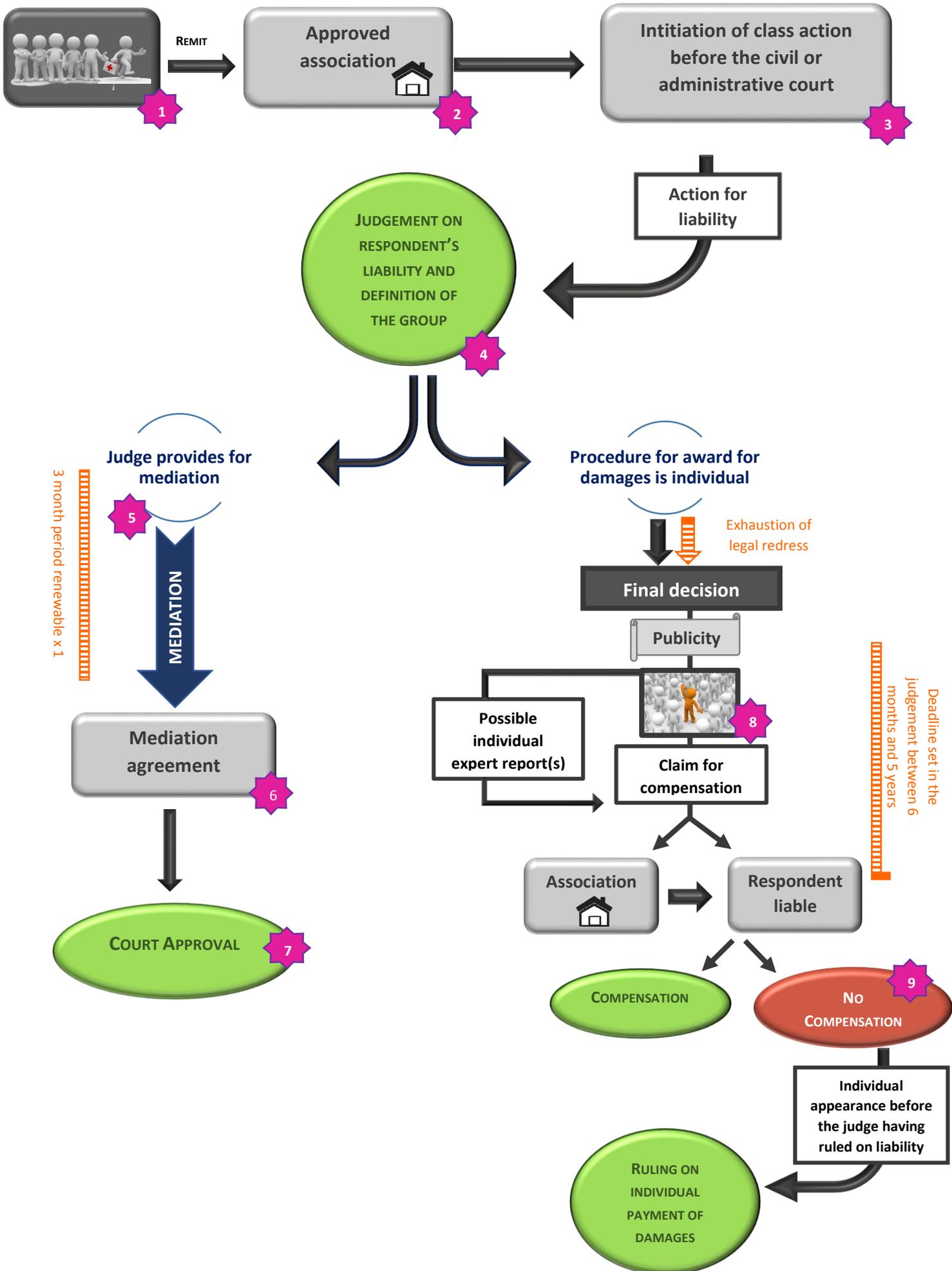


CLASS ACTION LAWSUIT IN HEALTHCARE



1 **Users of the healthcare system** finding themselves in a **similar or identical situation**, suffering prejudice arising from **bodily harm**, the commonly result of a **similar failing by the respondent** in its legal or contractual obligations.

The respondent may be:

- **producer** of a healthcare product;
- **supplier** of a healthcare product;
- **service provider using** a healthcare product.

2 Action reserved to **approved healthcare users' associations** other than those marketing a healthcare product as an associated activity.

3 The claim describes the **individual cases** presented by the association in support of the action.

Referral shall be to the **TGI** (District Court) in the case of a **private body** (e.g.: pharmaceutical company, wholesaler); and to the **administrative court** in the case of a **public body** (e.g.: hospitals).

The court applies the **common law rules**.

4 **The judgement concerns:**

- admissibility of the action;
- liability of the respondent;
- the user's group to whom the respondent's liability is incurred
- criteria for joining the group;
- reparable bodily harm for users constituting the group;
- potentially, any investigative measure, specifically medical expert reports;
- the period (between 6 months and 5 years) in which persons meeting the relevant criteria and wishing to take advantage of the ruling may join the group;
- publicity measures to inform of this decision persons likely to have suffered harm caused by the breach;
- potentially, payment of a provision by the respondent and, as required, a security deposit.

5 The **court may, with the agreement of the parties, assign a mediator** to propose a mediation agreement to the parties governing the terms for amicable compensation of harm suffered by users.

6 The **amicable agreement for compensation** is proposed to the parties by the mediator.

It sets the terms according to which the bodies concerned shall ensure compensation of the harm suffered by those affected by bodily harm arising from one or more deeds it identifies, notably:

- the types of bodily harm likely to arise from the breach;
- the terms of the individual, expert consultancy report with due hearing of parties, notably the deposit payment;
- the terms of the compensation claims and offers, including for third-party payors;
- time period for compensation claims made as provided by the agreement;
- monitoring arrangements;
- publicity measures.

The agreement **must be accepted by the claimant association and at least one of the bodies concerned**.

7 The court may refuse approval where **the interests** of the parties and the members of the group do not appear to be **adequately protected**.

The approval decision is **subject to appeal**.

8 **Within the joining period**, which starts to run from the end of the publicity measures, **the user shall address a claim for compensation** (i) either to the body recognized as liable, (ii) or to the association. The user is required to provide evidence that the criteria for joining the group are fulfilled, and prove they have social security cover. They must also (directly or via the association) inform the relevant social security bodies in order that said third party payors may state their claim.

9 By way of illustration, the compensation claim may not be satisfied if the facilitator considers that the user fails to fulfil the criteria for joining the group, the amount claimed in compensation is unjustified, or the causal link between the breach and the harm suffered is not established

Should the user claim compensation via the association, said **claim amounts to a remit to the association for representation throughout the legal action for payment of individual compensation of the harm suffered**.