

Collective Consumer Reddress Mechanizms in Hungary

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Definitions of Collective Redress

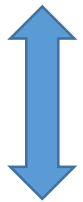
- **In general**, it is a procedure enabling groups of individuals to act collectively to seek the cessation of an illegal practice and/or to seek redress measures, including compensation, for the harm collectively suffered.
- **EU Directive on Representative Actions (RAD)** (adopted in December 2020, full application 25 June 2023): it is a procedural mechanism for representative actions for injunctive measures and for redress measures in order to protect the collective interests of consumers.
- **Different names are given to it in various countries.**
 - in Hungary public interest action, actio popularis, representative actions.
- **Objective of Collective Redress system - Pros & Cons**
 - The collective redress system ensures access to justice for consumers in a cost efficient way.
 - It reduces the burden on the courts, increases the efficiency of justice
 - Improves of behaviours of economic operators, but significant opposition of industry.



Different models

- Representation by lead plaintiff(s) or class representative
- Representation by organisations

Representation by lead plaintiff(s), class action (e.g. USA, Canada, Common law systems)



DEFENDANT



Oliver Brown (→ Brown v Board of Education), 1954

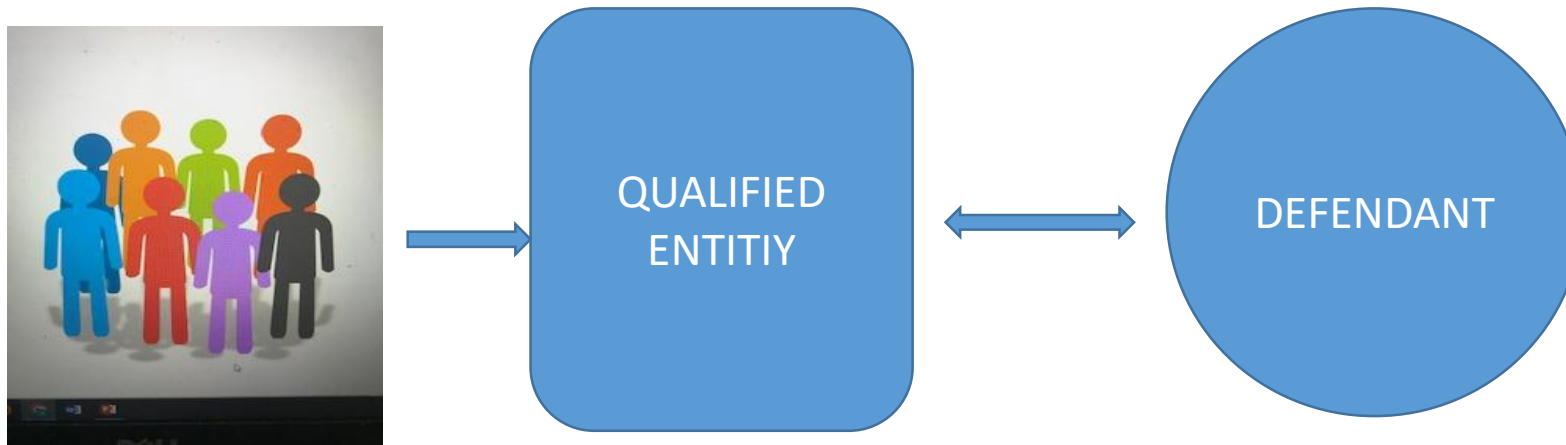


Norma Mc. Corvey (NELSON) Jane Roe
Roe v. Wade, 1973
2022 USA Supreme Court!!



Erin Brockovich 1993
333 M USD compensation


Representation by organisations (e.g. EU RAD, Continental legal systems, such as Hungary)





Public interest actions in Hungary before the EU Directive (RAD)

- First **PIA was introduced by the Civil Code** in 1977, entered into force 1978
 - the objective was control of unfair contract terms used by legal persons → similar to the German AGB-Gesetz
 - The entitled bodies: public prosecutor, the minister, autonomous administrative agencies, consumer NGOs, etc.
- **Consumer Protection Act of 1997** → the public prosecutor and the consumer interest groups entitled to bring public interest actions against traders that infringe the consumer laws.
- **The Competition Act of 1996** → the Competition Office and Consumer NGOs entitled to bring collective interest actions in case of violation of Competition Act.
- The Act of 2013 on the Hungarian Central Bank → against financial service providers, in case of violation of financial service regulations and against the unfair contract terms of financial contracts.
- **Environmental Protection Act of 1995** → in case of violation of environmental law public prosecutor & environmental NGOs entitled to bring PIA.
- **Beside the substantive rules, in 2016 the Act on Civil Procedure regulated the common procedural rules of Public Interest Actions**



Consumer collective redress mechanisms after the EU Directive (RAD) in Hungary

- (EU) 2020/1828 Directive **was implemented by Sections 38 & 38/A -38/G of CPA of 1997.** The new provisions entered into force of 25 June 2023.
- The „old” Public Interest Action mechanisms remained in force, except rules on public interest actions of Consumer Protection Act.
- Since December 2022 there is a new set of rules on representative actions for the protection of the collective interests of consumers.
- The interpretive provisions related to the transposition of the directive are in the section 2 of CPA.
- + 530/2022. (XII. 19.) Gov. Decree on



Qualified entities

- **Requirements of qualified entities for cross boarder and for domestic representative actions**

The Hungarian rules do not differentiate, the same requirements apply!

- **Structural:** Properly constituted legal person, non-profit character
 - **Activities:** 12 months of prior and activity in the area of consumer protection.
Statutes show a legitimate interest in protecting consumer interest.
 - **Independence:** Must be independent and not influenced by external parties. Must have internal procedures to avoid conflict of interests
 - **Transparency:** Must disclose information on their functioning, funding, structure et in a simple and easily accessible way.
- + is not subject to bankruptcy or liquidation proceedings, liquidation or compulsory liquidation
- + discloses compliance with the above conditions.
- **Qualified entities may submit representative action to the court in the event of a violation of the law affecting the collective rights of consumers.**



Ex lege qualified entities by Hungarian CPA

- Consumer protection Authorities,
- Government Office of the Capital City of Budapest in cases if traders based in the capital city,
- The Pest County Government Offices in cases of traders with other headquarters than Budapest.
- Prosecutor,
- Hungarian National Bank,
- All central offices, autonomous state administrative bodies, independent regulatory bodies whose task is to protect consumer rights, e.g. National Media Authority.



Designation

- The others, such as consumer organizations, must go through the designation process conducted by the Minister of Justice.
- The Minister designates the organisations as qualified entity **for cross-border RA** if they meet the legal requirements.
- The Minister decides on inclusion in the list, rejection, implementation of changes, deletion of authorized entities.
- The minister is examining the issue of financing representation claims.
- Control: every 5 years, it is necessary to review whether the QE still meets the requirement.
- The Ministry of Justice provides information on authorized organizations and general information on ongoing cases on its website.

Consumer Protection Roundtable – Working Group on Consumer Representative Actions

- **It was set up within the Consumer Protection Roundtable, the purpose of which is to prepare for its entry into force, to develop guidelines for law enforcement officers and consumers.**
- **Its members include:**
Ministry of Justice,
Economic Competition Office,
National Court Office,
General Prosecutor's Office,
Consumer protection associations





Other measures

- **Remedies:**

- Temporary or final injunction measures
- Compensation in natura (repair, replacement, price reduction)
- Damage compensation

- **Where to bring collective redress actions?** - No specific rules on it. General rules are applied.

- **Financing:** the Hungarian CPA allows 3rd party financing

- Section 62 (1) point r) of the Act on Fees XCIII of 1990 contains the right to record fees in representative proceedings initiated on the basis of the CPA.
- Act on Civil Procedure Section 88. § (2) Instead of the prosecutor and the person authorized to initiate the public interest actions, the legal costs are reimbursed by the state - as defined by law.



Concluding remarks

- Collective redress regulation has more than 40 years of history in Hungary
- However during the 40 years there were relatively few public interest actions submitted to the Courts:
- Numbers: 90 cases all together
 - 56 PI actions on unfair contract terms (Telecom, energy sectors)
 - 9 PIAs on the basis of the violation of the Consumer Protection Act (unfair terms, violation on right of withdrawal)
 - 7 PIAs on environmental infringement
 - 18 PIAs on violation of equal treatment
- I hope that the result of the implementation of the EU Directive on Consumer representative action will have a positive effect and that the number of representative actions will increase significantly in the future.

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- Thank you for your attention!!!