

THE ARBITRATION IN THE HUNGARIAN LAW

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1. A separate act, Act LXXI of 1994 on arbitration (hereinafter called: the Aa) regulates the arbitral proceedings. This Act, has come into force in 1994, is based on the Uncitral Model-Law passed in 1985. This Act shall be applied when the seat (registered seat) of the ad hoc or regular Court of Arbitration is in Hungary. Previously, the rules of the arbitral proceedings were incorporated in a separate chapter of the Code of Civil Procedure, but this chapter, which consisted of only five sections—with respect to the growing demand for the arbitral proceedings from the middle 80s—could not assure the appropriate framework of the regulation, any longer.

2. Pursuant to the effective Hungarian rules, in Hungary there is no mandatory arbitration. There is only one exception, when an Act in the field of financial law, Act CXX of 2001 on Capital Market, enacts that in several fields within the scope of the Act, the parties shall submit their dispute to arbitration before the Financial Asset and Capital Market Court of Arbitration *but only if they have made an arbitration agreement* on using arbitral proceedings in case of any dispute that may arise between them, in which case they cannot choose any other (either ad hoc or regular) court of arbitration. Such cases are—for example—disputes in connection with issuing securities, providing stock exchange services, and stock exchange transactions. I must notice that from 1994 to 2002 there was an Act in effect (the Act on the Commodity Exchange), which determined the exclusive jurisdiction of the Court of Arbitration attached to the Commodity Exchange in the case of several exchange transactions, therefore no arbitration agreement had to be made, since the act substituted for it.

2.1. The Act on arbitration determines—as a main rule—that arbitration is possible instead of civil proceedings only if the parties agreed to submit their disputes to arbitration by making an arbitration agreement either in the form of an arbitration clause in a contract or in the form of a

separate agreement. However, pursuant to the Aa., the exclusive jurisdiction of a permanent arbitration court may be determined by acts for certain cases. The legal authorisation exists in order to make arbitration mandatory for certain types of cases, though the presently effective Hungarian legal regulations do not make use of this possibility.

3. The Aa. may be appointed an arbitrator by giving a list of negative stipulations. No person under 24, or who is prohibited from practising public affairs by court with legally binding force, or who has been put under guardianship with legally binding force, etc. may be appointed an arbitrator. The Procedural Rules of several permanent courts of arbitration also include positive stipulations concerning arbitrators, like arbitrators shall have a deep professional knowledge of law, economics or any other field needed for the decision on the dispute within their competence, they shall have a high level of language knowledge, etc. The permanent courts of arbitration draw up a roll of arbitrators and disclose it. The roll of arbitrators is drawn up for a five year period, and it shall include at least 25, at most 100 persons, who may be re-elected for another five year period. The roll of arbitrators shall also contain —besides the given and family name— the profession, qualification, degree, academic title and language skill of each arbitrator. In practice, arbitrators are respectful lawyers, retired judges (active judges cannot act as arbitrators according to the act on courts), and university professors.

3.1. The parties' will is not subject to any limitation as to the appointment of arbitrators.

3.3. Both the Aa. and the Procedural Rules of several regular courts of arbitration enact the principles of the arbitrators' independence and impartiality. On the occasion of their appointment, arbitrators shall make a declaration about them. The Aa. says that arbitrators are not the parties' representatives, they must not accept instructions during their proceedings and they shall retain in strict confidence even after the completion of the proceedings. The procedure of the arbitrators' appointment is intended to assure their impartiality, too: each party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the third arbitrator. If circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, a request for exclusion may be submitted against the arbitrator within fifteen days after becoming aware of the constitution of the council.

3.4. In the Hungarian law there are no special rules relating to such a case.

3.5. The appointed arbitrator shall accept the appointment in a written declaration addressed to the parties (this includes a declaration on inconsistency, as well). There is a special engagement legal relationship between the parties and the arbitrator as a result of the appointment and its acceptance by the arbitrator.

4.

4.1. In the ordinary judicial proceedings, the judge may not oblige the parties to turn to arbitration in order to obtain a decision before making a judicial award.

4.2, 4.3, 4.5, 4.6. The Act on arbitration contains general prohibition as far as the intervention of state judges is concerned. It lays down that *the state court*, to which a case in which there is an arbitration agreement is submitted, *shall dismiss the statement of claim in limine litis*, or it shall discontinue the proceedings at the request of any of the parties. Bringing an action before a court does not prevent arbitral proceedings being commenced, or continued and an arbitration award may be made while the issue is still pending before the state court. In order that arbitral proceedings may not be delayed without reason, bringing an action in a matter which is the subject of an arbitration agreement before a state court by one of the parties does not prevent the other party from turning to arbitration and the arbitral proceedings from being commenced. If the state court, however, states its jurisdiction, and conducts the proceedings, this decision is compulsory for all other institutions, therefore, even the arbitration court is obliged to finish the proceedings. If the arbitration court has made an award, an action for its invalidation shall be submitted. With respect to this, to continue the arbitral proceedings is only a possibility, which both parties and the arbitration court shall consider, taking into account what chances there are that state court jurisdiction will be stated. For the last years, it has happened several times that the jurisdiction of the state court and arbitration court has collided. A great problem arises when both the state court and the arbitration court state the lack of their jurisdiction and therefore, the parties lose the possibility to submit their legal dispute to a court.

4.4. Shifting between arbitrators and ordinary judges may not be applied because of the procedural rules described in the previous point.

4.7. The Act on Arbitration—the rules of which relating to the proceedings are permissive to a large extent—does not give the answers to the

questions under this point, therefore, I used the Rules of permanent arbitration courts and their practice, which make it possible to suspend the arbitral proceedings either at the request of a party or ex officio in order to decide on a preliminary question (in the competence of any authority), which may last for more than 6 months only in an exceptional case. I consider the practice and procedural rules of arbitration courts prevailing, since as regards practice, we can state that there are hardly any examples for ad hoc arbitration in Hungary, and those who turn to arbitration have preferred the institutional (regular) form of arbitration.

4.8. The Code of Civil Procedure regulates the cases when the proceedings pending before the court may be suspended. It is possible for the court to suspend the proceedings in case of non-litigious proceedings within judicial jurisdiction, but only if the proceedings have already commenced. (The court is not bound by the party's request for the suspension of the proceedings, it is at discretion of the court whether to suspend the proceedings or not.)

5.

5.1. The Act on arbitration regards the ad hoc arbitration general (regardless of the practice), where it assures for the parties a great deal of freedom in appointing arbitrators and determining the procedural rules. The parties are free to agree on the procedural rules, the language of the proceedings, the place of arbitration and the day when the proceedings commence. Thus the parties are able to shape the most favourable procedural order for themselves. However, if neither the act on arbitration, nor the arbitration agreement of the parties contains regulations on what procedural rules shall be followed, it is the arbitration court's right to lay down the procedural rules. It is an important, but not written rule that in case of ad hoc arbitration, the arbitrator is obliged to inform the parties about the procedural order he has chosen to follow. If he chooses to act *ad libitum*, he has to point out the basic principles he will follow in the proceedings. In summary, we can state that the parties' right—in case of ad hoc arbitration—is mainly to determine how free the court may be during the proceedings after the subject matter of the lawsuit has been determined by the plaintiff.

5.3, 5.4. The obligation of exploring the facts, as a procedural minimum, is not explicitly ruled in the act, though there are several legal regulations aiming to realise this. It is mainly the parties' obligation to provide the evidence and documents necessary for the decision of the legal dis-

pute. The obligation of hearing the witnesses and experts is assured by the judicial assistance provided by the court, since the arbitration court may not make use of coercive measures. The arbitration court may also turn to the competent state court for assistance if the collection of the evidence before the arbitration court would cause significant difficulty or would cost disproportionately more. The local court where the proceedings may be conducted in the most efficient way shall be requested. In practice, we can rarely find such a case, the arbitration court holds the hearing of witnesses and experts itself, though it does not make use of fines or other coercive measures. Experts usually give their opinion relating to the questions determined by the arbitration court in writing, too.

5.5. The Act on arbitration does not directly mention the possibility of the use of intervention and the call of third parties, but the permissive regulations—if the parties agree—make their use possible. The procedural rules of the arbitration courts make the use of intervention possible. The request for intervention shall be submitted to the arbitration court 15 days before the first hearings. The arbitration court decides whether to allow intervention or not. It may allow intervention only if both parties agree. Present rules do not regulate the call of third parties.

5.6. More than one connected arbitral proceedings may be unified, though neither the Act on arbitration, nor the Procedural Rules of the regular arbitration courts contain relating rules, however, permissive regulations allow the unification of the proceedings if they are connected. In practice, there have been no such cases.

6.

6.1. If the subject-matter and nature of the arbitral proceedings require so, the arbitration court may render assessment and constitutive awards, though condemning awards are more typical.

6.2, 6.3. The Hungarian law makes a distinction between provisional and protective measures. Primarily, provisional measures are aimed at maintaining the status quo between the parties and providing immediate legal protection, with the help of which immediately threatening danger may be prevented, while the aim of protective measures is to assure the future satisfaction of the claim, and to guarantee the success of the execution. Pursuant to the Aa. at the request of any of the parties, the arbitrator may—by using provisional measures—order the opponent to make all the arrangements that he considers necessary as regards the subject-matter of the legal dispute. Related to this, the arbitrator asks the applicant to give

undertaking. The provisional measures will remain in force until an award is rendered by the arbitrator in the same question. Furthermore, it is also possible for the applicant to submit a claim before the state court requesting provisional measures as a form of state court assistance before or even during the arbitral proceedings. Within the framework of this state court assistance, it is possible that the state court shall take protective measures in the case which is pending before the arbitrator, if the applicant is able to prove his claim by a qualified document and the conditions of taking protective measures —determined in the act on arbitration— stand.

7.

7.1. The Aa. lays down the conditions upon which the case shall be submitted to arbitration instead of the state court. These conditions are as follows: at least one of the parties shall be a natural or legal person dealing professionally with an economic activity (personal condition), and the controversy shall be in connection with this activity (objective condition), the parties shall have the right to dispose of the subject-matter of the proceedings freely (objective condition), and the parties shall lay down the rules of arbitration in an arbitration agreement (formal condition).

There may be exceptions by law to the personal conditions. For example, the Company Act (1997) enacts that the legal disputes of companies may be subject to ad hoc or permanent arbitration. Parties may decide to bring the action before the Court of Arbitration attached to the Stock Exchange even if neither party is involved in a business activity professionally. With respect to the competence of the arbitration court, there is a further negative condition saying that the legal dispute shall not be one of those that cannot be subject to arbitration pursuant to the Act on arbitration. For instance, proceedings related to personal status belong to this circle of disputes.

7.2. The condition of turning to arbitration is having the disposal right of the rights and obligations concerned by the proceedings, that is pursuant to the substantive law, the parties shall have the right to dispose of the subject matter of the proceedings freely. Therefore, the answer to this question is negative.

7.3. Traditionally, arbitral proceedings shall mainly be in connection with economic activities. The term “economic activity” shall be used in the broadest possible sense, and its is an essential stipulation that the controversy shall be in connection with this activity of the party. The Act on arbitration, however, makes arbitration possible even in the lack of this

stipulation. This is an exceptional possibility. Based on this legal authorisation, in the autumn of 2001, the Sport Court of Arbitration was established in Hungary, which makes decisions in controversies not connected to economic activities. So my answer to this question is that the area of controversies which can be submitted to arbitration is narrower than the area of disposable rights, but it is not confined to the area of controversies arising in commerce.

7.4. The Act on arbitration excludes the use of arbitration in several special lawsuits regulated in the Code of Civil Procedure. Therefore, arbitration is excluded in matrimonial cases, in origin cases, in cases related to parental control, in guardianship cases, in public administration cases, press emendation cases and in labour cases. Furthermore, the Act also states that a separate act may exclude —“because of the special nature of the legal dispute”— other than the above mentioned cases from arbitration.

7.5. As regards the jurisdiction of the arbitration court, pursuant to the effective regulation, it shall only be based on either an arbitration agreement or on an arbitration clause (since there is no mandatory arbitration), therefore only legal disputes in which the parties made an agreement may be subject to arbitration. The parties may submit their legal dispute arising from or that may arise from their contractual or non-contractual legal relationship to the court of arbitration. (The arbitration clause shall be in writing.)

7.6. As I have already mentioned, according to the main rule, only natural or legal persons dealing professionally with an economic activity may submit their legal disputes to the court of arbitration, although law may make an exception from this condition.

7.7. An autonomous action may be admitted in order to verify the validity of the arbitration agreement but only in non-litigious proceedings. The arbitration court makes a decision itself on its own jurisdiction, including the reserve relating to the existence and validity of an arbitration agreement. A reserve concerning the validity of the arbitration agreement shall be submitted by the defendant not later than simultaneously with the statement of defence. If the arbitration court states its own jurisdiction, any party —within 30 days after the receipt of the notice on the decision— may request the state court to decide on the validity of the arbitration agreement. The state court at a county level makes a decision in non-litigious proceedings. No appeal may be submitted against its decision.

7.8. The limits of the arbitration award are determined by the plaintiff's claim (or the defendant's counterclaim or claim for Set-Off), too. Even if

they do not cover all the questions, which are in the arbitration court's jurisdiction, the arbitration court is entitled to make a decision only on these claims. The principles of the parties' disposal right and the commitment to the claim prevail in the arbitral proceedings, as well. A supplement of the award may be requested —simultaneously with the other party's being informed— (within 30 days), if the arbitration court has not decided on a claim which was submitted during the proceedings.

8.

8.1. We can make a distinction between *ad hoc* and regular arbitration. With respect to the given aspects, there is no difference between the proceedings of *ad hoc* and regular arbitration. As regards the nature of the proceedings, we can observe that the parties determine the procedural rules of *ad hoc* arbitration, while regular courts of arbitration conduct proceedings pursuant to their Procedural Rules.

8.2. According to the Hungarian rules, with respect to the given aspects, we cannot make a distinction.

8.4. Both in practice and in legal literature, the question whether the invalidity of the contract which contains the arbitration clause therein affects the validity of the arbitration clause or not is often raised. According to the prevailing views of the legal literature, the arbitration clause may be valid even if the contract including it therein is void and null. The representatives of this opinion argue that the arbitration agreement as a procedural law agreement does not necessarily follow the fate of the basic civil law agreement. Therefore, the arbitration court will have jurisdiction on the legal dispute, it may decide on the legal consequences of the basic contract which is void and null, for example, on the *in integrum restitutio*.

8.5. The Aa. does not regulate the question of the applicable law, however, the Procedural Rules of the regular arbitration courts contain rules relating to the questions of the applicable law and the *ex aequo et bono* decisions. Pursuant to the Rules, the arbitration court shall apply the law determined by the parties, and if no such law was determined, the courts shall apply the law, the rules of which shall be applied pursuant to the regulations of the Hungarian international civil law. The arbitration court may decide *ex aequo et bono* only if the parties authorise it to do so.

10. In spite of the fact that the parties appoint the arbitrators, several questions may arise in which arbitrators do not have satisfactory professional knowledge, therefore, the participation of experts is required. It is allowed by the Aa. The expert is appointed by the arbitration court. The

parties may exclude the requisition of experts in the arbitration agreement. If a party delegates an expert to give opinion—either before or during the arbitral proceedings—according to the prevailing point of view and judicial practice, the expert's opinion may not be taken into consideration as evidence but only as the party's standpoint. However, the arbitration court may decide to consider the private expert's opinion as the material of the lawsuit, too. In practice, the use of experts in arbitral proceedings hardly happens.

11.

11.1. An attempt at reconciliation is not a necessary step in order to have access to arbitration. Although the Aa. does not directly say that the arbitration court shall make an attempt to reconcile the parties, the Procedural Rules of the permanent arbitration courts emphasize that the arbitration court strives to reconcile the parties. So as to do so, the arbitration court may conduct conciliating-mediating proceedings aiming at the settlement of the legal dispute in such cases, in which it has jurisdiction pursuant to the Aa., even if there is no arbitration agreement between the parties.

11.2. An attempt at reconciliation shall be used neither as a necessary step of the arbitral proceedings nor as a condition in order to proceed with the proceedings.

11.3. Yes, an attempt at reconciliation may be used as a method to define and clarify the debated questions.

12. Recently, the Hungarian Parliament has passed the Act on mediation, which will come into force in March 2003, therefore, we have not got any experience as far as its use is concerned. Since 1996, the Code of Civil Procedure has widely assured the use of the so called summons for a reconciliation attempt before the proceedings commence, though the institution has not been used widely. The Ministry of Justice is now working on the draft on legal assistance, in which a great emphasis is put on building an apparatus—also financed by the state—which helps to prevent cases and conduces the parties' reconciliation.

12.1. The Ministry of Justice keeps a roll of mediators and companies employing mediators. The conditions upon which a person is admitted to the roll are—for example—higher education degree and minimum 5 years professional experience. The Ministry regularly and ad hoc supervises the work of mediators listed in the roll. The mediator is asked to participate by common assent of the parties. If he accepts the request, he makes a declaration of acceptance addressed to the parties. With the parties' accord, an

expert or a third person may be called for in the mediating proceedings. Upon the success of the mediating proceedings, a reconciliation agreement is made between the parties.

12.2. My answer to this question is found in the introductory part to point 12.

12.3, 12.4. The reconciliation agreement made by the parties as a result of the mediating proceedings does not affect the parties' right to submit their legal dispute to the state court or the arbitration court. If such proceedings commence, the parties shall not refer to the opponent party's point of view held during the mediating proceedings, the recognition or quit-claim made by the other party during the mediating proceedings. In the statement of claim initiating the proceedings, it shall be stated whether there have been mediating proceedings in the subject-matter of the legal dispute between the parties or not. It is important whether there have been mediating proceedings and whether the proceedings have been successful or not from the aspect who and to what extent shall pay the costs of the lawsuit. If the proceedings ended with an agreement, and a party commences a lawsuit in the subject-matter of the legal dispute in which the agreement has been made, he may be obliged to pay all the costs of the lawsuit regardless of its result!

12.4. Unless the parties agree differently, the person who participated as a mediator in the mediating proceedings shall not be appointed as an arbitrator. Otherwise, the rules of the Act on mediation may not be applied to mediation in arbitral proceedings.

13. The validity of the arbitration award is the same as that of the final award of the state court and we can describe its legal effect by the expression "judgement validity".

14. In both arbitral and state court proceedings, parties may make a reconciliation agreement. If the agreement is in compliance with law, the state court approves it by issuing an order (during the arbitral proceedings the reconciliation agreement is included in an award). Regardless of the above, the resolutions have the same judgement validity as the awards made by the state court. Furthermore, before the lawsuit, the party, who is concerned by the legal dispute, may ask for the issue of summons for a reconciliation attempt before the local court, and if a reconciliation agreement is made between the parties at this stage, the court lays it down in writing, approves it and this agreement will bear the same judgement validity as an agreement during a lawsuit. The parties may reconcile in sev-

eral notary public proceedings, as well, if the notary public approves the reconciliation agreement, the agreement will have the same judgement validity as the judicial reconciliation. Such a reconciliation agreement may be made, for example, during the probate of a will.

15, 17, 18, 19. The Aa. declares that an arbitration award has the same judgement validity as the final judicial awards, which means that it results in the same *res iudicata* and the rules of the Acts on judicial enforcement shall be applied to its enforcement. [According to the given aspects, the answers are closely connected, therefore I give my answers to them in a unified body.]

No appeal may be lodged against the award rendered by the arbitration court. A request for the *invalidation* of the award may be submitted to the court upon the conditions listed in the Aa. *within the term of preclusion* defined in the Act.

According to law, the party or a person who is concerned by the award may submit an action for the invalidation of the award within 60 days from the day it was delivered for him, if:

- the party making the arbitration agreement did not have legal capacity or ability to act;
- the arbitration agreement is void and null;
- he was not informed about the appointment of the arbitrator or the arbitral proceedings according to rules, or he was not able to submit a request for other reasons;
- the award was made in a legal dispute which is not subject to arbitration;
- the award includes provisions relating to a case beyond the framework of the arbitration agreement;
- the composition of the arbitration court or its proceedings were not in compliance with the parties' agreement, or in the lack of such an agreement, with law.

The invalidation of the award may also be requested for the reasons as follows:

- The subject-matter of the legal dispute is not subject to arbitration according to the Hungarian law.
- The award infringe the Hungarian public order (Point 15.3).

The court may suspend the enforcement of the arbitration award at the request of a party.

The judgment of the state court may be confined solely to the invalidation of the arbitration award. The state court may not make a judgment on the merit of the arbitration award, therefore, it may not render a judgment on the merit in the legal dispute. No appeal may be lodged against the judgment of the state court.

16. A separate chapter of the Constitution of the Hungarian Republic contains constitutional regulations relating to the judicial apparatus. The Constitution may order to establish special courts for certain groups of matters. The Aa. regulates the establishment of such a special court —the court of arbitration— to make decisions relating to a certain group of persons and matters. The arbitration court shall apply the constitutional rules, too. Several regulations of the Aa. contain constitutional principles (like the principles of independence and impartiality). A much more definite regulation in this area is that the invalidation of the arbitration award may be requested if it infringe the Hungarian public order. The infringement of the public order is realised when the arbitration award violate safeguard regulations of the constitution, or it infringes the fundamental constitutional rights and obligations.

Pursuant to the Act on the Hungarian Constitutional Court, if the judge notices during the proceedings that the rule applied is unconstitutional, simultaneously with the suspension of the proceedings, he may initiate the proceedings of the Constitutional Court to determine that the rules are unconstitutional. This legal regulation does not distinguish between an arbitrator and a State judge, therefore it may be applied in arbitral proceedings, too. Moreover, if a court makes a decision on a controversy based on an unconstitutional regulation, this may give grounds for the invalidation of the arbitration award.

20. Besides the rules of the national arbitration proceedings, the Aa. regulates the proceedings of international arbitration in a separate chapter, too. This regulatory technique is different from the methods of the legislation in other countries, where national arbitration has tradition and a separate system of rules is made for international arbitration, while in Hungary, the regulations were not satisfactory before the 1994 Act and therefore, there was no widespread practice to rely on and all this resulted in the establishment of a unified regulatory system.

The main rule is that the regulations of the Aa. shall be applied to international arbitration with the variances mentioned below. [It is essential to mention that in international cases as a regular arbitration court —maintaining its previous monopoly— the Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry shall act.]

Special rules relating to the proceedings of international arbitration:

- The act disposes of the applicable law: the arbitration court shall apply the law determined by the parties for making a judgement on the merit, and if the parties have not determined it, the Aa. disposes of the applicable law.
- The arbitration court may decide *ex aequo et bono* but only if the parties have authorised it to do so.
- The arbitration court shall render an award with respect to customs of trade relating to the case.

21. Since the validity of the arbitration award is the same as that of the final judgment, the rules of the enforcement—even by coercive measures—of the state court judgment shall be applied to the enforcement of the arbitration award that is the rules of the Act on Judicial Enforcement came into force in 1994. According to the above mentioned Act, based on either the national or international arbitration court's award or a reconciliation agreement, the county court competent on the basis of the debtor's address, registered seat or the place of the assets amenable to execution shall issue the enforceable document based on which the enforcement proceedings may commence. An original or attested copy of the arbitration award shall be attached to the request for enforcement and if the award is not in Hungarian, an authenticated translation of the award shall also be attached.

The court refuses the enforcement of the arbitration award if it finds that:

- The subject-matter of the dispute is not subject to arbitration according to the Hungarian law.
- The award infringes the Hungarian public order.

It can be seen that there are fewer reasons listed here than in the case of the invalidation of the award. The aim of this regulation is that no awards may be enforced which infringe the public order or which were rendered in a dispute that is not subject to arbitration.

22, 23. As regards the enforcement of foreign arbitration awards, the recognition proceedings and the proceedings declaring the award enforceable shall precede the issue of the so called enforceable document which is the formal condition of the enforcement.

Pursuant to the Act on Judicial Enforcement (Sections 205-210), foreign arbitration awards may only be enforced on the basis of acts, international agreements or reciprocity. The arbitration award may be enforced if it contains condemnation, it is non-appealable, and the time for performance has passed (i.e. the general prerequisites of the enforcement according to the Hungarian law stand) If the foreign arbitration award meeting the above mentioned conditions is enforceable, the competent court will issue —*by order*— a declaration of enforceability on the foreign arbitration award, in which it attests that pursuant to the Hungarian law, the award may be enforced in the same way as the awards of the national courts. After the order gains legal binding, the court issues an enforceable document based on the foreign arbitration award with a declaration of enforceability.

If the foreign arbitration award does not contain condemnation, it is not possible to conduct the above described proceedings and issue a declaration of enforceability, though it is necessary to examine even in this case whether the foreign arbitration award may be recognised and enforced pursuant to national rules. To assure this, the Act on international civil law makes the initiation of separate non-litigious proceedings possible. The procedural rules of issuing a declaration of enforceability for the foreign arbitration awards containing condemnation shall be applied to the non-litigious proceedings. The foreign arbitration award may not be judged on the merit in these proceedings, either. If the conditions of national recognition stand, the foreign arbitration award shall be enforced in the same way as the national award.

Article V. of the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards (announced in Hungary in 1962) lists the causes upon the verification of which the recognition and enforcement of the arbitral awards may be refused. These causes are similar to the causes of the setting aside of the arbitral award mentioned under points 15-19.

24. The Hungarian law does not distinguish between national and foreign arbitration awards concerning their legal effect or enforceability. The

rules of the Hungarian law relating to recognition and enforceability—which were described above—are in compliance with the international and the European Union’s regulations relating to the recognition and enforceability of foreign awards rendered by either state or arbitration courts (for example, No. 44/2001. Council Regulation, the Lugano Convention). The “legal filter system” that the Hungarian law uses before declaring foreign arbitration awards enforceable is similar to the practice of other European countries.

25, 26. Neither the Act on arbitration, nor the Code of Civil Procedure contains regulations relating to these questions.

The procedural rules of the Act on international civil law regulate the question of lawsuit pendency. Pursuant to this, if there are proceedings pending before a foreign court in the same subject matter arising from the same facts between the parties and the judgment made in these proceedings may be recognised and enforced according to the Hungarian regulations, the proceedings initiated *later* before a Hungarian court or authority shall be ceased. Moreover, the foreign award may not be recognised, if the effects of the lawsuit pendency in the same subject matter arising from the same facts between the same parties had become effective before a Hungarian court or authority before the foreign proceedings were launched. This act does not make a distinction according to the type of the foreign proceedings launched, but it arranges the procedural rules according to the fact that in which country the proceedings were launched earlier. These regulations—in compliance with No. 44/2001. Council Regulation and the Lugano Convention—concern mainly the proceedings commenced before state courts (since arbitration is an area taken out of the scope of the Council Regulation and the Convention mentioned above), BUT the Hungarian Act on International Civil law does not contain such a rule of preclusion for arbitration, moreover, several sections of it specifically include regulations relating to the recognition of arbitration awards.

Several comments and data to illustrate the practice of the Hungarian arbitration: Pursuant to the Aa.. regular arbitration courts may be established by the National Chamber of Economy. There are three institutional forms of arbitration in Hungary today. Among them, the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry deals with the largest number of cases.

The matters before the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry from 1997 to December 31, 2002:

	1997	1998	1999	2000	2001	2002
Controversy between Hungarian parties	125	114	133	127	206	364
Controversy between international parties	50	67	71	75	49	30
Total	175	181	204	202	255	394

The Act on sports, effective as of 2001, established the *Sport Arbitration Court*, which started work in August, 2001. Since then, it has finished three cases. The year 2003 will be a milestone in its work, since as a result of the amendment of the Act on sports, its jurisdiction has been broadened significantly and by now it has become a well-known arbitration court. The Sport Arbitration Court has jurisdiction on controversies between sports associations, between sports associations and sportsmen and between sportsmen.

The Act on the Capital Market, effective as of January 1, 2002 established the *Financial Asset and Capital Market Arbitration Court*, which has taken over the role of the Stock Exchange Arbitration Court, which previously had exclusive jurisdiction on certain cases, and operates as its successor. The Capital Market Arbitration Court rendered awards in 71 cases between 1994 and December, 2002.