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Hungary

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Efficiency of process

In Hungary, civil proceedings are regulated by Act III of 1952 in the Hungarian Code on Civil Proceedings (the HCCP). In the HCCP, no general deadline is established to be met by the courts when performing procedural acts, however, there are several other instruments to ensure the efficiency of civil proceedings in Hungary. As for the period of time generally taken by the courts to issue a final judgment in cases, there is an average of approximately 1-2 years, while concerning much more complex cases the issuance of a final decision may take even 5-6 years.

The HCCP lays down several principles which aim at ensuring the effectiveness of the procedure. An example of these principles is the principle of exercise of rights in good faith. According to this principle, the court shall take measures to prevent the potential efforts of any of the parties to delay the proceedings, or any actions which may lead to delays. As a tool of prevention, in such a case the court has the power to impose a financial penalty upon any party (e.g. if the party makes a delayed statement without justification). Moreover, the court has the power to impose a financial penalty upon any party (counsel) for delaying legal actions without justification, for any failure to meet a deadline, or for causing unnecessary expenses in any other way.

Another key principle establishes an obligation to be fulfilled by the courts, namely the obligation to close the proceedings within a reasonable time-frame. In case the court fails to comply with this obligation, the parties are entitled to file a complaint at the defaulting court, requesting the court of competence for hearing complaints to order the defaulting court to carry out – within the prescribed time limit – the missing procedural acts.

Although the HCCP does not provide for a general deadline as has been mentioned above, there are still some other provisions which prescribe concrete deadlines for either the parties, or for the court in special cases. For example, if a legal counsel acts in the name and on behalf of the party in the proceeding, there are strict deadlines to be met by the counsel in several cases (for example, there is a specific deadline for amending the claim). Another speciality is the case of proceedings of high priority. In such proceedings, the HCCP ensures priority in the way that it foresees specific deadlines for the parties and the courts to perform certain procedural acts.

Another element to increase the level of efficiency is electronic communications, made available recently in the course of civil proceedings. Since 1st January 2013 electronic communication is an option in certain types of proceedings and, according to a recently adopted amendment to the HCCP, as of 1st January 2016 it will become mandatory to conduct court proceedings by means of exchange of electronic documents if the party acts

through a legal counsel, as well as in cases when the party is a company.

Integrity of process

Hungary has a judicial system which has four levels. The structure of the court system is as follows: local courts; county courts; higher courts of appeal; and the Supreme Court (the *Kúria,* in Hungarian).

- Local courts conduct proceedings in the first instance and have first instance jurisdiction in all cases which do not fall under the competence of county courts. At the level of local courts there are 20 administrative and labour courts, which have competence to hear first instance cases relating to the judicial revision of administrative decisions, and cases regarding employment legal disputes.
- County courts are located at the second level of the system of jurisdiction. County courts proceed as the first instance court in cases specified by statutory law and review the appeals submitted against the first instance resolutions passed by local courts and administrative and labour courts.
- Higher courts of appeal generally review the appeal in second instance lodged against the resolutions of local courts or county courts.
- The *Kúria* is the supreme judicial authority in Hungary. The *Kúria* has partly jurisdictional powers (review of the appeals submitted against the resolutions of county courts and higher courts of appeal, legal revision of final and binding resolutions as extraordinary remedy) and other powers such as guarantee of the uniformity of the judicial system (adoption of the unifying (legal) resolutions), analysing the practice of Hungarian courts, and publishing decisions on principles.

The Hungarian Constitution specifies the fundamental rules of the Hungarian State organisation, legal and judicial system. Contrary to common law systems, Hungarian courts are not legally bound by previous court decisions.

At the same time the *Kúria* is authorised to pass unifying (legal) resolutions on high-profile legal issues in order to provide unity of court practice. Such resolutions passed by the *Kúria* have binding force, meaning that lower courts are legally bound by such resolutions.

Judges are officially appointed by the president of Hungary, and on the basis of the principle of the independence of judges, they are subordinated exclusively to statutory law.

Privilege and disclosure

The concepts of legal privilege or work product protection are not recognised in Hungary. However, there are certain procedural rules, which give protection to communication between client and attorney. For example, in case the court orders an attorney to be heard as witness, the attorney may refuse to make a testimony in case the testimony would result in the breach of the confidentiality obligation he is subject to in connection with the client-attorney relationship.

The parties' obligation of searching and disclosing documents that are relevant to the issues in dispute to the other party is basically unknown as a legal instrument in Hungary. Taking of evidence occurs only and exclusively in the course of the court proceeding, in the sense that the court shall order the taking of evidence in order to ascertain the relevant facts of the case. The facts needed for the court's decision-making shall be adduced by the party that is interested in persuading the court to accept them as true. As an exception to this general rule, there are special cases when so-called preliminary evidence may be taken before

launching a lawsuit. The conditions for taking preliminary evidence are the following: (i) there is a possibility that the taking of evidence cannot be performed successfully during the proceedings or during a later phase of the proceedings; (ii) the preliminary taking of evidence enhances the conclusion of the case within a reasonable period of time; (iii) the party is subject to a warranty obligation; or (iv) the preliminary evidence-taking is admitted by statutory law.

Costs and funding

The costs to be paid by a party to a civil procedure consist of the following elements: (i) duty of the civil procedure, the amount of which is 6% of the amount in dispute and not more than HUF 1,500,000; (ii) the advance of costs of taking of evidence (witness fees, expert fees, the fees of interpreters, the cost of remote hearings and inspections, etc.), which costs shall be advanced by the party who submits the motion for evidence (at the end of the procedure, the expenses of the successful party shall be covered by the losing party); and (iii) the expenses and fees of attorneys providing representation to the parties. These costs will also be borne by the losing party at the end of the procedure, but of course, have to be advanced by the party represented by the given attorney. In case of partial success (i.e. when the parties are losing and prevailing at the same time), the court decides on the costs of litigation, taking into consideration the proportion of success and the costs advanced by the parties. If the difference between the proportion winning and losing, and between the amounts advanced by the parties is not significant, the court may decide that the parties bear their own costs. It is to be noted that courts shall decide on the reimbursement of the costs of litigation automatically, *ex officio*, i.e. even in the absence of relevant requests. The court does not decide on the payment of the costs of litigation if the prevailing party expressly requests the court not to render such resolution.

Under Hungarian law, the contingency fee/success fee as a special form of attorney's fees is not excluded. The legal basis of the contingency fee is the Hungarian Act on Attorneys. The act provides that the attorney is entitled to receive mandate fees in consideration of the legal services rendered to the client. The mandate fee is subject to free negotiations between the parties. According to the prevailing practice of Hungarian courts, the client and the attorney have the possibility to agree on contingency fees, which means that the attorney is paid by the client on the basis of a certain percentage of the favourable result (recovery) achieved by the attorney.

Interim relief

Interim injunctions are also a part of Hungarian civil procedure. The objective of such injunction is to provide immediate legal protection to the applicant in order to prevent the infringement of its rights which could not be remedied later due to the lapse of time. Within the frames of an interim injunction issued by the court, the court orders a party to the proceedings to comply with a certain obligation prior to the rendering of the decision on the merits of the case.

The HCCP specifies the conditions which have to be fulfilled for the issuance of an interim injunction. According to such provisions, an interim injunction may be issued by the court if it is necessary to (i) prevent an imminent risk of damage, (ii) maintain the *status quo* of the legal dispute, or (iii) provide legal protection for the applicant requiring a special recognition. Apart from the abovementioned conditions, the court shall also assess the disadvantages caused by the interim injunction and compare them with the advantages that

may be achieved this way. Contrary to the general rules of evidence-taking, it is sufficient that the court holds the correctness of the facts alleged by the applicant to be likely, i.e. the applicant is not obliged to fully establish them. It is to be noted that generally, the application for interim injunction may not be filed prior to the submission of the statement of claim. The court brings its decision regarding the application for interim injunction in an accelerated procedure. Evidence-taking is necessary only if the application cannot be decided without it. The decision of the court regarding the interim injunction may be subject to a separate appeal. The interim injunction issued by the court is provisionally enforceable, i.e. it may be enforced even in case an appeal is lodged against the first instance decision of the court. The injunction shall remain in force until the date when the court repeals it by a ruling or with the final judgment.

Enforcement of judgments

The procedural rules on the enforcement of judgments of foreign courts are set forth in Act LIII of 1994 on judicial enforcement. As a general rule, the resolutions of foreign courts may be enforced in Hungary on the basis of statutory law, international treaty or reciprocity.

In light of the aforementioned provision, judgments of foreign countries may be enforced in Hungary on the basis of the EU Regulation on jurisdiction and recognition and enforcement of judgments in civil and commercial matters, (Council Regulation (EU) No 1215/2012 of 12 December 2012) (in case the foreign country is a member state of the European Union), the law decree No 13 of 1979 on international private law or the respective reciprocal arrangements in place (if the foreign country is not member of the European Union). For judgments brought in Switzerland, Norway and Iceland, the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007 (Lugano Convention) shall be applicable.

In the first phase of the recognition and enforcement of the foreign court's judgment, an application shall be submitted with the competent Hungarian court requesting the recognition of the foreign judgment (this is the so-called *exequatur* procedure). The recognition of the judgment requires the fulfilment of two conditions: (i) the judgment, according to its nature, shall comply with the general requirements of the enforceability set out above; and (ii) there is no ground of refusal which constitutes a legal obstacle to the enforcement of the judgment (e.g. the violation of the public policy of Hungary). In case the conditions of enforceability are met, the proceeding court issues a so-called enforcement certificate confirming that the foreign judgment may be enforced in Hungary in accordance with Hungarian laws in the same way as a decision of any Hungarian court. Once the enforcement certificate is issued, the applicant may launch the actual enforcement procedure in the narrow sense, requesting the court to issue an enforcement order on the basis of the foreign judgment.

Awards of foreign arbitral tribunals may be enforced in Hungary pursuant to the conditions set out in the United Nations Convention on the recognition and enforcement of foreign arbitral awards of 10 June 1958 New York Convention, in line with the procedural rules presented above.

Cross-border litigation

There are various international legal norms which aim at facilitating and accelerating cooperation in litigation involving more States, especially in the field of taking of evidence.

To civil and commercial matters in which more member states of the European Union are involved, Council Regulation 1206/2001 on cooperation between the courts of the member

states in the taking of evidence in civil or commercial matters (the **Evidence Regulation**) shall apply. The Evidence Regulation simplifies the procedure of taking of evidence in another member state. On the basis of the Evidence Regulation, the proceeding court of a member state may: (i) request the competent court of another member state to obtain evidence; or (ii) request to gather evidence themselves in another member state. Requests may be submitted in order to obtain pieces of evidence which are intended for use in commenced or contemplated judicial proceedings. Member states shall establish a list of the courts that are entitled to obtain evidence. Requests on the basis of the Regulation are directly transmitted by the court before which the procedure is pending or contemplated, to the court of the member state gathering evidence. In addition to the above, member states shall also designate a central authority which is responsible for: (i) supplying information to the courts; (ii) seeking solutions to any discrepancies in connection with the transmission; or (iii) forwarding requests to the competent court.

Hungary is a signatory to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the **Hague Convention**) which also facilitates the taking of evidence in cross-border litigation involving the signatory parties. The Convention provides for the taking of evidence abroad (i) by means of letters of request, and (ii) by diplomatic or consular agents and commissioners. Pursuant to the provisions of the Convention, a judicial authority of a signatory party (the requesting state) may request, by way of a letter of request, a competent authority of another state (the state addressed) to obtain evidence which is intended for use in judicial proceedings pending in the requesting state. Apart from this method of cooperation between the states, the Convention also allows diplomatic or consular agents and commissioners to take evidence, and may be subject to the prior permission of the appropriate authority of the state in which the evidence is to be taken.

Furthermore, Hungary is also party to the Hague Convention of 1 March 1954 on Civil Procedure, which also regulates certain aspects of cooperation between states in the field of taking of evidence.

International arbitration

The major rules of arbitration proceedings are set forth in Act LXXI of 1994 on arbitration (the **Arbitration Act**) which defines those matters that may be referred to arbitration. On the basis of the Arbitration Act, a matter can be brought to arbitration if: (i) at least one of the parties is a person professionally engaged in economic activities and the legal dispute is in connection with such activity; (ii) the parties may dispose freely over the subject matter of the proceedings; and (iii) the arbitration was stipulated in an arbitration agreement. There are certain cases which may not be subject to arbitration. These matters are typically the following non-commercial disputes: family law disputes, judicial revision of administrative decisions, disputes relating to collection orders and labour disputes.

There are two types of arbitral tribunals in Hungary: (i) *ad hoc* arbitral tribunals which are established by the parties themselves; and (ii) institutional arbitral tribunals which are organised within the framework of certain professional organs, such as the Hungarian Chamber of Commerce and Industry.

In case of *ad hoc* arbitration proceedings, there are no predefined rules of proceedings, the parties are thus free to agree on the procedural rules governing their arbitration. In case of institutional arbitration proceedings, however, the arbitral tribunal conducts the proceedings on the basis of its own rules of proceedings. The award of an arbitral tribunal is final and binding and no appeal may be lodged against it. The only legal remedy available against

the award is the so-called annulment procedure, within the framework of which the parties may request ordinary courts to annul the arbitral award on the basis of specific grounds for annulment set forth by the act on arbitration. The legal effect of a final and binding arbitral award is the same as the effects of judgments rendered by state courts, and they may be enforced within the same procedure.

International arbitration proceedings are also regulated by the Arbitration Act. An arbitration proceeding shall be deemed to be international if: (i) the parties to the arbitration agreement have, at the time of the conclusion of the agreement, their seats or, in lack of this, their places of business in different states; or (ii) one of the following places is situated outside the state in which the parties have their seat (place of business): (a) the place of arbitration as determined in the arbitration agreement; or (b) any place where a substantial part of the obligations deriving from the relationship of the parties is to be performed or to which the subject-matter of the dispute is most closely linked. In international cases, the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry shall have exclusive competence to proceed as permanent (institutional) arbitration tribunal.

The Arbitration Act regulates also those cases where state/ordinary courts may intervene in arbitration proceedings and may provide support to arbitral tribunals, especially in the field of interim injunctions and evidence-taking. According to such rules, state/ordinary courts may: (i) issue interim injunctions and protective measures; or (ii) provide support by coercive means in evidence-taking if the conduct of such evidence-taking by the arbitral tribunal would entail considerable difficulties or unreasonable extra costs.

Mediation and ADR

The legal system of Hungary regulates the most common types of alternative dispute resolution, so parties have the possibility to attempt to settle disputes via arbitration or mediation instead of initiating a lawsuit before state/ordinary courts. International arbitration was dealt with above.

Mediation is also recognised by Hungarian law, namely Act LV of 2002 on mediation (the **Mediation Act**).

Mediation is a form of settlement negotiation facilitated by a neutral third party. Under the Mediation Act, the parties (natural persons and legal persons) to a civil dispute relating to their personal and pecuniary rights may, if they agree so and if the law does not limit their right of disposal, use a mediation procedure to seek the settlement of their dispute through the intermediary of a mediator. The Mediation Act specifies certain types of legal disputes which may not be subject to mediation. Special provisions apply to mediation proceedings in specific fields, such as healthcare, child protection or consumers' protection.

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