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Legal implications of the violation of a patient's right to information and other patient rights

The development of the right to information in legal history and judicial practice

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Abstract

The enforcement of the patient’s right to information has become a central issue in the development of health care law in Hungary and across Europe. A breach of this duty to inform is not merely a communication failure, but a legally significant omission that inherently violates the patient’s right to self-determination, often accompanied by infringements of other patient rights, such as human dignity and the right to access medical documentation.

This study explores how the historical and doctrinal development of the right to information has led to a judicial paradigm shift, as a result of which the violation of this obligation has come to be recognized as an independent ground of liability under personality rights.

The study is based on a comparative analysis of judicial practice between 2008–2010 and 2018–2020, which represent two decisive stages in the development of Hungarian medical liability law: the period preceding the introduction of non-pecuniary damages (in Hungarian: sérelemdíj) and the subsequent, consolidated era. The research used qualitative content and quantitative analysis to examine how breaches of the right to information intersect with other patient rights and how judicial reasoning has evolved in this context.

The findings show that Hungarian courts increasingly interpret failures in patient information as complex, multidimensional infringements, leading to infringements of self-determination, mental health, and human dignity. Although not all results reached statistical significance, descriptive data consistently indicate higher judicial acknowledgment and stronger compensatory responses in such cases. This shift reflects Hungary’s growing alignment with European patient-rights jurisprudence, which views autonomy and informed consent as essential guarantees of human dignity in medical decision-making.

keywords: Keywords: right to information, patient self-determination, personality rights liability, medical malpractice compensation, non-pecuniary damages, judicial practice, development of health care law

Introduction

The legal recognition of patient self-determination and informed consent is the result of a long process of development, which took shape at the intersection of medical ethics, the thinking of human rights, and civil liability.

Until the mid-20th century, the paternalistic doctor-patient model prevailed, which was overturned by the 1947 Nuremberg Code, stating that “the voluntary consent of the human subject is absolutely essential” for any medical intervention. The patient rights movements of the 1960s and 1970s[1] and the spread of the principle of informed consent[2] elevated autonomy from the periphery of medical ethics to the realm of legally protected fundamental rights. The Oviedo Convention (1997) explicitly stated that medical interventions may only be performed with the patient's free and informed consent.[3]

In Hungary, Act CLIV of 1997 on healthcare codified patients’ rights, the obligation to provide information, and the right to self-determination, while the new Civil Code, which came into force in 2014, made it possible to sanction violations of personal rights—such as breaches of the obligation to provide information—with an independent legal consequence through the legal institution of non-pecuniary damages.

There has been a significant shift in approach in Hungarian medical malpractice lawsuits over the past decade and a half. Between 2008 and 2010, judicial practice primarily linked liability to professional negligence and the resulting damage to health, while violations of the duty to inform were mostly considered as secondary circumstances.[4] In contrast, by the end of the 2010s, a shift in judicial practice had emerged, recognizing deficiencies in communication and documentation as independent violations of personal rights and making the infringement of the patient's self-determination a central element of liability.[5]

While previously the determination of a violation of rights was typically linked to the occurrence of damage to health and its proven causal relationship, recent judicial practice now recognizes that a violation of the right to self-determination can in itself, even without damage to health, constitute grounds for unlawfulness and a claim for non-pecuniary damages.[6] Judicial reasoning increasingly emphasizes findings related to violations of human dignity and deficiencies in documentation. Deficiencies in documentation weaken the verifiability of the

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[1] BEAUCHAMP, Tom L. – CHILDRESS, James F. (2019): Principles of Biomedical Ethics. 8th ed. Oxford: Oxford University Press.

[2] ŐRI, Adrienn – FEITH, Helga Judit (2023): „Ha tudtam volna…” A tájékoztatáshoz való jog, mint betegjog aktuális kérdései és jogtörténeti perspektívái. (in English: “If I had known...” The current issues and legal historical perspectives of the right to information as a patient's right.). Kaleidoscope (2023.)

[3] Council of Europe (1997): Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Oviedo Convention, ETS No. 164).
Adopted: Oviedo, April 4, 1997. Promulgated in Hungary: Act VI of 2002.
Available at: https://coe.int/en/web/conventions/full-list/-/conventions/treaty/164 (Downloaded: October 29, 2025.)

[4] ŐRI, Adrienn – FEITH, Helga Judit – RÓKA, Tímea – SALLAI, Eszter (2023): Tájékoztatási kötelezettség elmulasztásából eredő kártérítési igényeken alapuló 2018–2020 közötti bírósági ítéletek kvantitatív alapú elemzése. (in English: Quantitative analysis of court judgments between 2018 and 2020 based on claims for damages arising from failure to comply with the duty to inform), Med et Jur. (December 2023)

[5] ŐRI, Adrienn – FEITH, Helga Judit (2023): „Ha tudtam volna…” A tájékoztatáshoz való jog, mint betegjog aktuális kérdései és jogtörténeti perspektívái. (in English: “If I had known...” The current issues and legal historical perspectives of the right to information as a patient's right.). Kaleidoscope (2023.)

[6] Curia Pfv.III.20.711/2024/15.

information provided and may result in an evidentiary disadvantage for the healthcare provider.[7]

All this shows that violation of the duty to inform is now considered a separate, complex violation affecting multiple patient rights in judicial practice. The two periods selected for examination – from 2008 to 2010 and from 2018 to 2020 – reflect two distinct phases in the development of this area of law: the first phase represents the judicial approach prior to the introduction of non-pecuniary damages, while the second phase represents the judicial approach that consolidated following the 2014 reform of the Civil Code, in which the violation of the right to self-determination was recognized as an independent legal basis for personal rights.

The year 2020 was also marked by the COVID-19 pandemic, which we assume may have caused specific distortions in the functioning of healthcare, patient communication, and documentation practices, thereby affecting the conditions for enforcing rights and providing evidence.[8,9]

This historical arc therefore represents not only a comparison between two periods of adjudication, but also the imprint of a paradigm shift: a shift from a paternalistic, physician-centered model toward an autonomy-based, patient-centered conception of rights.

The aim of this study is to explore how and in what legal context violations of the duty to inform have occurred in conjunction with violations of other patient rights, and how judicial practice has evolved toward recognizing such violations as a separate basis for liability.

Conceptual and theoretical frameworks

1. The patient's right to self-determination and its legal significance

Patient self-determination is one of the cornerstones of modern medical ethics, health law, and patient rights.[10,11]

Autonomy is not only a moral category, but also a legal one, which means the exercise of a person's freedom of choice in matters affecting their health. The prerequisite for exercising

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[7] DÖME, Attila (2022): Bizonyítási teher az egészségügyi perekben (in English: Burden of proof in healthcare litigation) Magyar Jog, (2022/1., pp. 17-22)

[8] Report of the Commissioner for Fundamental Rights in case no. AJB-509/2021 concerning investigations conducted in retirement homes in connection with the COVID-19 pandemic and the conclusions that can be drawn therefrom (in Hungarian: Alapvető Jogok Biztosának Jelentése AJB-509/2021. számú ügyben a COVID-19 járványhelyzettel kapcsolatosan az idősotthonokban folytatott vizsgálatokkal, és az abból levonható következtetésekkel összefüggésben.
Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ajbh.hu/documents/10180/3713052/Jelent%C3%A9s+a+COVID-19+j%C3%A1rv%C3%A1nyhelyzettel+kapcsolatosan+az+id%C5%91sotthonokban+folytatott+vizsg%C3%A1latokkal%2C+%C3%A9s+az+abb%C3%B3l+levonhat%C3%B3+k%C3%B6vetkeztet%C3%A9sekkel+%C3%B6sszef%C3%BCgg%C3%A9sben+509_2021.pdf/c1d6905f-5584-9de9-35d2-c0ee9b81950d?version=1.0&t=1618817010141
Downloaded: October 29, 2025,

[9] NOVÁK, Krisztina (2023): A betegtájékoztatás kiemelt fontossága betegjogi szempontból (2021–2023 évek összehasonlítása). (in English: The paramount importance of patient information from a patient rights perspective (comparison of 2021-2023)) IME VOLUME XXIII ISSUE No. 2024/3)

[10] KOVÁCS, József (2024): A modern orvosi etika alapjai – Bevezetés a bioetikába. (in English: The Fundamentals of Modern Medical Ethics – An Introduction to Bioethics). Medicina Könyvkiadó, Budapest,

[11] RÓZSA, Erzsébet (2022): Az etika kiiktathatatlansága a modern medicinában. (In English: The Indispensability of Ethics in Modern Medicine) (Eszterházy Károly Egyetem, 2022)

self-determination is adequate, personalized, and understandable information, which ensures the content and validity of freedom of choice.[12]

In the Hungarian legal system, the rights to self-determination and information are closely intertwined and mutually dependent patient rights. Act CLIV of 1997 on Healthcare (Healthcare Act) clearly states that patients are entitled to comprehensive, personalized information that they can understand (Section 13 of the Healthcare Act), and that medical intervention may only be performed with the informed and voluntary consent of the patient (Section 15 of the Healthcare Act). These provisions constitute the cornerstones of the constitutional and legal legitimacy of healthcare: the lawfulness of the intervention is based not only on professional adequacy, but also on the effective enforcement of the right to informed decision-making.

The provisions of Sections 2:42 and 2:52 of the Civil Code (Civil Code) ensure the protection of human dignity and self-determination as personal rights, the violation of which may give rise to non-pecuniary damages. The system of these rules expresses that violations of patient rights can be enforced not only in the form of public law, but also in the form of civil law liability.

International standards – in particular the Oviedo Convention (1997) and the Council of Europe's recommendations on patients' rights[13] – follow the same logic. Article 5 of the Convention stipulates that medical interventions may only be carried out with the free and informed consent of the patient, which requires prior, comprehensible, and relevant information. The WHO guidelines on patient rights and ethical issues also emphasize that the active participation and appropriate information of patients is not only a fundamental right, but also a prerequisite for safe and high-quality care. [14]

Autonomous decision-making is legally based on three cumulative conditions:

1. appropriate (comprehensive, personalized, and comprehensible) information; [15]
2. real, meaningful choice;
3. a decision-making situation free from coercion and influence.

The absence of any of these conditions limits the exercise of self-determination and may result in a violation of personal rights, even if the medical intervention was medically justified or effective.

The concept of patient self-determination has emerged as a central element of international legal and medical ethical thinking since the 1970s. The institution of *informed consent* has gradually transformed the doctor-patient relationship: the paternalistic role of the doctor has

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[12] ŐRI, Adrienn – FEITH, Helga Judit (2023): „Ha tudtam volna…” A tájékoztatáshoz való jog, mint betegjog aktuális kérdései és jogtörténeti perspektívái. (in English: “If I had known...” The current issues and legal historical perspectives of the right to information as a patient's right.). Kaleidoscope (2023.)

[13] Council of Europe (1997): Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Oviedo Convention, ETS No. 164). Oviedo, April 4, 1997.
Promulgated in Hungary: Act VI of 2002. Available at: https://rm.coe.int/168007cf98 (Downloaded: October 29, 2025.)

[14] World Health Organization (WHO) (2021): Patient Safety – Global Action on Patient Safety: Strategic Plan 2021–2030. Geneva: World Health Organization. Available at: https://www.who.int/news-room/fact-sheets/detail/patient-safety (Downloaded: October 29, 2025)

[15] ŐRI, Adrienn – FEITH, Helga Judit (2023): „Ha tudtam volna…” A tájékoztatáshoz való jog, mint betegjog aktuális kérdései és jogtörténeti perspektívái. (in English: “If I had known...” The current issues and legal historical perspectives of the right to information as a patient's right.). Kaleidoscope (2023)

been replaced by a partnership model that emphasizes the patient's freedom of choice and cooperation. [16]

The fundamentals of bioethics can be traced back to Beauchamp and Childress's principle of autonomy[17,18], which interprets an individual's freedom of choice as the basis of moral and legal responsibility. However, respect for autonomy can only be achieved in practice if the healthcare system actually ensures the conditions for decision-making:

- adequate time and information,
- a psychologically and socially acceptable environment,
- a decision-making situation free from influence and hierarchical pressure.

WHO and OECD data[19, 20] show that despite the transformation of the healthcare system, challenges affecting patient rights, such as the lack of active patient participation, restrictions on access to documentation, and weak participatory structures, which are partly linked to the remnants of a paternalistic care model, remain evident in the Central and Eastern European region. Shortcomings in information provision and patient involvement can often be traced back to systemic factors: an overburdened healthcare system, a shortage of human resources, a hierarchical institutional culture, and poor documentation practices all contribute to limiting the enforcement of patient rights in practice.

Hungarian judicial practice consistently states that a lack of or insufficient information may constitute a violation of the right to self-determination in healthcare, even in the absence of damage to health. As a result, failure to provide information has become one of the most common manifestations of infringement of self-determination, to which courts increasingly link the possibility of awarding non-pecuniary damages.[21, 22, 23]

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16 ŐRI, Adrienn – FEITH, Helga Judit (2023): „Ha tudtam volna…” A tájékoztatáshoz való jog, mint betegjog aktuális kérdései és jogtörténeti perspektívái. (in English: “If I had known...” The current issues and legal historical perspectives of the right to information as a patient's right.). Kaleidoscope (2023)

17 BEAUCHAMP, Tom L. – CHILDRESS, James F. (2019): Principles of Biomedical Ethics, 8th edition, Oxford University Press, Oxford, Detailed presentation of the principle of autonomy: chapter "Respect for Autonomy," pp. 99-144.

18 KOVÁCS, József (2024): A modern orvosi etika alapjai – Bevezetés a bioetikába. (in English: The Fundamentals of Modern Medical Ethics – An Introduction to Bioethics). Medicina Könyvkiadó, Budapest

19 (World Health Organization: Taking the pulse of quality of care and patient safety in the WHO European Region: Multidimensional analysis and future prospects. WHO Regional Office for Europe, Copenhagen, 2024. Avalable at: https://www.who.int/europe/publications/i/item/9789289061568 (Downloaded: October 29, 2025)

20 OECD / European Commission: Health at a Glance: Europe 2024 – State of Health in the EU Cycle. OECD Publishing, Paris, 2024. DOI: 10.1787/b3704e14-en. Available at: https://www.oecd.org/en/publications/health-at-a-glance-europe-2024_b3704e14-en.html (Downloaded: October 29, 2025)

21 KRAJECZ, Laura (2019): A bírói gyakorlat a sérelmi díj bevezetésekor. (in English: Judicial practice at the time of the introduction of non-pecuniary damages). Doctoral thesis. Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Budapest, 2019 Available at: PPKE JÁK Digital Repository (Jakobiánus) – https://jak.ppke.hu/hu/karunkrol/jakobinus (Downloaded: October 29, 2025)

22 CSEHI, Bettina Ivett (2022): Polgári jogi felelősség az egészségügyi szolgáltatók polgári jogi felelőssége – szigorú bírói gyakorlat? (In English: Civil liability of healthcare providers – strict judicial practice?), Faculty of Law, University of Debrecen, 2022
Available at: University of Debrecen Archive (DEA) / Antall József Knowledge Center Digital Archive. (Downloaded: October 29, 2025)

23 BARZÓ, Lilla Andrea (2023): Utólagos tájékoztatás: az orvosi vizsgálatok/beavatkozások utáni tájékoztatás és az önrendelkezési jog kapcsolata. (in English: Post-treatment information: the relationship between information provided after medical examinations and interventions and the right to self-determination).

2. The relationship between the right to information and related patient rights

The right to information is not an isolated element in the system of patient rights, but rather a connecting link between numerous other fundamental rights and personal rights. A lack of appropriate information can result in violations of rights in several areas.[24] Violation of the right to self-determination: the lack of information on which a decision is based renders autonomy meaningless, which is also affected by the provisions of the current health care law on patients' rights, including the right to refuse treatment and to leave a medical institution.

- Violation of human dignity: if the information provided to the patient is formal, condescending, or if its timing or manner does not ensure meaningful participation, it results in the objectification and exploitation of that person.
- Violation of the right to access documentation and information: incomplete or contradictory medical documentation makes it impossible to verify the information provided, thus making it impossible to prove the violation afterwards.

Violation of the duty to inform is therefore a multidimensional legal violation,[25] which often simultaneously affects the areas of self-determination, dignity, and the right to documentation. This complexity is also reflected in the application of the law: courts are increasingly assessing the lack of information not as a simple procedural deficiency, but as a complex violation of personal rights affecting multiple patient rights.

The relationship between documentation and the duty to inform is also emphasized in the latest Hungarian literature. Bettina Ivett Csehi points out that “in order to prove compliance with the duty to inform, it is advisable and necessary for healthcare providers to keep medical records”, as these can serve as decisive evidence in determining liability in the event of a subsequent legal dispute.[26]

In line with this, the Hungarian Ombudsman's Office (OCFR) publication entitled Our “Sick” Rights – Healthy Dignity (2012) discusses in detail how deficiencies in information and documentation in healthcare services are not merely procedural problems but can also result in violations of patients' human dignity.[27]

Forum Discipulorum, Faculty of Law, University of Szeged, Szeged, 2023. Available at: University of Szeged Repository Center (SZTE Repository) – https://repo.lib.u-szeged.hu/ (Downloaded: October 29, 2025)

[24] ŐRI, Adrienn – FEITH, Helga Judit (2023): „Ha tudtam volna…” A tájékoztatáshoz való jog, mint betegjog aktuális kérdései és jogtörténeti perspektívái. (in English: “If I had known...” The current issues and legal historical perspectives of the right to information as a patient's right.). Kaleidoscope (2023)

[25] ŐRI, Adrienn – FEITH, Helga Judit (2023): „Ha tudtam volna…” A tájékoztatáshoz való jog, mint betegjog aktuális kérdései és jogtörténeti perspektívái. (in English: “If I had known...” The current issues and legal historical perspectives of the right to information as a patient's right.). Kaleidoscope (2023.)

[26] CSEHI, Bettina Ivett (2022): Polgári jogi felelősség az egészségügyi szolgáltatók polgári jogi felelőssége – szigorú bírói gyakorlat? (In English: Civil liability of healthcare providers – strict judicial practice?), Faculty of Law, University of Debrecen, 2022
Available at: University of Debrecen Archive (DEA) / Antall József Knowledge Center Digital Archive. (Downloaded: October 29, 2025)

[27] Office of the Commissioner for Fundamental Rights (OCFR): Beteg Jogaink – Egészséges Méltóság (in English: Our Sick Rights – Healthy Dignity).
Budapest, 2012. Available at: https://www.ajbh.hu/documents/10180/110964/Beteg+Jogaink.pdf
(Downloaded: October 29, 2025)

In recent Hungarian judicial practice, “conditional consideration” has become increasingly common: the courts ask the follow-up question of whether the patient would have made a different decision if they had received appropriate, comprehensive, and understandable information. If this is reasonably assumed, the lack of information alone may constitute a violation of the right to self-determination and a violation of personal rights, resulting in the award of non-pecuniary damages. This approach is in line with the German doctrine of "hypothetische Einwilligung" (hypothetical consent), the criteria for which are laid down by the BGH (Bundesgerichtshof/German Federal Supreme Court) (VI ZR 310/21). In English law, the analogy of the informed consent causation test emerges in the cases of Chester v Afshar and Montgomery v Lanarkshire Health Board, which recognize the infringement of a patient's freedom of choice as a separate violation of rights.

Hungarian judicial practice – although not using uniform terminology and not in all types of cases – consistently approaches the international trend of assessing the violation of the duty to inform as an independent infringement of the right to self-determination.[28]

3. International outlook and European convergence

The complementary interpretation of the right to information and self-determination is decisive not only in Hungarian law, but also in European health law trends. The common denominator of European patient rights standards (Oviedo Convention, WHO, Council of Europe, EU Charter of Fundamental Rights) is that the right to informed decision-making is a fundamental right derived from human dignity, the enforcement of which is a key indicator of the quality and safety of care (Table 1).

The development of Hungarian law is proceeding in parallel with this convergence: the courts no longer consider a breach of the duty to inform to be an incidental aspect of professional negligence, but rather an independent violation of personal rights with fundamental legal significance. This change sheds new light on the interdependence of patient rights and confirms that the protection of patient autonomy is a key element of the development of health law.

WHO statements on patient rights and health ethics emphasize that appropriate information and patient involvement in decision-making are fundamental requirements of the “empowered patient” model. According to the WHO approach, ensuring active patient participation is not only a fundamental right, but also a key indicator of the quality and safety of care. [29]

Table 1 International comparison – the principles of patient autonomy and informed consent (Source: own compilation)

Source / Document	**The concept of autonomy**	**The requirement for informed consent**	**Legal consequences in the event of a violation**
Oviedo Convention (1997) – Convention	The patient's free choice regarding	Intervention may only be carried out with the	Invalidity of consent; establishment of the

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[28] BGH, Urteil v. 21. 06. 2022 – VI ZR 310/21, Medizinrecht 2022, 756–760.
Chester v Afshar [2004] UKHL 41; [2005] 1 AC 134.
Montgomery v Lanarkshire Health Board [2015] UKSC 11; [2015] AC 1430.

[29] LONGTIN, Yves – SAX, Hugo – LEAPE, Lucian L. – SHERIDAN, Stacey E. – DONALDSON, Liam – PITTET, Didier (2010):. Patient Participation: Current Knowledge and Applicability to Patient Safety. Mayo Clinic Proceedings, 85 (1), 53–62. https://doi.org/10.4065/mcp.2009.0248)

Source / Document	**The concept of autonomy**	**The requirement for informed consent**	**Legal consequences in the event of a violation**
on Human Rights and Biomedicine (CoE)	medical intervention is a fundamental human right.	free and informed consent of the patient (Art. 5).	infringement of the patient's rights, state responsibility.
Council of Europe recommendations and patient rights standards	Autonomy is a fundamental right stemming from the human dignity of the patient.	Information must be understandable, relevant, comprehensive, and personalized.	Legal consequences may include: declaration of infringement, compensation, activation of complaint mechanisms.
WHO guidelines on patient rights and ethics	Autonomy is the basis of the "empowered patient" model – the patient is an active participant in decisions.	Clear, culturally and linguistically accessible information necessary for decision-making must be provided.	It appears as a quality indicator for care; infringement is an indicator of patient safety and quality.
EU Charter of Fundamental Rights (2000)	Respect for human dignity includes self-determination.	The ability to make informed decisions is part of high-level health protection.	It can be considered a violation of fundamental rights, and a fundamental rights complaint may provide a remedy.
Hungarian law (Healthcare Act, Civil Code) – brief positioning *(point of comparison)*	Self-determination is protected as a personal right; informed consent is a prerequisite for intervention.	The information must be comprehensive, understandable, and personalized (Sections 13–16 of the Healthcare Act).	Non-pecuniary damages and/or damages may be awarded regardless of whether there has been any damage to health (Civil Code, Section 2:52).

The development of Hungarian law is closely aligned with European trends, however, it follows a specific pattern of gradual adaptation: violation of the right to self-determination is now considered in judicial practice not merely as an "incidental" aspect of professional misconduct, but as a legal disadvantage that must be assessed independently and gives rise to reparations.[30, 31]

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[30] ŐRI, Adrienn – FEITH, Helga Judit – RÓKA, Tímea – SALLAI, Eszter (2023): Tájékoztatási kötelezettség elmulasztásából eredő kártérítési igényeken alapuló 2018–2020 közötti bírósági ítéletek kvantitatív alapú elemzése. (in English: Quantitative analysis of court judgments between 2018 and 2020 based on claims for damages arising from failure to comply with the duty to inform), Med et Jur. (December 2023)

[31] ŐRI, Adrienn – FEITH, Helga Judit – RÓKA, Tímea – SALLAI, Eszter (2025): A sérelem sorsa – Tájékoztatási kötelezettség elmulasztásából eredő kártérítési igényeken alapuló 2008–2010 és 2018–2020 közötti pereskedési és ítélkezési gyakorlat kvantitatív alapú összehasonlító elemzése. (in English: The fate of harm – Quantitative comparative analysis of litigation and adjudication practices between 2008–2010 and 2018–2020 based on claims for damages arising from failure to comply with the duty to inform). MED. et JUR., Vol. 16., Issue No. 2, June 30, 2025.

4. Dogmatic interpretation of associated infringements, development of domestic judicial practice

In practice, breaches of the duty to inform rarely occur in isolation. In most cases, it is compounded by violations of other patient rights, and this combination raises specific dogmatic and evidentiary issues.

In recent years, Hungarian courts have been applying the principle of integrated assessment more consistently: a lack of information is not just a communication problem, but a systemic violation of patient rights that can affect several personal rights at the same time.

5. The development and turning points of judicial practice

The judicial assessment of breaches of duty to inform has undergone three distinct stages of development over the past two decades, as shown in Table 2.

Table 2 Development of judicial practice from 2000 to date (Source: own compilation)

Period	Decisive approach	Judicial approach
2000–2010	Information as a “secondary issue”	The focus of liability is on professional negligence; lack of information is usually only considered an incidental circumstance.
2010–2015	Transitional phase	The conceptual recognition of the violation of the right to self-determination is emerging and gaining strength; the lack of information is now a relevant factor in determining liability.
2015 →	Violation of the right to self-determination as an independent legal basis	Violation of the obligation to provide information is considered a separate violation of personal rights; it becomes a separate basis for awarding non-pecuniary damages.

The legal institution of non-pecuniary damages, introduced in 2014, marked a turning point: due to its objective nature, courts are not required to prove psychological or health damage; it is sufficient to establish a violation of personal rights. This means that violation of the duty to inform has become an independent basis for compensation in Hungarian legal practice.

A clear shift in approach can already be identified in judgments between 2018 and 2020. The courts consistently state that: the lack of information – insofar as it was sufficient to restrict the patient’s freedom of choice – justifies the award of non-pecuniary damages.

6. Research objectives

Although the Hungarian legal system is formally in line with European patient rights standards, in practice many questions remain unanswered regarding how the lack of information affects the effective exercise of the right to self-determination, the enforcement of human dignity, and the transparency of documentation.

This study aims to fill this gap in academic and practical knowledge by examining breaches of the duty to inform within the framework of related violations of patient rights, using a legal-theoretical and empirical approach. The aim is to explore how judicial practice recognizes and deals with multidimensional violations of patient rights, and how the approach to adjudication has shifted towards recognizing the lack of information as a separate violation of personal rights.

Empirical examination of associated violations of patient rights

1. Research objective and methodology

The aim of the research was to explore how often, in what patterns, and in what legal contexts violations of the duty to inform occur in conjunction with violations of other patient rights, and how this association influences judicial practice and the logic of determining liability.

The study used a mixed-methods (combined) approach: the integrated application of quantitative and qualitative content analysis. The aim of the method was to enable a multifaceted, empirically based examination of legal interpretation and liability trends related to breaches of the duty to inform in judicial practice.

The quantitative analysis examined the number and type of infringements appearing in the judgments and the legal consequences associated with them, while the qualitative analysis explored the structure and argumentation patterns of the judges' reasoning. The combined use of the two analytical techniques allowed the research to highlight not only the legal consequences of the decisions, but also the change in the judges' approach.

The study was based on 349 final court judgments between 2008–2010 and 2018–2020 (N=349). The sample included cases in which the plaintiff explicitly referred to a breach of the duty to inform, either as an independent legal basis or in combination with other violations of patient rights.

A standardized coding sheet was developed for quantitative and qualitative content analysis. The coding was performed by three researchers, and in cases of differing interpretations, consensus decision-making ensured the reliability of the coding.

Statistical methods used:

- Descriptive statistics (mean, median, quartiles, standard deviation): to examine the distribution characteristics and typical values of decisions.
- Variance and distribution analysis: to measure the heterogeneity or unification of judicial practice.
- Testing differences between periods: two-sample t-test for parametric distribution, rank tests for non-parametric distribution.

These methods made it possible to determine whether the changes in judgments were statistically established trends or merely fluctuations resulting from random variations.

Qualitative content analysis examined the textual reasoning behind court rulings, with particular regard to the relationship between the duty to inform and the right to self-determination. The shift in approach reflected in the decisions between 2018 and 2020 is clear: the courts no longer treat the lack of information as an incidental factor, but as a key factor determining the outcome of the judgment.

2. Occurrence and patterns of associated infringements

According to the analysis of the judgments, in most cases, the violation of the duty to provide information did not occur as an isolated violation, but rather in conjunction with multiple, interrelated violations of patient rights.

The proportion of associated infringements related to the infringement of the right to information was nearly 80% (78.9%) in the total sample.

The following patient rights were most frequently violated in connection with the breach of the duty to inform:

- the right to healthcare in 40.70% of cases (77 cases),

- the right to self-determination in 9.50% of cases (18 cases),
- a combined violation of the right to self-determination and the right to care in 15.90% of cases (30 cases).

The proportions contain overlaps, as a single case may fall into more than one category of infringement.

In terms of the number of associated infringements, 54.50% of the cases involved one infringement, 22.20% involved two infringements, 1.60% involved three infringements of patient rights, while 21.10% involved only a breach of the duty to inform.

3. The impact of associated infringements on court decisions (comparison of 2008–2010 and 2018–2020)

One important question in the research was how the breach of the duty to inform relates to other violations of patient rights that often arise in conjunction with it, and to what extent these associated violations influenced the courts' decisions.

According to the results of the statistical analysis, there was no demonstrable correlation in first-instance judgments between the number of associated infringements and the amount of non-pecuniary damages (Sig.=0.462) or material damages (Sig.=0.533).

In the case of annuities, the first calculation model initially showed a difference (Sig.=0.046), but further verification revealed that the distribution of data was not uniform, so the result cannot be considered reliable.

The precision test (known as Welch's correction) has already indicated that there is in fact no statistically verifiable relationship between the associated infringements and the amount of the annuity (Sig.=0.329). Rather, the effect size measured ($\eta^2 = 0.248$) indicates a tendency—that is, it suggests that a certain correlation may exist—but this is not sufficient to establish a causal relationship.

On the other hand, the average values (Table 3) show that in cases related to violations of the right to self-determination, the amounts awarded in the first instance were usually higher than in the entire sample: in such cases, the average damages awarded were HUF 4.82 million and the average non-pecuniary damages was HUF 5.10 million, while the average for all cases was HUF 2.95 million and HUF 3.74 million, respectively.

In the analysis of second- and third-instance judgments, no statistically significant difference was found between the number of associated infringements and the amounts awarded (second instance: Sig.=0.471; 0.388; 0.741; third instance: Sig.=0.668; 0.622; 0.833).

Nonetheless, the trend in the data clearly indicates that in cases where the right to self-determination was also violated, the courts awarded higher amounts.

In the second instance, in such cases, damages averaged HUF 7.59 million and non-pecuniary damages averaged HUF 7.23 million, while the average for the entire sample was HUF 3.54 million and HUF 5.07 million, respectively.

A similar pattern can be seen in third-instance judgments: in cases of violation of the right to self-determination, the damages awarded amounted to HUF 3.73 million and the non-pecuniary damages to HUF 4.20 million, while the average for all cases was HUF 1.37 million and HUF 2.65 million, respectively.

The differences cannot be proven in statistical terms because the number of cases in each category is relatively low and there is a wide dispersion in the values. This means that although the data do not allow for mathematical proof of the differences, a consistent pattern can still be observed in practice: the courts consider violations of the right to self-determination to be more serious infringements of rights and attach greater compensatory weight to them in their decisions.

Table 3 Average amounts awarded in cases related to violations of the right to self-determination and in cases included in the total sample (million HUF) (Source: own compilation)[32]

Court instance	**Damages – self-determination**	**Damages – sample**	**Non-pecuniary damages – self-determination**	**Non-pecuniary damages – sample**
First instance	4.82	2.95	5.10	3.74
Second instance	7.59	3.54	7.23	5.07
Third instance	3.73	1.37	4.20	2.65

In the early period between 2008 and 2010, associated infringements primarily manifested themselves as a combination of professional negligence and a lack of information. The courts mostly assessed this accumulation in the context of establishing causality, rather than as an independent factor in personal rights.

Documentation deficiencies were generally treated as evidentiary difficulties, not as independent violations.

During this period, the courts still considered damages to be closely linked to health damage, and regarded breaches of the duty to inform as merely supplementary, incidental circumstances.

During the second investigation period between 2018 and 2020 a noticeable change in attitude occurred. Violations of the duty to inform increasingly appeared as complex infringements, associated with violations of the right to self-determination, human dignity, and access to documentation.

The courts examined whether the patient would have made a different decision had he been properly informed, and if so, this could have constituted grounds for finding a violation of the law.

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[32] The “complete sample” refers to all healthcare compensation judgments examined during the given period, regardless of whether a violation of patient rights was established in them.
The column "violation of the right to self-determination" contains the subset of this sample in which the court expressly assessed the breach of the duty to inform as a violation of the right to self-determination.

Discussion

A comparison of the two periods clearly shows that the courts assess not the number of infringements, but their content and severity.

While multiple infringements did not significantly affect the compensation awarded between 2008 and 2010, the qualitative dimension of infringements became decisive between 2018 and 2020.

Violations of the right to self-determination are increasingly emphasized in the statement of reasons for judgments, and although the differences cannot always be proven in statistical terms, the descriptive data consistently show higher compensation values in this category.

The trend is clear: the focus of Hungarian judicial practice has gradually shifted from a damage-centric approach to an autonomy-centered interpretation of the law, which reflects a deepening in terms of content and a value-based approach to healthcare liability and the enforcement of patient rights.

Based on a qualitative content analysis of judgments between 2018 and 2020, a clear shift in approach emerges:

- violation of the duty to inform is considered not merely a communication failure, but a legally relevant violation of personal rights,
- the courts analyze in detail the manner, quality, and verifiability of the information provided, and
- they separate the examination of professional negligence from that of violations of the right to information.

Documentation deficiencies have evolved from being an “incidental circumstance” to becoming a factor that creates a burden of proof: if the service provider cannot credibly prove that the information was provided, the burden of doubt falls on them.

The introduction of the “conditional consent” test is also a sign of a qualitative change in approach. Courts increasingly frequently examine whether the patient would have made a different decision if they had been properly informed. If this can reasonably be assumed, a breach of the duty to inform in itself constitutes a violation of the law, regardless of whether any damage to health has occurred.

Table 4 Summary of the comparative analysis based on various criteria (Source: own compilation)

Element / Dimension	2008–2010	2018–2020	Trend in interpretation / significance
Framework for legal interpretation	The duty to inform is typically an “ancillary” element to professional negligence.	The lack of information is considered a separate violation of personal rights and a separate basis for liability.	The emphasis shifts towards protecting the right to self-determination.
Evidential role	The lack of documentation is considered a formal deficiency, not a decisive one.	The lack of documentation results in a burden of proof on the service provider (“the burden of proof lies with the service provider”).	Documentation discipline becomes a key evidentiary factor.

Element / Dimension	2008–2010	2018–2020	Trend in interpretation / significance
Logic of argumentation	Failure to provide information is usually examined in conjunction with the occurrence of damage to health.	The “hypothetical consent” test appears: if the patient could have made a different decision with adequate information, the violation can be established independently.	Instead of causal relationships, the emphasis is placed on limiting autonomy.
Legal consequence	Non-material damages are rarely awarded; typically, they are only awarded in connection with damage to health.	Non-pecuniary damages may also be awarded on the basis of infringement of the right to self-determination without damage to health.	The logic of reparations is transformed: non-pecuniary damages are compensation for legal injury, not physical injury.
Structure of judicial reasoning	Brief, general statements; the method and content of information are rarely analyzed.	Detailed, fact- and evidence-based reasoning; separate examination of professional obligations and of the duty to inform.	A structured, analytical argument about the content of the information appears.
Conceptual basis	Paternalistic approach to care: medical professional decisions dominate.	Patient-centered, autonomy-based interpretation of rights: freedom of choice is placed at the center.	An autonomy-oriented paradigm instead of a physician-centered model.
Handling of associated violations	In the case of multiple violations, the focus is on professional misconduct.	Associated violations (self-determination, dignity, documentation) receive an integrated assessment.	Patient rights are presented as an interconnected system of guarantees.

Table 4 clearly shows the shift from paternalism to autonomy: whereas previously, failure to provide information was considered at most a formal deficiency in terms of liability, by 2020, violation of the right to self-determination had become an independent violation of personal rights entitling to reparation.

Limitations of the research

When interpreting the results of the research, the following limitations regarding data sources, methodology, and interpretation must be taken into account:

a) Source pool limited to judgment databases

The study was based solely on the content analysis of final court judgments. Out-of-court settlements, insurance claim settlements, mediations, and hospital compensation agreements do not appear in the database, although their volume and practical significance may be considerable. Consequently, the research examined only that segment of enforcement that actually resulted in court proceedings, thus reflecting judicial practice but not the full reality of healthcare liability.

b) Time horizons of adjudication patterns

Research and data processing began in 2022, therefore, based on methodological considerations, the time horizon for the study was set at the end of 2020.

The reasons for this are as follows:

- finality and accessibility of judgments: in 2022, a sufficiently large number of final and published decisions were available for the period 2018–2020; for cases after 2021, anonymization and publication did not yet provide a uniform sample;
- trend stability: COVID-19-related supply and documentation issues may have had a temporary distorting effect from 2021 onwards; therefore the aim of the study was to analyze already consolidated, normative patterns;
- temporal and normative comparability: the designation of the 2008–2010 and 2018–2020 blocks enabled a temporal and dogmatic comparison of the judicial interpretation of the right to self-determination and the duty to inform.

c) Limitations of the database and source material

The judgments examined were taken from the Wolters Kluwer Law Database, which is a comprehensive but not exhaustive collection of judicial decisions. The database contained edited, anonymized, and thematically selected decisions; thus the empirical analysis could not cover the entire range of published judgments, but only a representative sample. The digital format and structural uniformity of judgments from the earlier period (2008–2010) posed an additional technical challenge.

d) The risk of subjectivity in qualitative content analysis

Although the coding was carried out according to a fixed set of rules and was finalized by consensus, the interpretation of judicial reasoning necessarily included interpretive elements. Due to the interpretation of legal texts and the implicit elements of argumentation structures, it was not possible to completely rule out the possibility of researcher bias.

e) Limitations of processing judicial reasoning

The study did not use machine natural language processing (NLP) techniques, thus automated identification and quantification of argument patterns was not possible. This represented a technical limitation in terms of deeper, algorithmic comparison of trends in reasoning.

Summary

Both statistical and qualitative results confirm that violation of the duty to inform is considered a complex, multidimensional violation of patient rights.

In judicial practice, deficiencies in information provision do not usually occur in isolation, but rather as a combination of violations of the right to self-determination, human dignity, and the right to access medical records, which strengthens the complex, multidimensional nature of the violation.

The qualitative weight of multiple violations has a greater impact on the outcome of judgments than the numerical accumulation of violations.

With this approach, Hungarian judicial practice is increasingly aligning itself with European trends, which interpret patient autonomy and the right to information as practical guarantees of human dignity. In European health law practice, a breach of the duty to inform is no longer regarded merely as a procedural deficiency, but as a violation of the fundamental right to autonomous decision-making.

This process is a sign of a shift also in Hungary, where the enforcement of patient rights is gradually moving beyond formal compliance with the law, and the substantive, human rights dimension of legal protection is coming to the fore. Future case law is likely to be shaped by an approach that views the lack of information not only as an unlawful omission, but also as a complex symptom of the breach of trust, partnership, and dignity.

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