

Alternative dispute resolution in the Slovak Republic and the Czech Republic

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Abstract

This paper aims to analyse the degree of use of consumer alternative dispute resolution (ADR) in the years 2017 – 2019 and the results of alternative dispute resolution for consumer disputes. During that period 7 ADR entities have been operating in the Slovak Republic. The integral part of the research is a comparison of this type of out-of-court settlement with alternative dispute resolution for consumer disputes in the Czech Republic. The methods used for the research include analysis, comparison, deduction and synthesis.

Key words

consumer alternative dispute resolution, ADR entity, consumer, Slovak Republic, Czech Republic

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Introduction

Alternative dispute resolution is a relatively new type of out-of-court settlement of consumer disputes. In the Slovak Republic Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (EU Directive on consumer ADR) was implemented by the Act No. 391/2015 Coll. on alternative dispute resolutions for consumer disputes (Act on Consumer ADR). In the Czech Republic the amendment of the Act No. 634/1992 Coll. on Consumer Protection was adopted.

This paper is focused on comparison of legislation of the ADR proceedings in both countries and on the comparison of decision-making process of chosen ADR entities.

1 Literature review

Out-of-court settlement of consumer disputes is a part of scientific research of R. Hučková (Hučková, 2016). H. Magurová analyses ADR proceedings in Magurová, 2016. J. Haasová deals with the topic of consumer protection in the papers from scientific conference of VŠE in Prague in 2016. M. Pospíšil in his papers from the same conference

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concludes that consumer should stay active although in contractual relationship consumer – trader, a consumer is considered to be a weaker party. (Pospíšil, 2017) Information about the adoption of a new Consumer Code in the Czech Republic and in the Slovak Republic were processed by Maslák, 2018. In this papers are used data based on annual activity reports of ADR entities in both countries.

2 Methodology

The objective of this article is to compare the alternative dispute resolution in the Slovak Republic with the out-of-court consumer dispute resolution in the Czech Republic. We tried to compare mainly decision-making process of chosen ADR entities in both countries. Firstly, we collected information about the consumer ADR on the websites of ADR entities. Annual reports of the ADR entities provide data necessary for further research. In this part of the research, we used the method of analysis, induction and deduction. Subsequently, by using the method of comparison, relevant information about the decision-making process of the Slovak ADR entities and the Czech ADR entities were compared. It is important to note that only selected ADR entities, mainly ADR authorities, were the subject of the research. Then we used method of synthesis to formulate conclusions of our research.

3 Results and discussion

In the Slovak Republic the Act on consumer ADR regulates not only requirements for the application to initiate the ADR proceedings, but also the procedure of the ADR entity, including dismissing the application, setting aside the application after the initiation of ADR proceedings and reasons for termination of the proceedings. It also covers duties of the ADR entities including publication of mandatory information on the web sites of the ADR entities and in the annual activity reports.

The EU Directive on consumer ADR was implemented by the amendment of the Act on Consumer Protection in the Czech Republic. This amendment regulates requirements for the consumer application and the procedure of the ADR entity, reasons for dismissing and termination of the ADR proceedings, and information obligations of the ADR entities towards the Ministry of Industry and Trade of the Czech Republic and towards consumers, too. More detailed rules of the proceedings are published on the websites of the Czech Trade Inspection Authority as a residual ADR entity and specialized ADR entities.

In the Slovak Republic a new Act on Consumer Protection is being prepared by the Ministry of the Economy of the Slovak Republic. A new Act should unify the Act on Consumer ADR, the Act No. 250/2007 Coll. on Consumer Protection and amendments to Act on the Slovak National Council No. 372/1990 Coll. on Offences, as amended and the Act No. 102/2004 Coll. on Consumer Protection in relation to sales of goods or provisions of services based on distance and off-premises contracts and amending certain laws, as amended. The new Act on Consumer Protection should also involve selected parts of the Act No. 40/1964 Coll. Civil Code, as amended. (najprávo.sk, 2020) If the

new Act on Consumer Protection will be adopted, the Slovak legislation on consumer protection will move closer towards the Czech legislation and to the European legislation, too (due to the fact that three directives of the Council and the European Parliament should be implemented into the Slovak legislation).

It is important to mention that the effort of unifying, but also simplifying the consumer law has been noticeable in the Czech Republic recently. According to Haasová, 2017 a new Consumer Code should be adopted in the Czech Republic. It should contain not only current legislation of the Act on Consumer Protection, but also parts from the new Civil Code. There were different views on the adoption of the new Consumer Code (deputies of the Ministry of Industry and Trade of the Czech Republic and author of the Civil Code prof. Eliáš and others) with respect to the new Civil Code in 2014. Finally, the Consumer Code was not adopted in the Czech Republic. Around the same time there was effort to pass new consumer legislation in the Slovak Republic, too. The situation with the new Consumer Code in the Slovak Republic depended on the adoption of the new Civil Code. We can conclude that the situation for adoption of a new Consumer Code in the Slovak Republic was murky. (Maslák, M., 2018) Consequently, the Ministry of Economy of the Slovak Republic prepared the proposal of the aforementioned Act on Consumer Protection.

3.1 ADR entities

Since August 2020 the following ADR authorities operate in the Slovak Republic: Regulatory Office for Network Industries and Regulatory Authority for Electronic Communication and Postal Services. Slovak Trade Inspection acts as residual ADR entity. This means that matters to which no ADR authority is competent, will be resolved by the Slovak Trade Inspection (with exception of disputes concerning the consumer financial services). Among authorized legal persons included in the list of ADR entities on their request belong Consumer Protection Society (S.O.S.) Poprad, Slovak banking association, OMBUDSPOT, Association for Protection of Consumers' Rights and Slovak Insurance Association (the Insurance Ombudsman) (MH SR, 2021). Social and Legal Advisory Services Association for All which has been included in the list of ADR entities since May 2018 requested removal from the list due to pandemic of COVID-19 and ended the activity in ADR proceedings in 2020. (mediacnecentrummagnolia.sk, 2021)

The Act on Consumer Protection in the Czech Republic states the following ADR entities: Financial Arbitrator, Czech Telecommunication Office and Energy Regulatory Office. These ADR entities are entitled to issue a binding decision which is legally enforceable. The Czech Trade Inspection Authority acts as the residual entity, too. Other ADR entities authorized by the Ministry of Industry and Trade of the Czech Republic are Association of Czech Consumers, Czech Bar Association and Office of the Ombudsman of the Czech Insurance Association. The last four entities (including the Czech Trade Inspection Authority) direct their activities towards an agreement (which should be a result of a conciliation procedure) and do not have the power to issue binding decisions or to force the parties to an agreement. (MPO.cz, 2019)

3.2 Reasons for dismissing/refusing the application

According to Section 11 of the Act on consumer ADR a consumer who is not satisfied with the method of handling the complaint determined by the trader or who has reasonable grounds to believe that his rights have been breached has the right to request a remedy. The consumer is entitled to initiate the ADR proceedings if the trader does not accept his request for remedy or if the trader stays passive and did not reply within 30 days from the date of submitting the request for remedy. The ADR proceedings start from the date of receipt of a complete application by the ADR entity. (Section 14 (1) of the Act on consumer ADR)

In the Czech Republic a complainant may apply to the Czech Trade Inspection Authority or other authorized entity within one year from the day the right that is the subject-matter of the issue, was claimed by the trader. (Section 20p of the Act on Consumer Protection)

Based on the Slovak Act on consumer ADR the respective ADR entity has either an option or an obligation to dismiss the application. According to Section 12 (6) if the application is incomplete, due to lack of essential information or necessary documents, or is incomprehensible, the consumer must remedy the deficiencies in the period, which should not be shorter than 15 days. Otherwise, if it is not possible to continue in the proceedings, the ADR entity shall dismiss the application.

Under the section 13 (2) of the Act on consumer ADR the application is also dismissed on the following grounds

- a) lack of competence of the ADR entity or when authorized legal person is not registered for this kind of dispute,
- b) defect of *litis pendenza* and the principle of *res judicata* – earlier proceedings before other ADR subject have been conducted, court proceedings or arbitration or ADR proceedings were terminated, or mediation settlement agreement concluded,
- c) an application is unfounded,
- d) an application is anonymous, or
- e) the ADR entity requests removal from the list of ADR entities.

Closely similar, section 20q of the Czech Act on Consumer Protection distinguishes five reasons for dismissing the consumer's request. They include amending essential requirements or documents by the consumer in the period of 15 days; incompetency of the ADR entity; a decision in the case was already given (*res judicata*) or a proceedings has already been initiated (*litis pendens*); clearly unfounded request and the consumer is not entitled to submit the request after one-year period from claiming his right at the seller (expiration of the one-year period for submitting a request).

Under the Slovak legislation, the last reason for refusing a request is a voluntary dismissal by the ADR entity. Other optional reasons include no communication between a trader and a consumer before the initiation of the proceedings, claims with value smaller than 20 euros, the clearly inappropriate proceedings and alternative dispute resolution proceedings that would involve disproportionate effort (for example with regard to expensive expert evaluations).

According to the Table 1 and the Table 2 we can generally observe that in the years 2017 – 2019 the number of applications dismissed by the Slovak Trade Inspection represents from 19 % to 27 % of terminated cases. By way of comparison, the Czech Trade Inspection Authority refused during the same period from 22 % to 26 % of received requests.

Among the main reasons for obligatory dismissal by the Slovak Trade Inspection belong lack of competence, unfounded application and incomplete application despite the request of the ADR authority. Other grounds (voluntary refusal of applications) are disputes with value smaller than 20 euros and no prior communication between the consumer and the trader (see the Table 2).

Similarly, the percentage of suspended or refused request (including requests withdrawn by consumer) by the Czech Telecommunication Office ranges from 24% to 27% out of received requests. According to Table 4, in years 2018 – 2019 the most frequent reasons for refusing the consumer requests by the Czech Telecommunication Office include: failure to pay administrative fee and failure to correct substantial defects of the request. Likewise, the Financial Arbitrator dismissed the most complaints because the consumer failed to provide necessary assistance despite requests and notifications from the Financial Arbitrator (compare with the Table 6).

From our point of view, it is not important whether the reason for dismissing the request is formulated as obligatory (in the Czech Republic and the Slovak Republic) or voluntary (in the Slovak Republic). We have noted that the most frequently used reasons for refusing the complaints are identical in both countries. Many of the complaints were dismissed because consumers stay passive and for instance do not complete complaint despite the request of the ADR entity (the Czech Republic and the Slovak Republic) or before submitting a complaint there was no prior communication between the trader and the consumer (the Slovak Republic). (see also Vačková, 2020) According to Po-spíšil, 2017 consumer is a weaker party, but it doesn't mean he should act careless and irresponsible.

3.3 Termination of alternative dispute resolution

Provision of the Section 20 (1) of the Act on Consumer ADR distinguishes six options of the termination of ADR proceedings in the Slovak Republic. These options are: agreement on a resolution, reasoned opinion, setting aside the proposal, death or declaration of a death of a party which is a natural person or dissolution of a party which is a legal entity without legal successor or removing the authorized legal entity from the register.

In the Czech Republic, Section 20u of the Act on Consumer Protection states the following five reasons for terminating a consumer dispute: amicable settlement approved by the parties, a unilateral statement of a consumer on the termination of the participation on the dispute notified to the CTIA or designated ADR entity; death of a party or a party declared dead or missing or dissolution of a party to the dispute without the legal successor; expiration of the 90-day period or period extended by a further 90 days and dismissing of the request according to section 20u.

In the Slovak Republic the expiry of 90 days period or period prolonged by another 30 days, is a reason to terminate the ADR dispute too (Explanatory memorandum, 2015), although it is not listed among the reasons for ending the ADR procedure.

It can be observed that ways to terminate the ADR disputes in the Slovak Republic are very similar in comparison with the Czech Republic, but not entirely identical. Slovak legislation regulates also situations when the parties do not agree on the resolution but the law was breached by the trader, by allowing the possibility to issue a reasoned opinion. The reasoned opinion is not binding and has informal character but it can be used as evidence in court proceedings. It includes also conclusion with specification of provisions of the Act on consumer ADR or other specified act and a statement of reasons with the description of the circumstances, the indication of the nature of evidence and the procedure of assessment of the evidence by ADR entity. (Explanatory memorandum, Hučková, 2016, Magurová, 2016)

Article 8 (5) of the ADR Rules issued by the Czech Trade Inspection Authority recognizes a qualified advice as a possibility of the ADR entity in the situation when the request is dismissed due to unfounded application. A qualified advice, like a reasoned opinion, is not legally binding and may differ from court or other decision.

In our opinion, the possibility of the termination the ADR proceedings by issuing a reasoned opinion is a good solution in situations when the ADR entity has no doubt that the rights of the consumer were broken, but the dispute is not resolved by amicable settlement of the parties.

By way of comparison, in years 2017 – 2019 the Slovak Trade Inspection issued from 13 to 18 reasoned opinions, representing 6 % to 9% of terminated cases. Parties to the dispute concluded from 28 to 42 agreements on the dispute (from 13 % to 22%). The Czech Trade Inspection Authority terminated the ADR procedure by agreement of the parties in 50, 3 % to 53, 5 % from received applications (see the Table 1 and the Table 2).

The number of amicable settlements and reasoned opinions issued in years 2017 – 2019 by the Slovak Trade Inspection (similarly the number of amicable settlements approved by the Czech Trade Inspection Authority) is decreasing. On the other hand the number of cases set aside by the Slovak Trade Inspection is rising slightly.

3.4 Postponing of ADR proceedings

After the initiating of the proceedings the Slovak ADR entity is entitled to postpone the application for the reasons listed in the section 19 (1) of the Act on consumer ADR. They are

- a) a defect of *litis pendenza* or a principle of *res judicata*,
- b) a consumer failed to provide assistance due to the request of the ADR entity,
- c) a statement of a consumer on the termination of the participation on the dispute,
- d) if the parties to the dispute do not agree with the way of solving the impartiality and independency of an authorized natural person,

- e) it is not clear whether the rights of the consumer have been breached by the trader according to consumer laws.

Compared to the Czech legislation “a unilateral statement of a consumer about the termination of the participation notified to ADR entity” is a reason for terminating of the ADR proceedings under the section 20u of the Act on Consumer Protection.

Between the years 2017 and 2019 the Slovak Trade Inspection postponed from 50% to 53% of terminated cases. The only two reasons for setting aside the proposals were the termination of the participation in the proceedings by a statement of a consumer and the reason that consumer’s rights have not been broken.

While in 2017 Regulatory Authority for Electronic Communication and Postal Services (RÚ) in the Slovak Republic dismissed a large majority of the cases (more than half of them based on failure to amend the application by the consumer), in years 2018 – 2019 the authority set aside from 86 % to 100% of resolved disputes (see the Table 5). But it is important to note that RÚ received in 2018 only 7 and in 2019 only 8 applications. And very similarly Regulatory Office for Network Industries in years 2017 – 2019 set aside from 67 % to 83 % of received applications (from 9 to 22 applications). (Vačková, 2020)

With regard to the out-of-court settlement in consumer disputes of the Financial arbitrator, in years 2017 – 2019 around 60% of the terminated disputes ended by amicable settlement of the parties. This means that for instance in 2018 amicable settlement was reached in 986 cases (from 1660 legally ended), 1 agreement of the parties was approved by the Financial arbitrator, 967 cases were terminated for withdrawal by the consumer (because the financial institution accepted his claim fully or partially) and in 18 cases the proceedings was terminated due to the reason that the dispute became devoid of purpose. The claims of the consumer were accepted by the financial institutions but the consumer did not withdraw the complaint (see the Table 6). (Annual report of the Financial Arbitrator, 2018, p. 16)

Most complaints before the Financial arbitrator ended by amicable settlement of the parties, on the second place are complaints terminated because the party failed to provide necessary assistance even though they have been requested repeatedly (in the years 2017-2018) and in the third place are complaints rejected by the decision of the Financial arbitrator (see the Table 6).

From our point of view, the Czech legislation regarding the termination of the ADR proceedings is much simpler than Slovak legislation mainly according to section 20 (1) c) and the section 19 (1) on postponing the application. Reasons for setting aside the application are “de facto” largely similar to the reasons for dismissing the submission. The difference is mainly in the time when it is used (before initiating of the proceedings or after it). We suggest to think about using (in our opinion) more reasonable way of decision-making process of the Czech ADR entity in the prepared unification of the Slovak legislation of consumer protection.

Tab. 1 Results of a decision-making process of the Czech Trade Inspection Authority (CTIA)

CTIA	2017	2018	2019
received submissions	3394	3582 (+5%)	3504
refused (for legal reasons)	740 (22%)	858 (24%)	908 (26%)
withdrawal of the suggestion	310	351	351
agreement of parties	1124 (53, 5%)	1109 (51, 8%)	1005 (50, 3%)
ended by expiry of 90-days period	976	1033	992
ongoing procedure	244	231	248
including extension by further 90 days	95	85	72

Source: Own analysis of data based on CTIA 2017 – 2019 Annual reports

Tab. 2 Reasons and number of applications refused by the Slovak Trade Inspection (STI)

STI	2016	2017	2018	2019
terminated cases	180	194	207	219
refused/dismissed	43 (24%)	36 (19%)	41 (20%)	59 (27%)
incompetence of the ADR entity	16	17	11	23
the application was not completed	10 (23%)	6 (17%)	5 (12%)	9 (15%)
value of the dispute < 20 euro	5	7	6	3
the application is unfounded	4	2	18	21
not informally resolving the dispute with the trader	3 (7%)	2 (6%)	-	2 (3%)

Source: Own analysis of data based on STI 2017 – 2019 Annual ADR reports, Vačková, 2020

Tab. 3 Number of agreements, number of reasoned opinions and the reasons and number of applications postponed by the Slovak Trade Inspection (STI)

	2016	2017	2018	2019
Terminated cases	180	194	207	219

	2016	2017	2018	2019
agreements on resolving the dispute	47 (26%)	42 (22%)	42 (20%)	28 (13%)
reasoned opinions	22 (12%)	18 (9%)	16 (8%)	13 (6%)
postponed cases	68 (38%)	96 (50%)	106 (51%)	116 (53%)
termination of the participation of the consumer	31	45	52	58
rights of consumer have not been broken	37	51	54	58

Source: Own analysis of data based on Annual reports ADR STI 2016 – 2019, Vačková, 2020

Tab. 4 Compulsory published information of the Czech Telecommunication Office (CTO)

CTO	2017	2018	2019
requests received	418	434	376
suspended or refused without founding a solution	113 (27%)	105 (24%)	99 (26%)
withdrawal of the request	27%	20%	23%
substantial defects of the request were not rectify	9%	24%	24%
administrative fee was not paid by the requesting party	59%	49%	39%
the request has become irrelevant (is devoid of purpose)	2%	7%	11%
the earlier request has been filled with other administrative body	-	-	2%
manifestly inadmissible request	3%	-	-

Source: Own analysis of data based on CTO Annual reports 2017 – 2019

Tab. 5 Decision-making process of the Regulatory Authority for Electronic Communications and Postal Services (RÚ)

UREKPS	2016	2017	2018	2019
received applications	18	18	7	8
dismissed together	8	15	1	-

UREKPS	2016	2017	2018	2019
not completed application	8	9	1	-
incompetence of the ADR entity	-	4	-	-
value of the dispute < 20 euro	-	2	-	-
postponed applications	8 (47%)	3 (16%)	6 (86%)	9 (100%)

Source: Own analysis of data based on Annual reports RÚ 2016 – 2019, Vačková, 2020

Tab. 6 Results of a decision-making process of the Financial arbitrator

Financial arbitrator	2017	2018	2019
complaints received	1343	1399 (4% annual growth)	1178 (17% annual growth)
decisions in legal force	1007	1660 (65% annual growth)	1944 (17% annual growth)
terminated for withdrawal	598	967	1107
agreement approved	1	1	5
terminated for the complaint became devoid of purpose	16	18	12
amicable settlement of the dispute	615 (60%)	986 (59%)	1124 (58%)
complaint rejected/dismissed	77	105	250
complaint partially or fully upheld	9/17	74/20	121/5
terminated for failure to provide assistance	195	356	222
terminated for inadmissibility	26	43	143
terminated for incompetence	63	74	79
terminated for other reasons	5	2	-
annulled	1	-	-

Source: Own analysis of data based on Annual reports on the activities of the Financial arbitrator 2017 – 2019

Conclusion

Transposition of EU Directive on consumer ADR in the Slovak Act on Consumer ADR and in the Czech Act on Consumer protection, is similar but not identical.

Financial Arbitrator, Czech Telecommunication Office and Energy Regulatory Office are acting as key ADR authorities in the Czech Republic. Their decisions are legally binding and enforceable. This paper focused on volume of cases in the period of 2017-2019. Financial Arbitrator received a high number of consumers' applications (1178 – 1399). During that period the number of applications received per year by Czech Telecommunication office ranged from 376 to 434. Energy Regulatory Office received the smallest share of applications, the number of consumer disputes ranged from 72 to 175 per year. (ERO.cz, 2020) Czech Trade Inspection Authority, having competence as the residual entity, received yearly from 3394 to 3582 submissions.

What we really appreciate in the Czech application practice is the authorization of the Czech Bar Association as ADR entity entitled for resolving disputes between a lawyer – provider of legal services and a client – consumer. It received from 44 to 23 requests in years 2017 to 2019.

Slovakia has a higher number of ADR entities authorized to resolve consumer disputes. To compare the volume of cases in Slovakia, Slovak Regulatory Authority for Electronic Communications and Postal Services received only 7 to 18 applications in the same period and Slovak Regulatory Office for Network Industries received 9 to 22 petitions. Slovak Trade Inspection acting as state authority and the residual entity dealt with the most applications, ranging from 256 to 282 per year.

Focusing on financial services industry, Slovak Insurance Association received from 75 to 133 petitions in the years 2017-2019 and the Slovak Bank Association solved in this period from 64 to 176 disputes but with declining tendency.

The similar number of the submissions as to the Regulatory Office for Network Industries and to the Regulatory Authority for Electronic Communications and Postal Services was delivered to consumer association S.O.S Poprad (from 11 to 28). Other three consumer associations dealt only with one or two applications per year. (Vačoková, 2020)

The decision-making process in both compared countries is similar, but the analysis showed also some different aspects. The most used reasons for dismissing applications are lack of essential information or necessary documents and lack of competence of ADR entity (obligatory ground for dismissal in the Slovak Republic). Slovak ADR entities also have grounds for dismissal they can use at their discretion, such as no prior communication between the trader and the consumer. It can be noticeable that the consumer in the ADR proceeding should not stay passive, but should, on the contrary, be active, similarly as the trader or provider of the services during the whole proceedings.

Possible results of ADR proceeding are also quite similar in both countries. However, the Slovak Act on Consumer ADR distinguishes the possibility of issuing a non-binding reasoned opinion when the ADR entity has no doubt that the rights of the consumer has been breached, but no agreement has been reached by the parties.

Unlike the Czech legislation, the Slovak Act on Consumer ADR provides for setting aside the proceedings after its initiation. Some reasons for setting aside the application are similar like the reasons for dismissal (f. e. defect of *litis pendenza* or principle of *res iudicata*, not providing assistance by the consumer etc.). The most used reasons for postponing the application are: no clear view on whether the rights of the consumer have been breached by the trader and consumer statement to terminate his participation

on the dispute notified to ADR entity. The last one is also a reason for termination of the ADR proceeding according to Czech Act on Consumer Protection. From our point of view, the planned adoption of a new Slovak Act on Consumer Protection represents a very good opportunity to simplify the ADR proceedings, make it more efficient and to move closer towards Czech legislation.

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