast, within the framework of conciliation board proceedings, only financial consumer disputes are currently subject to sector-specific provisions. In our view, the appropriate solution would be to adopt a healthcare-specialized mediation model as the basis, however, this would necessitate a substantial reform of its procedural framework.

In the context of reforming the procedure, it would be worth considering the incorporation of the favourable procedural rules highlighted in this study from conciliation board proceedings. Given that conciliation boards have proven effective in the field of consumer disputes and represent a widely used and popular means of enforcing rights, they

may serve as a model worth emulating. Recent legislative changes in 2024 have further increased their effectiveness and value to consumers.

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