The Dispute Resolution Review

Second Edition

Editor
Richard Clark

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Second Edition

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HUNGARY

*Zoltán Balázs Kovács and Dávid Kerpel**

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

Hungary's legal system is greatly influenced by continental legal principles and traditions. Consequently, within its civil law system, Hungarian courts interpret and apply the legal provisions set forth in the relevant legislation.

The Hungarian legal system may be categorised pursuant to the entity entitled to issue the legal regulation. The Parliament is the main legislative body in Hungary; its structure is unicameral. The government and its ministers have the power to issue decrees. Municipalities may issue decrees regulating local issues that are not provided for in a regulation of a higher level. The President of the Hungarian National Bank also has the right to issue decrees. Decrees may not be contrary to any legal provision at a higher level.

The Hungarian court system is a four-tier system, consisting of the district and local courts, the metropolitan courts and county courts, the five courts of appeal adjudicating appeals against the resolutions of the metropolitan and county courts, and the Supreme Court. Although binding case law does not exist *per se*, the Supreme Court sets guidelines, which are binding on all courts in Hungary. The only special courts in Hungary are labour courts. Local courts have general jurisdiction; however, the metropolitan and county courts have jurisdiction over cases with a value exceeding 5 million forints and in defined matters such as, for example, cases relating to patents, trademarks or copyright, international delivery of goods, securities and unfair contractual terms.

The composition of a court depends on its level. For instance, local and district courts usually consist of one judge, but a three-judge panel shall proceed in cases such as those related to trademarks and patents (two of the judges are required to have a technical degree). The court of second instance consists of three judges. The Supreme

* Zoltán Balázs Kovács is an associate and Dávid Kerpel is a junior associate at Szecskay Attorneys at Law.

Court proceeds in a three-judge panel during legal supervisory proceedings and (in extremely complicated cases) in a five-judge panel.

As a general rule, civil law disputes shall be submitted to the jurisdiction of the ordinary courts. However, parties may submit their legal dispute to arbitration if at least one of them is professionally engaged in an economic activity and such legal dispute is in connection with that activity and the parties may freely dispose of the subject of the proceeding.

With regard to ADR procedures, please Section VI, *infra*.

II THE YEAR IN REVIEW

Due to a recent modification of the Civil Procedure Code, as of 1 July 2009, parties are no longer allowed to stipulate the exclusive jurisdiction of the Metropolitan Court of Budapest, the Central District Court of Pest or the County Court of Pest (these are the largest courts in Budapest with the most cases) in monetary cases, since these courts usually have an enormous workload. The Constitutional Court is currently examining this modification due to the fact that the above prohibition applies not only to all procedures launched after 1 July 2009, but to the agreements previously concluded, meaning that the prohibition has a retroactive effect. The decision of the Constitutional Court will hopefully resolve this issue.

III COURT PROCEDURE

i Overview of court procedure

In Hungary, litigation is still the most common method of dispute resolution. The main rules governing court litigation are laid down in the Civil Procedure Code.

The plaintiff must – prior to the submission of the statement of claims – attempt an amicable settlement of the dispute by communicating his legal or factual standpoint to the defendant, indicating his evidence or other relevant documents in the case. If the parties reach no amicable settlement, the statement of claim may be submitted to the competent court. If the plaintiff is a foreign entity, it may be obliged – at the request of the defendant – to provide a security for court costs, the amount of which shall be stipulated by the court.

The court then communicates the claim and the documents to the defendant and summons the parties to a hearing. During hearings, the parties must provide their legal arguments and present the relevant documents substantiating their claim or counterclaim, following which the court makes a decision.

The Civil Procedure Code is based upon the principle of freedom of evidence; the court is entitled to accept all kinds of evidence regardless of the form. The Civil Procedure Code explicitly mentions witness testimonies, expert's opinions, inspections, documents and other forms of evidence (such as photos, audio or video records).

In general, an ordinary appeal may be filed against a first-instance decision. The procedure then continues to the second instance. New evidence or factual statements may only be submitted if the person lodging the appeal became aware of these after the first-instance decision had been made. The second-instance decision is final and

enforceable. Only extraordinary legal remedies are available against the decision, such as a petition for review (in case the decision violates the law) submitted to the Supreme Court or a request for retrial (e.g., if important new evidence arises).

The procedural costs shall be borne by the defeated party. Certain costs (e.g., costs of evidence) are advanced by the parties during litigation. The plaintiff must pay a fee prior to filing the statement of claim, which generally amounts to about 6 per cent of the amount of claim. Procedures aimed at the initiation of enforcement of foreign decisions as per EU Regulations Nos. 44/2001, 805/2004 and 2201/2003 are exempt from duty.

The length of a judicial procedure may vary for many reasons, such as the number of parties, the complexity of the case, the quantity of evidence required, etc. It is worth pointing out that a litigation proceeding may take as long as one-and-a-half to two years or even more depending on the circumstances. A procedure at the second instance may also take a year or more.

Since 1 July 2010, payment orders (i.e., creditors' requests either for payment of a certain amount or another specific service, which may be final and enforceable provided that the debtor fails to contest it in due time) will be handled by notaries public and not by the courts. If the debtor contests the payment order in due time, the procedure goes to litigation. The aim of this modification is once again to ease the already heavy workload burden on the courts and to simplify the whole procedure. Monetary claims involving under 1 million forints may only be enforced via payment order, provided that the debtor has a domestic residence (or registered seat) and the claim does not arise from the employment, public service, service, outside worker or cooperative membership relationship. This provision does not prevent the creditor from enforcing its claim on the basis of EU Regulation No. 861/2007 of the European Parliament and the Council on the European Small Claims Procedure, or by way of an arbitration procedure. The provisions of the Civil Procedure Code are also applicable to payment order procedures governed by EU Regulation No. 1896/2006.

ii Procedures and time frames

Within 30 days of submission, a court examines whether a statement of claim meets the legal requirements or is in need of any supplements. If the court finds that the claim complies with the provisions of the Civil Procedure Code, it sets the date for the first trial within 30 days of receipt of the statement of claim.

The date of the first trial shall be scheduled for no later than four months (or nine months in special cases) from the receipt of the statement of claims. Any subsequent trials shall also be scheduled so that four months do not pass between two consequent trials. This rule does not apply if a summons is to be served on a party in a foreign country and the delivery process prolongs the date of the trial.

Parties must attend trials. If a claimant fails to appear at the first trial, the court terminates the procedure upon the request of the defendant. If the defendant fails to appear at the first hearing, the court may – at the claimant's request – condemn the defendant in accordance with the statement of claims. If the parties miss the trials held later on, the court only holds the hearing upon the request of any party, or may also adjourn the hearing and impose a fine on the missing party. The parties must present

their claims or counterclaims at the first trial. The court may summon witnesses or experts if necessary, and the parties also have the right to initiate this measure. The court holds hearings until there is sufficient data and information to make a decision on the case. There is no provision in the Civil Procedure Code setting a maximum time frame for a procedure.

An appeal may be lodged against a first-instance decision within 15 days from its communication (or three days in case of lawsuits in connection with promissory notes). The court examines the appeal, and if it complies with the legal requirements, it delivers the documents to the competent court of second instance. The hearing shall be scheduled so that four months shall not pass from the receipt of the documents by the court of second instance.

There are a number of ways to prolong the procedure, such as stay of procedure (for a maximum of six months), postponement of the hearing (at the mutual request of the parties, or if the statement of claims or amendment thereto were not duly and timely communicated to the defendant), or suspension of the hearing (if the decision to be made is subject to another decision of another court or authority). There is also an official summer holiday at the courts from July 15 to 20 August, during which time no hearings are held.

The Civil Procedure Code also provides for urgent applications. The court proceeds out-of-turn (i.e., without delay) in the event of, for example, claims for damages caused by the courts, promissory notes, requests for interim injunctions, litigations aiming at the termination of parental supervision, litigations where the protection or rights of a minor are concerned, libel suits, reinstatement of an unlawfully terminated employment contract, or litigations for the termination or limitation of enforcement procedures.

Following the submission of the statement of claims or counterclaims, a party may request the court to issue an interim injunction if such injunction would prevent imminent damage, is necessary for maintaining the situation from which the litigation arose, or is necessary for the protection of the applicant's legitimate interests and the disadvantage caused by the injunction does not exceed the advantages it may engender.

The Civil Procedure Code does not determine the types of injunctions that may be requested; therefore the court may apply a measure that best suits the applicant's interest.

iii *Class actions*

There are numerous cases where the law permits the submission of a class action:

a According to the Civil Code, in case of unfair general terms a third party[1] is entitled to challenge the said conditions. If the court rules that the condition

1 Such parties are: (1) prosecutor, (2) minister or head of an office with a national jurisdiction, (3) notary and chief notary, (4) commercial or professional chambers, (5) social organisation protecting the interests of consumers, (6) organisation established in any of the Member States of the EEA registered in accordance with Section 4(3) of Council Directive 98/27.

is unfair, it may declare it null and void with affecting all parties who are in a contractual relationship with the party applying the condition.

b The Hungarian Competition Office ('HCO') may file a claim on behalf of consumers against a business entity engaged in any infringement of the provisions of the Act on the Prohibition of Unfair Trading Practices and Unfair Competition or the provisions of the UCPA,[2] falling within the competence of the HCO, where such illegal action results in a grievance that affects a wide range of unknown consumers, but whose identity can be established based on the circumstances of the infringement.

c Class actions may also be brought on the basis of the Consumer Protection Act[3] according to which the consumer protection authority, non-governmental organisation for the protection of consumers' interests or the public prosecutor may file charges against any party causing substantial harm to a wide range of consumers by infringing consumer rights.

Class actions are becoming increasingly popular in the field of consumer protection, but there has not been a large number of procedures initiated by class actions to date.

A bill to modify the Civil Procedure Code is currently pending before the Hungarian Parliament regarding the provisions on class actions. The bill recommends that litigation launched on the basis of class actions be in the competence of the county courts, and that legal representation in these litigations is mandatory. The bill also requires that certain additional elements be included in contracts for legal services concluded between plaintiff and lawyer, as well as in the statement of claims.

Another change in the bill is that once a decision condemning a defendant is published, any person having legitimate interest in the outcome of the procedure (but who did not participate as plaintiff in the litigation) may request to be exempted from or even included within the scope of the decision.

These provisions are, however, currently only proposals within the bill.

iv Representation in proceedings

As a general rule, litigants may represent themselves in every proceeding before the local or county courts. Legal representation is mandatory before the Court of Appeal for a party submitting an appeal against a judgment or against an order made on the merits of the case. Legal representation is also mandatory before the Supreme Court for a party filing a specific appeal or petition for review. Furthermore, legal representation is compulsory in disputes between entities with legal personality that fall within the jurisdiction of the County Courts in the first instance. Therefore, the scope of mandatory legal representation is rather wide in the case of legal entities. Attorneys, law firms and legal counsel of a legal entity and patent agents are regarded as legal representatives. Certain other persons may also qualify as legal representatives provided that they have passed the necessary bar

2 Act No. XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices which Implemented the Unfair Commercial Practices Directive (Directive 2005/29/EC).

3 Act No. CLV of 1997.

exams. An attorney may proceed before any court. In Hungary, there is no distinction between lawyers as there is in the UK, with solicitors and barristers.

In matters where legal representation is mandatory, lawyers qualifying and registered with the competent bar association as European community lawyers may only proceed as legal representatives if they have concluded a collaboration agreement with a Hungarian attorney or law firm for that purpose.

v *Service out of the jurisdiction*

As a general rule, as of 1 January 2009, parties to litigation that are not domiciled nor have a residence or seat in Hungary are served with documents through their delivery agent provided that they have no proxy in the litigation with a Hungarian domicile or seat. The parties are considered to have become aware of the content of the respective document on the 15th day after the delivery agent was served with the respective document. If the parties to the litigation do not name a delivery agent within the applicable deadline or the delivery agent cannot be served with the documents, the court may serve the respective court documents by announcement, namely, by publishing the document on the notice board of the competent court and it shall be deemed as served on the 15th day following that on which the document was posted on the notice board. If the address of the party is available, the document must also be sent by post.

The above rules do not apply to the service of the statement of claim and the summons for the first hearing upon the defendant. Those documents shall be served to EU Member States as set forth and in accordance with the provisions of Regulation (EC) 1393/2007 of the European Parliament and of the Council, whereas with regard to non-EU Member States, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters applies.

If a company did not grant anyone specific authorisation regarding a lawsuit in connection with the operation of the company but has a delivery agent registered with the company registry, this registered delivery agent shall be regarded without any particular authorisation as delivery agent for the purposes of the lawsuit in connection with the operation of the company. With regard to other aspects, the same rules shall apply as demonstrated *supra*.

vi *Enforcement of foreign judgments*

The enforcement of EU judgments is mainly governed by Council Regulation (EC) No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. Pursuant to the regulation, a judgment delivered in a member state must be recognised in another member state without any special procedure.

An EU judgment may not be recognised, if, for example:

a recognition is manifestly contrary to the public policy in the member state in which recognition is sought;

b the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the defendant to arrange for its defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so; or

c the judgment is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought.

European Enforcement Orders are subject to enforcement in accordance with the rules laid down in EC Regulation No. 805/2004 creating a European Enforcement Order for uncontested claims. Actual enforcement is subject to Hungarian enforcement laws.

The recognition of non-EU judgments is governed by Law Decree No. 13 of 1979 on Private International Law. According to the Law Decree, a foreign judgment must be recognised if:

a the foreign court that delivered the judgment had jurisdiction over the dispute as per the Hungarian rules applicable to jurisdiction;

b the judgment is final under the laws of the country where the judgment was given; and

c there is reciprocity between Hungary and the country of the court that delivered the judgment.

A foreign judgment may not be recognised if:

a doing so would be contrary to Hungarian public policy;

b the party against whom the decision was made did not attend the proceeding either in person or by proxy because the subpoena, statement of claim, or other document on the basis of which the proceeding had been initiated was not served at its domicile or residence properly or in a timely fashion to allow adequate time for it to prepare its defence;

c the judgment was based on the findings of a procedure that seriously violates the basic principles of Hungarian law;

d legal proceedings involving the same parties and the same matter have been initiated before a Hungarian court before the foreign proceedings (*lis pendens*); or

e the matter was resolved by a final judgment of a Hungarian court (*res iudicata)*.

Actual enforcement is subject to Hungarian enforcement laws in both cases.

vii Assistance to foreign courts

The Taking of Evidence Regulation (Council Regulation 1206/2001/EC) is directly applicable in Hungary as well, by which the courts of the Member States (except for Denmark) may request assistance in taking evidences in another Member State, or may take evidence themselves. A foreign court's request must be made in the form attached to the Regulation and must include the name of the requesting and the designated court, the name and address of the persons participating in the litigation and their legal representatives, a short description of the case, a short description of the evidencing procedure requested, and data of the persons to be interrogated.

As for cooperation with courts in non-EU states, Hungary is a member of the Hague Convention of 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. A foreign court's request must include the same information as indicated *supra*.

viii Access to court files

As a general rule, hearings are held publicly. The court is entitled to exclude the general public for the protection of state, service or business secrets, in the defence of public morals or at the request of a party if it is necessary for the protection of personal rights. Judgments are announced publicly.

Otherwise, the litigating parties, the public prosecutor and other persons participating in the litigation (e.g., person intervening in the proceeding) and their legal representatives are entitled to have access to the documents of the case (except for draft decisions, which are confidential). Access to documents containing state and service secrets is restricted and is subject to special rules, for example, specific approval is required and no copies may be prepared of the documents. If the documents contain business, service or other types of secrets, the judge may establish a strict policy for accessing or copying such documents. In this case, the persons wishing to become aware of the content of the document containing a secret must make a declaration pursuant to which they will keep confidential all data and information learned of. If the person entitled to grant release from secrecy makes a declaration in due time pursuant to which he or she does not give consent to others becoming aware of the business or service secret, then only the judge and the person taking minutes of court hearings may have access to the confidential parts of such documents.

Other third persons who do not participate in the process, but have a legitimate interest in the outcome of the dispute may request the judge, upon evidencing their legitimate interest, to grant them access to the documents.

Currently, members of the public only have access to final decisions on the website of the courts.[4] It is also possible to request a printed version of the final decisions. All personal data of the parties are cleared from these decisions.

ix Litigation funding

In practice, litigation is funded by the parties, but there is no specific rule against third-party litigation funding.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

Act No. XI of 1998 on Attorneys ('Attorneys Act') contains the main rules governing conflict of interest. Under the act, an attorney may not take a mandate from a party whose interest goes against the interest of the attorney's client. An attorney may take a mandate against a former client if there is no connection between the previous case and the new case. In addition, an attorney may take a mandate against his former employer if the employment was terminated at least three years prior to the possible mandate and the attorney did not work on the respective case. Clients, former clients and employers may grant a written release from the said limitations. An attorney may not take a case in

4 www.birosag.hu.

which he previously acted as a judge, prosecutor, notary public, or as a member of an investigating authority.

The Ethical By-Laws of the Hungarian Bar Association provide some additional rules in this regard.

As indicated *supra*, an attorney may not take a mandate from a party whose interest goes against the interest of the attorney's client unless the attorney's client gives written consent thereto. In addition, as a rule, the attorney is bound by confidentiality with regard to every fact and all data about which he has gained knowledge in the course of carrying out his professional duties. This obligation is independent of the existence of the attorney-client relationship and continues to be in place even after the attorney has ceased acting in the matter.

Therefore, it is possible for two attorneys working in the same law firm to represent clients with adverse interests, provided that the client's consent is obtained in writing. If consent is granted, the attorneys owe a duty of confidentiality towards each other. This duty could be regarded as a Chinese wall within the law firm.

ii Money laundering, proceeds of crime and funds related to terrorism

Act No. CXXXVI of 2007 on the Prevention of and Combat against Money Laundering and the Financing of Terrorism governs this issue. Pursuant to the act, attorneys must identify their clients and make reports, when needed, if they hold any money or valuables in escrow or if they provide legal services in connection with the preparation and execution of the following transactions:

a purchase or sale of any business interest in a business association;
b purchase or sale of real property; or
c establishment, operation or dissolution of a business association.

Client identification (or client due diligence) consists, among other things, of the identification of the client, the recording of certain client's data and, when needed, reporting an event to the authorities.

iii Other areas of interest

Attorneys may prepare and endorse signature specimens for managing directors, board members and supervisory board members provided that all other respective corporate documents are prepared and endorsed by the same attorney.

Attorneys may provide to companies 'registered seat' services provided that the deed of foundation of the relevant company was prepared and endorsed by them. In this case, certain conditions must be fulfilled by the attorney.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

The concept of privilege as in the United Kingdom does not exist under Hungarian law. Lawyers are, however, bound by the duty of confidentiality.

The Attorneys Act sets forth the rules that apply to confidentiality. Pursuant to this act, an attorney is bound by confidentiality with regard to every fact and all data about which he gains knowledge in the course of carrying out his professional duties.

The duty of confidentiality pertains to all documents prepared by the attorney and all other documents in the attorney's possession that contain any fact or data subject to confidentiality. An attorney may not disclose any document or fact pertaining to his or her client in the course of an official inquiry conducted at the attorney's office, but he may not obstruct the proceeding of the authority.

While the attorney may not disclose and may not be forced to disclose any confidential information, the document or the information contained therein is not specifically protected. Therefore, if the other party lawfully obtains documents that are considered confidential as per the terms of the Attorneys Act, that party may use them in legal proceedings.

As in-house lawyers are employees of their firm, they do not enjoy special treatment in comparison to other employees of the relevant firm.

Foreign lawyers working in Hungary are bound by the same rules as Hungarian lawyers.

The above rules have been in place for a few years and no change is expected to take place in this regard.

ii Production of documents

A litigating party is not required to disclose documents to the other party. Of course, the court may oblige a party, at the request of the other party, to disclose certain documents.

In some cases, certain documents must be disclosed, including documents that establish a legal relationship with or that were issued on behalf of the requesting party, or prove an ownership right.

If a litigating party wishes to prove the statements he or she makes by means of documents, he or she is required to submit to the court the relevant documents. Then the judge will assess the probative force of the document submitted.

No specific treatment applies to documents stored overseas. If the relevant party finds it essential to submit a document that is being stored overseas, he may obtain the document and file same with the court.

If, in a litigating party's view, certain documents are indispensable for successful litigation, he may submit them to the court.

At the request of the proving party, the court may oblige the other party to produce a document he is obliged to submit in accordance with the rules of civil law, for example, if the relevant document was issued in favour of the proving party or the document certified a legal relationship relating to the proving party.

If a litigating party wishes to prove statements that he or she makes by means of documents, he or she must submit to the court the relevant documents. The judge will assess the probative force of the document.

In this regard, no special rules apply to documents stored electronically. If a party wishes to submit such documents to the court, the party must make available the means to the court to access the document.

If a litigating party is unable to produce a document that he or she is required to produce, the court will assess the failure to produce the relevant document and will decide the case.

Due to a recent modification of the Civil Procedure Code, since 1 July 2010, in litigation between companies where the legal representation is mandatory, the statement of claims and all related documents must only be communicated to the court electronically via an internet-based portal (except if the scanning of the documents causes an unreasonable amount of difficulties or the authenticity of the documents is questioned) by way of uploading them to the court's 'account'. The court will also communicate with the parties and the expert exclusively via electronic means. This modification also affects the rules of presumption of delivery. According to the laws effective as of July 2010, the documents will be considered delivered automatically after the fifth business day from delivery (upload). The scope of the aforementioned electronic communication will be extended to all procedures where the party acts by way of its legal representative as of 1 July 2011.

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

There are three main types of alternative dispute resolutions in Hungary: arbitration, mediation and conciliatory proceedings. We focus here on the review of the main rules governing conciliatory proceedings.

Based on the Labour Code,[5] the parties may engage a referee with a view to reaching a resolution of a collective labour dispute. Such referee's resolution is binding, provided that the parties previously so agree. In certain cases, this proceeding is compulsory when it comes to a collective labour dispute. In addition, the employer and the employee may also be subject to a referee with a view to settling a dispute that does not qualify as a collective labour dispute.

With a view to enforcing consumer's rights, the Consumer Protection Act established conciliatory bodies attached to the regional economic chambers. The conciliatory bodies deal primarily with the out-of-court settlement of disputes arising between consumers and undertakings in connection with the quality and safety of goods, the application of the rules relating to product liability, the quality of services and the conclusion and performance of contracts. The aim of the conciliatory procedure is to settle disputes between consumers and undertakings by way of reaching an agreement, and in the absence thereof, to make a resolution to enforce consumers' rights in an expedient, effective and simple way. Conciliatory proceedings are initiated at the request of the consumer or, if more consumers are concerned, the competent organisation representing consumers' interests. In the absence of an amicable settlement, the decision of the conciliatory body is binding on the undertaking only if same has previously made a declaration pursuant to which the undertaking would consider the decision of the conciliatory body as binding.

5 Act No. XXII of 1992.

ii Arbitration

Act No. LXXI of 1994 on Arbitration ('Arbitration Act') and the European Convention on International Commercial Arbitration of 21 April 1961 mainly govern arbitration procedures in Hungary.

The Arbitration Act basically covers: arbitration clauses, the formation, jurisdiction and procedure of the arbitration trial, procedure in international arbitration cases and the role of ordinary courts.

The main Hungary-based permanent courts of arbitration are as follows: the Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry. This is the most important arbitration tribunal in Hungary designed to resolve large commercial disputes; the Money and Capital Markets Arbitration Tribunal – if the parties agree to the jurisdiction of this arbitration tribunal, it has a broad jurisdiction to settle disputes in matters related to financial and capital markets; and the Permanent Court of Arbitration for Telecommunications – this body was founded by the Council of the National Telecommunications Authority and may also conduct mediation proceedings between the parties in accordance with the rules of Act No. LV of 2002 on Mediation ('Mediation Act').

In addition to the above courts of arbitration, it is worth noting that the International Court of Arbitration of the International Chamber of Commerce is the best known international arbitral tribunal in Hungary.

When it comes to dispute resolution, arbitration is not too common and is typically used by certain players of the Hungarian business field. Mainly foreign-owned business organisations and large Hungarian-controlled companies submit their legal disputes to arbitration tribunals.

The award of the arbitration tribunal has the same effect as that of a binding court resolution; therefore, it is not possible to appeal against the award. Within 60 days after receipt of the award, the party may file a request for annulment through a statement of claims with the competent county court or the Metropolitan Court on any of the following grounds:

- *a* the party who concluded the arbitration agreement did not have a legal capacity under the applicable law to act;
- *b* the submission to arbitration is not valid under the applicable law;
- *c* the party was not given proper notice of the appointment of an arbitrator or the arbitration proceeding or was otherwise unable to present its case before the arbitration tribunal;
- *d* the award concerns a dispute not covered by or not falling within the terms of the submission to arbitration; if the award contains a decision on matters beyond the scope of the submission to arbitration, provided that the decision on matters submitted to arbitration can be separated from those not covered by the submission to arbitration, annulment may only be requested in regard of that decision that is not covered by the submission to arbitration;
- *e* the composition of the arbitration tribunal or the arbitration procedure was not in accordance with the agreement of the parties – except if such agreement is contrary to a mandatory provision of the Arbitration Act – or, in the absence of such an agreement, with the provisions of the Arbitration Act;

f the subject matter of the dispute may not be subject to arbitration under Hungarian law; or

g the award violates Hungarian public policy.

Failure to meet the 60-day deadline results in the forfeiture of rights.

In addition to the above, the court may suspend the enforcement of the award at the request of the relevant party. The court may not revise the award on the merits of the case. Instead, the court's role is to establish whether any of the grounds for annulment applies. Although no appeal may be lodged against the decision of the court, a petition for review is allowed.

In Hungary, foreign arbitral awards may be enforced by way of judicial enforcement in accordance with the provisions of Act No. LIII of 1994 on Judicial Enforcement ('the Judicial Enforcement Act'). First, the court adopts a confirmation of enforcement in which it confirms that the foreign arbitral award is enforceable under Hungarian law the same way as Hungarian arbitral awards or judicial decisions. To obtain such confirmation, the following documents must be enclosed with the application for enforcement: the duly authenticated original award or a duly certified copy thereof, the original of the arbitration agreement or a duly certified copy thereof, and an official translation if the aforementioned documents were not issued in the Hungarian language. The competent court issues a certificate of enforcement after the confirmation of enforcement has become final and binding, if the following conditions are met: the award contains condemnation; it is final and binding or preliminarily enforceable; and the performance period has expired. The court provides the competent bailiff with the certificate of enforcement. Under Hungarian law, the debtor's salary, bank accounts, claims, moveables and real properties may all be subject to judicial enforcement.

According to the reservation made by Hungary, the New York Convention applies only to recognition and enforcement of awards made in the territory of another contracting state and only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under Hungarian law.

Pursuant to the New York Convention, recognition and enforcement of an arbitral award may be refused if, for example:

a the subject matter of the dispute may not be subject to arbitration under Hungarian law; or

b recognition or enforcement of the award would violate the public policy of Hungary.

In a relatively recent case,[6] the Supreme Court ruled that only a real and rather substantial menace that prejudices society's fundamental interest violates Hungarian public policy. The fact that the payment of an amount awarded by an arbitral trial would make the debtor insolvent only affects the debtor's individual financial situation – it has no effect on public policy. Therefore, based on that ground, recognition and enforcement of the award may not be refused.

6 Case BH 2007/130.

Since the beginning of the 1990s, arbitration and international arbitration have had an expanding role in dispute resolution. The Hungarian Bar Association published a set of arbitration rules which may be adopted on a voluntary basis in *ad hoc* arbitration cases. The most important permanent arbitration institute, the Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry, has almost three times as many cases as 15 years ago; that is about 300 cases per year.

iii Mediation

The Mediation Act contains the main rules governing mediation proceedings in Hungary. Pursuant to the Mediation Act, mediation is a special, non-litigious procedure conducted to provide an alternative to court proceedings aiming at the resolution of disputes where the parties involved voluntarily submit the case to a mediator with a view to reaching a written agreement.

Both natural persons and legal entities with legal personality may become mediators provided that they meet all the statutory requirements laid down in the Mediation Act.

It is worth noting that an agreement reached during mediation has no effect of any kind on the parties' right to assert their claims before ordinary court or a court of arbitration.

Mediation is rarely used as a method of dispute resolution in the business field in Hungary and we are not aware of any fact or development that would suggest that this may change in the future.

iv Other forms of alternative dispute resolution

The main ADR mechanism in Hungary is arbitration. The main advantage of arbitration as opposed to litigation is that the procedure is usually more expedient. The drawback of the same is that arbitration is more expensive than ordinary court procedures.

Other alternative dispute resolution methods, such as mediation, expert determinations and referees, are rarely used.

VII OUTLOOK AND CONCLUSIONS

As we have already mentioned, the major trend in the law of civil procedures is to simplify and make the litigation procedure more cost-effective (by introducing electronic delivery in certain litigations), as well as decreasing the sometimes tremendous workload of the courts (by restructuring of the handling of payment orders and the prohibition on stipulating the exclusive jurisdiction of certain courts). Since these modifications are relatively new or (in some cases) are not even effective yet, it is currently too early to comment on their results.

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