Hungary

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LITIGATION

Court system

1 | What is the structure of the civil court system?

The Hungarian court system has four levels. There are:

- 112 local courts (106 in towns and six in the various districts of Budapest, the capital city);
- 20 county courts, including the Budapest-Capital County Court;
- five regional courts operating in five major towns; and
- the Supreme Court (Curia).

On 31 March 2020, the regional administrative and labour courts were dissolved. In their place, the legislature appointed eight county courts with an administrative division that, as courts of first instance, deal with the judicial revision of administrative decisions. In administrative cases, the Supreme Court acts as the court of appeal and the court of revision (ie, the court adjudicating requests for extraordinary remedy submitted against an enforceable judgment allegedly violating the law or deviating from a published decision of the Supreme Court).

Labour cases are now handled in the ordinary court system: they are adjudicated by county courts as courts of first instance, by regional courts as courts of appeal and by the Supreme Court as the court of revision.

The Constitutional Court, which has a duty to protect the Fundamental Law of Hungary, is not part of the ordinary court system. However, a case under the Civil Procedure Act (CPA) may be referred to the Constitutional Court by an ordinary court if it considers that the law applicable to the case is against the Fundamental Law of Hungary or an international treaty. In addition, under certain circumstances, a person or organisation involved in a case under the Administrative Litigation Act (ALA) or the CPA may also turn to the Constitutional Court if the law applied in the case or the final decision passed by an ordinary court is against the Fundamental Law of Hungary.

At first instance, the trial is held by a single professional judge in civil matters. In administrative matters, as a general rule, the court consists of three professional judges. In employment matters, there are also two lay judges in the court in addition to the professional judge. In every second-instance procedure, the court consists of three professional judges.

There are no specialist commercial or financial courts; however, special divisions were established at most of the courts for managing commercial matters. Usually, judges have a certain portfolio of matters, which is publicly available in the case of some courts.

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

The CPA, which entered into force on 1 January 2018, requires judges to participate in procedures more actively than before. It sets forth the obligation of judges to endeavour to obtain evidence within a time period that makes the adjudication of the lawsuit possible at the first hearing. This obligation means that judges shall ask questions, request statements and provide information if the parties' statements are not complete, not detailed enough or contradictory. Judges shall notify the parties if they interpret the legal regulations referenced by the parties differently, if they identify such a fact that has to be considered by them ex officio (without the parties' reference to it), or they are not bound in certain aspects by the petitions of the parties (eg, the court shall terminate co-ownership in such a manner it sees fit, if this manner is not objected to by all parties).

Civil procedures have two phases: in the first phase, the parties and the court shall act to determine the framework of the procedure. The parties are obliged to make statements, offer evidence and file motions for obtaining evidence (eg, motions for hearing witnesses and acquiring expert opinion). In this phase, the role of the judge encompasses pre-hearing responsibilities, which include examination of the statement of claim, the decision whether to refuse the claim or suspend the procedure and decisions on interim remedies. It is up to the court to decide on further written statements (after the respondent files an answer to the statement of claim), or to set the time of the hearing. The court shall also decide when the framework of the procedure is clear, and close the first phase.

In the second phase, as a general rule, judges may act only for obtaining evidence in accordance with earlier motions and the parties may submit only legal arguments (ie, they cannot put forward new motions and state new facts). Judges shall decide in the second phase if it is time to pass a judgment.

At the hearing, the judge leads the trial and determines the sequence of procedural acts.

The jury system is unknown in Hungary.

Pre-qualification criteria of judges

Candidates to be appointed as judges in Hungary must:

- be at least 30 years of age;
- be Hungarian citizens;
- not be under guardianship or conservatorship or under the effect of advocated decision-making;
- have a law degree;
- have passed the bar examination;
- agree to file a declaration of personal wealth as set out in the relevant law;
- have at least one year's relevant experience (as specified in the relevant act); and
- be found suitable based on the results of the professional aptitude test.

The selection process of judges

Vacancies are filled through a public selection process. The selection process shall be conducted in a way to ensure that the judge's position

is filled in an open selection procedure designed to ensure equal conditions for all candidates who are able to satisfy the requirements prescribed in the CPA and in the notice of vacancy and, as a result, to choose the best suitable candidate for the position. The president of the National Office for Judiciary (OBH) shall have competence to publish the notice of vacancy. When determining the ranking of applicants, only certain criteria may be taken into account (experience, results of the professional aptitude test and the bar examination, postgraduate diploma in law or other secondary diploma, language skills, legal publications, etc).

Limitation issues

3 | What are the time limits for bringing civil claims?

The statute of limitations is considered to be a matter of substantive law. Limitation of actions is regulated in the Civil Code, and a general regime applies to most civil claims. As a general rule, the limitation period for breach of contract, property damage, economic loss and personal injury is five years. If the damage or personal injury is caused by a crime, the limitation period is the same as the period during which the crime is punishable, but is at least five years. Ownership claims may be pursued without any time limit.

Some special rules provide for shorter limitation periods such as three years or one year (eg, implied warranty) and for special torts. Generally, the parties to a contract are also free to change the prescribed period in writing but they cannot rule it out completely.

Where the claimant is not in a position to bring an action for good cause, his or her claim is not time-barred for one year of the date on which the reason ceased to hinder the claimant, even if the limitation period has expired.

The limitation period commences on the date when service is due or the damage is done, irrespective of whether the party has knowledge of this fact. The limitation period is interrupted by:

- the start of judicial proceedings in which a final decision on the merits of the case would be adopted;
- amendment by the parties of the underlying contract or the settlement of a dispute relevant to the obligation in question;
- notification of the claim in bankruptcy proceedings; or
- acknowledgment of the debt by the debtor.

The limitation period recommences after interruption.

There is a different regime of very short ordinary and long-stop limitation periods for lawsuits in connection with company law cases. Special rules also apply to certain claims based on securities, such as a bill of exchange.

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

The new procedural system puts the burden on claimants: the statement of claim must contain all facts and evidence that substantiate the claim. If a fact that is necessary for the success of the claim is not supported by evidence, the claimant shall make motions to the court to acquire them. This means that the statement of claim must be planned well ahead of submission and will require more work on behalf of both the client and the attorney.

It is advisable to exchange letters about the dispute with the counterparty before filing the statement of claim. If the respondent accepts the claim in the first phase of the procedure and did not give a reason for the procedure, the claimant shall bear all court fees.

Pre-action disclosure orders are not known in Hungarian law, but it is possible to request the conduct of preliminary evidentiary procedures by courts or notaries. A motion for interim injunction may be filed before the statement of claim.

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

An action is started with the submission of a statement of claim to the appropriate court. The statement of claim shall have three sections, containing the following:

- data of the court, the parties and the claimant's legal representative;
- remedies sought by the claimant, the legal grounds, relevant facts, the legal argument on the connection between the remedies sought, the legal grounds and the relevant facts, evidence and motions substantiating the relevant facts or motions to acquire them; and
- value of the procedure's object, competence of the court, payment of duty, the legal capacity of the party and its representatives to act in the procedure and all relevant facts, legal grounds and evidence.

In the case of monetary claims, an action can (or must, in the case of claims under 1 million forints) be started by a request for the issuance of an order to pay.

Under Hungarian law, the other party shall not be informed of the start of the judicial proceeding, nor shall the statement of claim be delivered directly to him or her. The summons and the claim are served by the court on the respondent.

The caseload of courts is uneven: in general, metropolitan courts are overflooded, while courts in the countryside have free capacity. Available judges and panels may be appointed to manage cases of other courts as secondments. (This means in practice that the case in question will be managed by another court; for example, hearings will be held at the court in which the judge or panel usually acts.) The secondment judge or panel may be appointed in certain cases by the president of the county (metropolitan) court, and in other cases by the OBH.

Timetable

6 | What is the typical procedure and timetable for a civil claim?

Following the filing of the statement of claim, the court has 30 days to decide whether the case falls within its competence and the claim is suitable for trial. If the court determines the lack of its competence and it can identify the competent court or authority, it transfers the case. If the claimant omits necessary elements of the claim, the court is bound to reject the claim ex officio. The omission of certain other elements of the claim may give grounds for the court to order the claimant to submit further particulars. If no further particulars are necessary, or if the claimant submits the missing particulars, the court forwards the claim to the respondent and provides 45 days to file its answer. The court may extend this deadline by a maximum of 45 days upon the request of the respondent.

After the respondent's answer, the court may request further written statements from the parties, set the date of the first hearing or close the first phase of the procedure without a hearing. In the latter case, any of the parties may request a hearing. If the framework of the procedure is clarified, the court shall adopt a resolution on closing the first phase, and opens the second phase by setting the date of a hearing. If the court adopts its resolution on a hearing, it may instantly open the second phase.

In the second phase, the court proceeds to obtain evidence based on the parties' motions submitted in the first phase. The court may set hearings for consecutive dates.

When the court sets the date of a hearing, the date shall be within four months.

When the court considers that it is time to pass its judgment, it notifies the parties. No time limit is set for the court to pass its judgment.

The legislature adopted the new ALA and CPA to shorten court procedures. Previously, a first instance procedure generally lasted for one year in administrative matters and for one to three years in civil matters. In our experience, the duration of administrative procedures has decreased to under a year, while the duration of civil procedures has generally been reduced to one to two years.

Case management

7 | Can the parties control the procedure and the timetable?

The procedure and the timetable are controlled by the court. The new CPA lays down strict rules and provides instruments to judges to abolish parties' dilatory behaviour.

Evidence – documents

8 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

In Hungary, only the court can order production of those documents to which the party must, by substantive provisions of civil law, give the other party access.

The new CPA defines statement and evidentiary crisis of a party. A party is in crisis if the party cannot make specific statements on facts or provide certain evidence because the other party has such knowledge or evidence, and the other party does not share them with either the party in crisis or with the court. In case of such a statement or evidentiary crisis, the court may accept facts as true if it does not have doubts.

The court can obtain numerous documents ex officio. Government bodies such as the Revenue Office and Social Security Office must comply with the court's request.

Evidence – privilege

9 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Legal privilege (attorney–client or legal professional privilege) as known in common law jurisdictions is not recognised by statute as an obstacle to the disclosure of a document. An attorney can refuse to be heard as a witness, and this rule has been extended by legal practice to attorney–client documents as well. Similar rules apply to relatives, doctors, priests and persons who hold business secrets.

There are certain areas of law, such as competition law, where the concept of legal privilege is accepted by statute. However, documents written by in-house counsel are not privileged, even in this context. In other areas of law, privilege can be used as an argument, but the principle itself is not established in court practice. However, disclosure obligations cover only a very narrow field of documents. In addition, for non-disclosure of confidential information, the court may order that the hearings are not held publicly.

Classified information, such as state secrets, must not be disclosed. If a third party's business secret or professional confidence is affected, and the third party does not consent to disclosure, the document cannot be used as evidence. If the court deems that the content of a submitted document concerns business or professional secrets, it must approach the person or entity entitled to approve the use of the secret (secret-holder) to obtain approval. If the secret-holder does not respond within eight days or gives its consent, the secret can be used.

Evidence – pretrial

10 | Do parties exchange written evidence from witnesses and experts prior to trial?

No. The parties may exchange letters about the dispute and initiate preliminary evidentiary procedures.

Evidence – trial

11 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Court witnesses of fact usually only give oral evidence in person and in court before the judge (written evidence is generally treated as a document and not as witness testimony).

The court usually appoints experts upon the request of a party. The court's first choice will always be someone registered as a judicial expert, and preferably a member of the local chamber of judicial experts or of a state-owned expert institute. The parties can agree on a specific expert. If so, the court will probably appoint that expert.

After the expert submits his or her opinion, the parties may file motions to the court with questions to the expert or for clarification of unclear or faulty parts of the expert opinion. If the court grants such a motion, it will call upon the expert to supplement his or her opinion or summon him or her to the hearing.

If the faults of the opinion are not remedied, the court shall appoint a new expert.

Interim remedies

12 | What interim remedies are available?

Interim injunctions may be requested in the procedure or before filing the statement of claim. The court grants an interim injunction if it deems at least one of the following conditions fulfilled:

- instant damage threatens;
- the status quo shall be preserved;
- in lieu of an interim injunction, the applicant may not be able to exercise his or her rights later; or
- the interim injunction is justified by the special circumstances of the applicant.

The court weighs whether the advantage to be attained exceeds the disadvantage caused.

The other party has the right to make a statement on the application. The court may hear both parties, especially if it has to decide about securities. Granting the interim injunction may be subject to the provision of securities by the applicant if the other party shows the probability of an injury due to the interim injunction, or if the applicant offers it and the other party accepts.

An interim injunction takes the form of an order. If the respondent does not comply with the order, the order can be enforced. The order is enforceable irrespective of whether an appeal was submitted against it, and remains in force until it is overruled by the court.

Remedies

13 | What substantive remedies are available?

Depending on the circumstances of the case, the remedies sought and the substantive provisions of law, final remedies can take any form the court considers appropriate, including:

- specific performance;
- compensatory damages;
- injunctions;
- declarations; and

- in special cases, conclusion or amendment of contracts (eg, in case general terms and conditions shall be regarded as unfair).

Nevertheless, as a general rule, the court cannot apply a remedy that the claimant did not specify in the statement of claim as a relief sought. Punitive damages are not awarded.

Enforcement

14 | What means of enforcement are available?

Enforcement is a separate, standalone court procedure. It is governed by Act LIII of 1994 on Judicial Enforcement.

If the due date set in a final judgment has passed and the unsuccessful party has not performed, the other party can apply for enforcement to the local court with jurisdiction. The local court then seals the judgment as enforceable and, if requested, instructs a judicial bailiff (a registered official enforcement agent) to enforce it. The applicant has a right to choose the method of enforcement, subject to certain limits.

Enforcement for the recovery of sums of money takes one of the following forms: seizing goods, financial assets, including bank assets and shareholdings, outstanding claims, portion of salaries and other regular earnings, or real properties.

Public access

15 | Are court hearings held in public? Are court documents available to the public?

Generally, court hearings are public; however, under certain circumstances a closed hearing can be ordered.

Since 2007, all judgments of higher courts are, after anonymisation, made available online. Upon request or ex officio, the court can try the case in a closed hearing or protect the confidentiality of sensitive information in other ways. Apart from the hearings, the court procedure is not public. Pleadings, motions and other submissions, as well as court orders, are only accessible to the parties to the lawsuit.

Costs

16 | Does the court have power to order costs?

Costs paid in advance in the procedure, procedural fees and expert costs are usually borne by the losing party in proportion to the winning or losing ratio. In allocating the costs, the court can consider other factors such as delays and actions of the parties violating the good-faith principle in relation to proceedings. However, the court does not normally consider factors outside the proceedings. In practice, the court can order legal fees, although some of the costs are frequently not recovered in full for various reasons. In addition, courts often reduce the costs incurred in connection with the lawsuit.

Non-resident claimants are required to provide security – when so requested by the respondent – for covering the costs arising out of the litigation, except if:

- otherwise provided for by an international treaty to which the Hungarian state is a party, or unless the principle of reciprocity suggests otherwise;
- the claimant's claim is recognised by the respondent or the claimant's domestic assets provide sufficient cover; or
- the court granted a complete exemption from costs to the claimant.

Funding arrangements

17 | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

One restriction applies to the agreement between lawyers and their clients: the part of the contingency fee exceeding two-thirds of the normal fee may not be enforced before court. It follows that 'no win, no fee' agreements are practically ruled out.

In practice, task-based billing is the most common in litigation matters. However, in the case of high-profile cases, law firms usually bill hourly. Both solutions are often combined with a contingency fee. If legal counsel does not disclose his or her agreement with the client, which is mostly the case, the court determines legal fees and costs on the basis of statutory provisions.

The parties to the litigation advance, and very often pay, the costs of litigation. Third-party funding is possible, but it is very rare in practice.

Insurance

18 | Is insurance available to cover all or part of a party's legal costs?

Generally, insurance is available for litigation costs only as a part of liability insurance. Otherwise, it is not known or applied in Hungary.

Class action

19 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

The new CPA lays down two types of collective lawsuits: lawsuits initiated in the public interest and lawsuits initiated by, among others, a public prosecutor based on association. The former may be initiated in respect of, for example, contracts that involve a consumer and a business party and for the annulment of an unfair contract term that has been incorporated into a contract. The latter may be initiated by at least 10 claimants for enforcement of identical rights if the factual background is the same and the court grants its approval. Lawsuits based on association may be initiated in respect of claims arising from consumer contracts or from health damages caused by unforeseeable environmental incidents, and in labour cases. The legislator formulated the concept of lawsuits based on association in line with the opt-in mode of class actions.

Appeal

20 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

An appeal can be brought on certain grounds:

- illogical conclusions drawn from evidence;
- the omission of acquiring evidence regarding relevant facts referenced by a party;
- a wrong legal conclusion drawn from the established facts;
- discretion exercised in an improper manner; and
- the omission of certain relevant issues.

However, the parties may not make new references to facts or evidence in the appeal or during the second-instance procedure, except in special circumstances.

The appeal must be filed with the court that issued the judgment within 15 days from the date of receipt of the judgment.

There is no right of further appeal. Nevertheless, if certain conditions are fulfilled, a request for the judicial review of the final judgment or a final ruling adopted on the merits of the case can be submitted to the Supreme Court on the grounds of violation of law.

Foreign judgments

21 | What procedures exist for recognition and enforcement of foreign judgments?

EU member states

The Brussels Regulation applies to the enforcement in Hungary of judgments passed by a court in another EU member state.

Under the Brussels Regulation, a judgment given in an EU member state is recognised in Hungary without any special procedure required. Judgment means any judgment given by a court or tribunal of a member state, whatever the judgment may be called, including a decree, order, decision or writ of execution. In no circumstances may a foreign judgment be reviewed as to its substance.

A judgment will not be recognised if:

- recognition is manifestly contrary to Hungarian public policy;
- the respondent was not served with the document that started the proceedings in sufficient time and in such a way as to enable the respondent to arrange for his or her defence;
- it is irreconcilable with a judgment given in a dispute between the same parties in Hungary;
- it is irreconcilable with an earlier judgment given in another EU member state or in a third state involving the same cause of action and between the same parties; or
- it is in contrast with the exclusive jurisdiction of Hungarian courts.

With the revised Brussels Regulation (Regulation 1215/2012 of the European Parliament and of the Council) being applicable from 10 January 2015, the recognition and enforcement of judgments in the European Union became automatic. However, the denial of enforcement may be requested on the grounds listed above as exceptions to recognition. Under Council Regulation 1346/2000/EC on insolvency proceedings, insolvency of a company ordered by a court in a member state is automatically acknowledged by Hungarian courts.

Other countries

Similar rules as under the Brussels Regulation apply between Hungary and the EFTA countries, other than Liechtenstein, under the New Lugano Convention, dated 30 October 2007.

A judgment adopted by a court of a non-EU country or by a court of a country that has not ratified the New Lugano Convention will be recognised in Hungary in line with the Hungarian Code of International Private Law if:

- the jurisdiction of the foreign court in question is found legitimate under the rules of jurisdiction of Hungarian law;
- the decision is final and enforceable in the country in which it was made; and
- there is reciprocity between Hungary and the foreign country in question (there is no reciprocity with the United States, for example).

Recognition of the judgment can be refused if:

- it violates Hungarian public policy;
- the respondent to the judgment did not attend the proceedings in person (or through a representative) because the document on the basis of which the proceedings were initiated was not served at his or her domicile or residence properly, or in a timely fashion to allow adequate time to prepare his or her defence;
- it was based on the findings of a procedure that seriously violates the basic principles of Hungarian law;
- a procedure for the same right arising from the same factual basis between the same parties was already conducted before a Hungarian court or a Hungarian authority before the foreign proceeding was initiated; or
- a Hungarian court or a Hungarian authority has already adopted a final decision concerning the same right arising from the same factual basis between the same parties.

Under the revised Brussels Regulation, a judgment passed in a member state shall be recognised in another member state without any further ado. In other cases, the party that intends to enforce a judgment may request a special court procedure for the recognition of an official foreign judgment in Hungary. The judgment is then enforced in the same way as domestic judgments. If the party does not initiate a separate procedure, the judgment, as a general rule, shall be examined and recognised (or denied) by the court or authority in the procedure where it was referenced.

Foreign proceedings

22 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

EU member states

Hungary provides assistance to other EU member states in line with Council Regulation No. 1206/2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters.

Other countries

According to the Hungarian Code of International Private Law, at the request of a foreign court or an authority, a Hungarian court or an authority shall provide legal aid on the basis of an international treaty or in the case of reciprocity. Hungary ratified the Hague Convention of 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters on 13 July 2004. In line with article 2 of the Convention, Hungary designated the Ministry of Justice as Central Authority.

ARBITRATION

UNCITRAL Model Law

23 | Is the arbitration law based on the UNCITRAL Model Law?

Act LX of 2017 on Arbitration (the Arbitration Act) closely follows the UNCITRAL Model Law and reflects the 2006 amendments. The Arbitration Act applies if the place (seat) of the ad hoc or permanent arbitration court is in Hungary. In international arbitration, parts of the Act apply even if the seat of the proceeding permanent arbitration court or the place of ad hoc arbitration is outside Hungary.

Certain procedural provisions in the Hungarian Code of International Private Law apply mainly in relation to jurisdiction.

Arbitration agreements

24 | What are the formal requirements for an enforceable arbitration agreement?

Except for the requirement that the agreement be in writing, there are no statutory requirements relating to the arbitration agreement. (An arbitration agreement can be concluded as part of another contract or in a separate agreement.) The interpretation of the term 'in writing' is not always straightforward, but it is usually accepted as being in writing if the arbitration clause is signed by each party and mailed or faxed to one another. The signature must originate from a person duly authorised to represent the party (valid proxy). In many cases, the validity

of an arbitration clause is challenged on the grounds that the signing party was not an authorised representative. An arbitration agreement concluded electronically but without an electronic signature must also be considered to be in writing if the data communicated electronically (especially by email, fax or telex) could be accessed by the other party and is appropriate for later reference.

An arbitration clause is often included in one of the party's standard terms and conditions. However, this type of arbitration clause forms part of the parties' agreement only if both the party using the general terms and conditions specifically draws the attention of the other party to the arbitration clause; and the other party expressly accepts the arbitration clause.

Choice of arbitrator

25 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The parties may freely agree upon the number of the arbitrators as long as it is an odd number. Failing an agreement of the parties, the number of arbitrators appointed to a tribunal shall be three.

The parties may freely agree on a procedure for the appointment of the arbitrator or arbitrators. If the parties agreed on a specific arbitration court, its rules of procedure would most likely provide for the appointment procedure.

In the absence of the parties' agreement, the rules laid down by the Arbitration Act are applicable; for example, in the case of an arbitration tribunal consisting of three arbitrators, each party shall have the right to appoint one arbitrator, and the two arbitrators thus appointed shall designate the third arbitrator. Where either party fails to appoint its own arbitrator within 30 days from the date of receipt of the other party's request to do so, or if the two arbitrators fail to agree on the third arbitrator within 30 days, any of the parties could turn for appointment to the Budapest-Capital County Court or to the presidency of the arbitration court, if the case falls under the competence of the Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (Commercial Arbitration Court).

The parties may also freely agree on the rules of the procedure for exclusion of an arbitrator (eg. by referencing the procedural rules of an arbitration court). If the application for exclusion was unsuccessful in this procedure, the applicant may request the court or the presidency of the arbitration court (if the Commercial Court has competence) to rule on the application for exclusion. This right for legal remedy may not be excluded by the parties.

Arbitrator options

26 | What are the options when choosing an arbitrator or arbitrators?

The Arbitration Act determines those that may not function as arbitrators:

- any person under the age of 24;
- any person who has been deprived the right to participate in public affairs;
- any person sentenced to prison by final ruling until exempted from the detriments of having a criminal record;
- any person who is under guardianship or supported decision-making affecting its capacity to carry out legal acts;
- any person who is barred from practising a profession conditional to having a university law degree; and
- any person who is on probation owing to a final ruling during a probationary period.

In addition, any person who formerly took part in the parties' legal dispute referred to arbitration court or in their relevant legal dispute as a mediator, as the representative of one of the parties or as an expert may not function as an arbitrator in the arbitration procedure.

If the parties have not agreed to the contrary, nobody may be precluded from proceeding as an arbitrator in view of their citizenship or lack thereof.

Arbitral procedure

27 | Does the domestic law contain substantive requirements for the procedure to be followed?

The Arbitration Act provides default rules governing the commencement of arbitral proceedings, although it does not cover all procedural rules, and additional legislation may apply.

Except for certain mandatory provisions of the Arbitration Act and general principles of civil procedure, the parties can freely:

- agree the procedural rules to be observed by the arbitral tribunal (permanent arbitration courts are free to establish their procedural rules within the boundaries of the Arbitration Act; their rules must be respected, and the infringement of these rules can be a ground to invalidate the award); and
- stipulate the use of an arbitration institution's rules.

In the event of default of the parties' agreement, an arbitral tribunal can determine the procedural rules at its own discretion, within the framework of the default rules provided by the Arbitration Act.

It is debatable whether the procedural provisions of a foreign state can be applied by the arbitration court. Some commentators believe the procedural laws cannot be chosen by the parties because of their public law nature.

Court intervention

28 | On what grounds can the court intervene during an arbitration?

State courts can assist with the following:

- appointment or disqualification of arbitrators (at the parties' request);
- deciding about objection against the jurisdiction (if the arbitral tribunal passed a preliminary decision on establishing its own jurisdiction);
- taking evidence at the arbitral tribunal's request or at a party's request if approved by the tribunal, local courts can apply coercive measures necessary to present evidence (eg, securing witness attendance at hearings or preserving evidence);
- granting during the ongoing arbitration (at the parties' request) interim measures and injunctions and protective measures;
- furnishing documents with an enforcement clause; and
- ordering a party to provide security.

Courts are not frequently requested to exercise these powers.

Interim relief

29 | Do arbitrators have powers to grant interim relief?

Unless otherwise agreed by the parties, the arbitral tribunal can, on request, order interim or preliminary measures if the tribunal considers it necessary in relation to the dispute. The Arbitration Act, in line with the 2006 amendments to the UNCITRAL Model Law, provides a detailed description of the types of possible measures and conditions for granting them. These can include appropriate security, usually to secure the amount in dispute or the costs of the proceedings (eg, the cost of tribunal-appointed experts).

A decision in relation to interim measures is valid until it is changed by the tribunal or an award is made. A preliminary measure loses its effect after 20 days.

The interim measures are only enforceable by courts. In practice, they are very rare in Hungary.

Award

30 | When and in what form must the award be delivered?

The award is committed in a written form and signed by the arbitrators. The award will state the reasons upon which it is based, unless it is an award on agreed terms. In addition, the award includes its date and the place of arbitration. One copy bearing the signature of the arbitrators will be delivered to each party. It usually takes six months to two years for an arbitration award to be made.

Appeal

31 | On what grounds can an award be appealed to the court?

Arbitral awards are final and not appealable. However, a party to the arbitration and any third person affected by the award can file an annulment action with a court within 60 days of the date of delivery of the award. Legal grounds for the annulment are as follows:

- any of the parties to the arbitration agreement lacked legal capacity;
- the arbitration agreement is invalid under the law the parties have chosen or, in the absence of this choice, under Hungarian law;
- a party was not given proper notice of the arbitrator's appointment or of the arbitration proceedings, or was unable to present his or her case for other reasons;
- the award was made in a legal dispute to which the arbitration clause did not apply or that was not covered by the arbitration agreement; if the award contains decisions on matters beyond the scope of the arbitration agreement, and decisions on matters validly submitted to arbitration can be separated from them, only the part of the award containing decisions not validly submitted to arbitration can be annulled;
- the composition of the arbitral tribunal or the arbitration procedure did not comply with the arbitration agreement, unless the agreement was in conflict with any provisions of the Arbitration Act from which the parties cannot derogate, or the agreement was not in accordance with the Arbitration Act;
- the matter of the dispute cannot be subject to arbitration under Hungarian law; or
- the award violates Hungarian public policy.

The following may invalidate the award during the annulment proceedings:

- breach of the arbitral institution's rules;
- breach of the parties' agreement (including the procedural rules), unless the agreement conflicts with any mandatory provision of the Arbitration Act; or
- the tribunal proceeded in a case where there was no arbitration clause.

Enforcement

32 | What procedures exist for enforcement of foreign and domestic awards?

The enforcement of arbitral awards is subject to substantive rules. An arbitral award has the same effect as a final court judgment. Therefore, it is final and enforceable. However, a court will refuse to execute an arbitral award if, in its judgment, the matter in dispute cannot be subject to arbitration under Hungarian law or the award violates Hungarian public policy.

The enforcement procedure for arbitral awards is regulated by the Arbitration Act and the Act on Judicial Execution. A party that makes reference to an arbitral award or applies for its enforcement must supply the original award or a certified copy of it.

According to Act of XXVIII of 2017 on the Hungarian Code of International Private Law, recognition of a foreign decision (eg, a foreign arbitration award) does not require a separate procedure (this question is examined by the court in its procedure in which the question arises). However, the determination of domestic recognition could also be requested in a separate court procedure.

A foreign decision shall not be recognised if:

- doing so would violate Hungarian public policy;
- the party obliged by the decision did not attend the proceeding either in person or by proxy because the summons, claim or other document on the basis of which the proceeding was initiated was not served at his or her place of residence or habitual residence properly or timely to allow the adequate preparation of his or her defence;
- proceedings involving the same cause of action and between the same parties were brought before Hungarian courts before the start of the foreign proceedings;
- a Hungarian court has already decided the same cause of action between the same parties;
- a foreign court other than the state of the court adopting the decision has already adopted a final decision in the same cause of action and between the same parties, provided that the previous decision fulfils the requirements for recognition in Hungary.

Hungary acceded to the 1958 New York Convention in 1962 and to the European Convention on International Commercial Arbitration 1961 (Geneva Convention) in 1964. Under the New York Convention, arbitral awards made in Hungary are enforceable in other member states of the New York Convention, save for the grounds listed in article V of the New York Convention. In certain jurisdictions, local rules may further limit the enforceability of awards made in Hungary.

Costs

33 | Can a successful party recover its costs?

Arbitration costs and legal fees are not regulated by law (except for the amount of duty payable to the state) and are a matter of custom (permanent arbitration courts define their regulation of fees). Any fee structure can be used, including a reasonable contingency fee subject to applicable other regulations. Generally, the basis of the legal fee is around 5 per cent of the litigated amount, subject to adjustments based on the value or complexity of the case. Generally, it is a matter of the arbitrators' discretion and any applicable procedural rules.

In a widely cited case (BH 2003.127), the arbitration tribunal set the lawyers' fees at less than 1 per cent of the litigated amount, which amounted to the equivalent of nearly US$1 million. The Supreme Court considered that this fee was unreasonably high and that it violated public policy. Therefore, it annulled this part of the award. Many have criticised this Supreme Court judgment, as there is no right to annul awards on the grounds of legal fees and the arbitration tribunal had respected the 5 per cent limit applied by civil courts.

The losing party typically bears the following:

- arbitration costs, including the registration fee and the duty;
- fees of the arbitration (including arbitrators' fees); and
- fees and costs of the legal representatives.

If it is difficult to decide who has won, or both parties were equally successful and unsuccessful, each party bears its own costs and legal fees. The arbitral tribunal can also decide that a party must pay surplus costs because of delaying tactics, unreasonable acts or bad faith.

There are no rules or a universal standpoint on the recovery of third-party funding costs.

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

34 What types of ADR process are commonly used? Is a particular ADR process popular?

The main ADR method used in Hungary is arbitration. Arbitration is used in almost all industries, and particularly in banking, insurance, construction, aviation and shipping.

Ad hoc arbitration is not a frequent choice of parties and counsels. If not resolved in court, commercial disputes are resolved through institutional arbitration.

Although available, mediation has not yet become popular for large commercial disputes.

Requirements for ADR

35 Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

ADR does not form part of court procedures. ADR, such as arbitration and mediation, apply only if the parties agree to it. Courts cannot compel the use of ADR.

MISCELLANEOUS

Interesting features

36 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Certain restrictions apply to disputes concerning assets that qualify as national property: if the parties intend to settle their dispute by arbitration, they may only do so under the scope of Hungarian law before a Hungarian (arbitration) court and in the Hungarian language if an international treaty does not make an exception.

UPDATE AND TRENDS

Recent developments

37 Are there any proposals for dispute resolution reform? When will any reforms take effect? (Please also mention any ground-breaking recent cases, etc.)

On 1 April 2020, a new reform introduced a special form of the precedent system in Hungarian court procedures. Published earlier judgments have already played an important role in the arguments of the parties and the adjudication of cases, but this reform makes this practice official and mandatory to an extent: the court shall follow the published judgments of the Supreme Court, and give reason to any deviation. The reform also introduces a new legal remedy: a complaint for uniformity may be filed, if a petition for revision was denied, although it referenced a deviation from the legal reasoning in one of the Supreme Court's earlier published judgments or if the Supreme Court is the first forum in the case that deviated from one of its published earlier judgments.

Owing to the coronavirus pandemic, the government of Hungary declared a 'state of danger' by Decree No. 40/2020. (III.11.) based on article 53 of the Fundamental Law of Hungary. One of the government's special measures was an order on judicial vacation that generally led to the suspension of court cases. However, Decree No. 74/2020. (III.31.) later introduced new measures that prescribe the continuation of procedures and rule out physical contacts, for example, hearings may not be held but the parties shall have the opportunity to make their statements in writing or via videoconference.

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