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Arbitration Reform in Hungary

Miklós Boronkay

I. Background: Why was Reform Needed?

On 8 June 2017 a new Hungarian arbitration act was promulgated, which reformed the entirety of Hungarian arbitration law (Act LX of 2017 on Arbitration – Arbitration Act). The Arbitration Act entered into force on 16 June 2017¹) and is applicable in the case of arbitration proceedings initiated on January 1, 2018 or later.²) This introductory chapter gives a general overview of why the Hungarian legislator considered that this reform is necessary, and what the main aims it wished to achieve by adopting the new Arbitration Act were.

A. Arbitration in Hungary between 1994–2017

After the political and economic change in 1989, the Hungarian Parliament passed the first arbitration act in 1994 (Act LXXI of 1994 on Arbitration – Arbitration Act 1994). This act was based on the 1984 UNCITRAL Model Law and served the arbitration community well. However, the legislator failed to adopt the changes introduced by the 2006 UNCITRAL Model Law, or otherwise amend the act to reflect new trends in arbitration. Thus, while the Arbitration Act 1994 was still capable of properly regulating most aspects of arbitration, it became somewhat outdated.

Before the new Arbitration Act, the institutional landscape was quite fragmented. The Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (Commercial Arbitration Court) was considered to be the leading arbitration institution, both with regards to its case load and in terms of its reputation. This institution, the legal predecessor which was established in 1949, has the longest history and had exclusive jurisdiction for international arbitration cases.³) In addition, two industry-specific arbitration courts were established to handle commercial disputes: the

¹) Section 64(1) of the Arbitration Act.
²) Section 65(1) of the Arbitration Act.
³) Section 46(3) of the Arbitration Act 1994.
Permanent Court of Arbitration of the Money and Capital Markets (2002) and the Permanent Arbitration Court for Energy (2008). The number of cases administered by these institutions was rather small compared to the caseload of the Commercial Arbitration Court. Finally, an arbitration court of sport and an agricultural arbitration court were set up in 1997 and 2000 respectively.\(^4\)

Immediately after the Arbitration Act 1994 came into force, the number of cases administered by the Commercial Arbitration Court increased: in the first couple of years this number was between 100–200 per year and, in the first decade of this century, it further increased into the range of between 200–400 cases per year. In the best year (2005), the annual number was as high as 817. However, starting from 2011 the case load slowly decreased to about 100 cases a year. It was in 2017 for the first time that the Commercial Arbitration Court had less than 100 cases (97).\(^5\)

While the exact reasons for this decay are not entirely clear, it is impossible not to mention the legislative intervention in 2011, which provided that legal disputes related to ‘national assets’ cannot be arbitrated.\(^6\) The intervention was so strict that it would have applied to arbitration agreements already concluded before the legislative changes. However, the Hungarian Constitutional Court ruled that it is a constitutional requirement to interpret the respective legal provisions in line with the Constitution (\textit{verfassungskonforme Auslegung}) in a way that previously concluded arbitration agreements are not affected.\(^7\) While the restriction regarding ‘national assets’ was lifted in 2015,\(^8\) its impact nevertheless continues, as for several years arbitration clauses were prohibited in a number of important contracts involving ‘national assets’ (such as contracts for public construction works). It is now possible to amend these contracts to include an arbitration clause, it is nevertheless unrealistic to expect that this would take place in all cases. What is more, the message behind the legislative intervention was that arbitration proceedings do not protect ‘national assets’ the same way ordinary court proceedings do, a message which obviously did


\(^{5}\) The statistics were provided by the Secretariat of the Commercial Arbitration Court.


\(^{7}\) Decision of the Hungarian Constitutional Court no. 14/2013. (VI. 17.) AB.

\(^{8}\) Sections 33 and 35 of Act VII of 2015 on the investment related to the maintenance of the capacity of the Nuclear Plant of Paks, as well as on the amendment of certain connected acts.
not enhance the public’s trust in arbitration, even if legal literature severely criticized the legislative restriction.\(^9\))

To sum up: the somewhat outdated Arbitration Act 1994 and the decreasing number of arbitration cases led the legislator to adopt the new Arbitration Act.

**B. The Aims of the New Arbitration Act**

When the Hungarian Ministry of Justice submitted the bill of the Arbitration Act to the Hungarian Parliament, it justified the bill by stating that a well-regulated arbitration law enhances the competitiveness of the Hungarian economy and would make Hungary a more attractive place for foreign investors. In particular, the Ministry expressed their aim to increase the number of arbitration cases in Hungary, especially with regards to disputes between Hungarian and foreign parties.\(^10\)

The new Arbitration Act has three main aims:

- to implement new provisions of the 2006 UNCITRAL Model Law, which were missing from the Arbitration Act 1994 (in particular interim measures and preliminary orders);\(^11\)
- to regulate certain procedural matters which were not regulated in the Arbitration Act 1994 (such as the participation of third parties in arbitration proceedings or the revision of arbitral awards); and
- to reform the institutional framework, in particular to concentrate commercial arbitration cases at the Commercial Arbitration Court.

**II. Institutional Reform**

**A. De-fragmentation of the Institutional Landscape**

In the Arbitration Act the most apparent changes affected the arbitration institutions, as two permanent arbitration courts were abolished as of January 1, 2018: the Permanent Arbitration Court of Money and Capital Markets, as well as the Permanent Arbitration Court of Energy.\(^12\) It is the

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\(^9\) See e.g. Miklós Boronkay & György Wellmann Jr., *A választóbírásáskodás helyzete Magyarországon*, Európai Jog 9 (2015/5) (with further references to Hungarian legal literature).


\(^11\) In addition, Section 3(3) of the Arbitration Act reflects the new Article 2A of the 2006 UNCITRAL Model Law, while Section 8 of the Arbitration Act reflects the amended Article 7 of the 2006 UNCITRAL Model Law (Option I).

\(^12\) Section 67(1) of the Arbitration Act.
Commercial Arbitration Court which took over the ongoing cases from these abolished arbitration courts: as of 1 January 2018 the Commercial Arbitration Court is responsible for the tasks of the abolished arbitration courts in respect of the ongoing arbitration proceedings initiated before January 1, 2018.\textsuperscript{13}) The ongoing cases were actually handed over to the Commercial Arbitration Court.

The Arbitration Act also deals with the question as to what should be the fate of those arbitration agreements in which the parties chose one of the abolished arbitration courts. These clauses are deemed, by virtue of an express provision of the Arbitration Act, as agreements choosing the Commercial Arbitration Court.\textsuperscript{14}) Thus, if a legal dispute arises after January 1, 2018 in relation to which the parties previously chose the proceedings of one of the abolished arbitration courts, then the Commercial Arbitration Court will have jurisdiction to proceed.

As a result of the reform, the institutional landscape became less fragmented: the Commercial Arbitration Court is now the single permanent arbitration court handling commercial arbitration cases, including financial and energy related disputes. It is of course open for the parties to choose ad hoc arbitration or opt for a foreign permanent arbitration court, however if they wish to agree on a permanent arbitration court in Hungary, their choice has become much more simple.

The two other special arbitration courts (\textit{i.e.} the sports arbitration court and the agricultural arbitration court) remained unaffected by the institutional reform.

\section*{B. Reorganization of the Commercial Arbitration Court (Budapest)}

The legislator bestowed a leading role to the Commercial Arbitration Court (Budapest) and reformed its internal organizational structure in order to enhance its effective functioning. Changes affected the following aspects:

\subsection*{1. New Board}

The Commercial Arbitration Court is led by a seven-member Board. The Board members are nominated as follows: the Hungarian Chamber of Commerce and Industry has the right to nominate the president and two other Board members, whereas the Hungarian Energy Office, the Budapest Stock Exchange, the Hungarian Banking Association and the Hungarian Bar Association is entitled to nominate one Board member each.\textsuperscript{15}) To ensure the

\textsuperscript{13}) Section 67(7) of the Arbitration Act.
\textsuperscript{14}) Section 67(6) of the Arbitration Act.
\textsuperscript{15}) Section 61(2) of the Arbitration Act.
competence of the Board members, the Arbitration Act prescribes that only those persons who have at least 10 years’ experience as lawyers and 5 years’ experience as arbitration practitioners (i.e. as arbitrators listed on the roll of arbitrators or as counsel in arbitration proceedings) may be delegated as Board members.\textsuperscript{16} It is an important novelty that Board members cannot act as counsels, arbitrators or experts in arbitration proceedings of the Commercial Arbitration Court.\textsuperscript{17} This rule was introduced to ensure the complete independence of Board members. For the same reason, the Board members cannot be instructed or revoked by the bodies who delegated them.\textsuperscript{18}

\section*{2. New Roll of Arbitrators}

The Board of the Commercial Arbitration Court compiled and published a new roll of recommended arbitrators. The list consists of a general part and two sub-lists: a section for energy matters and another one for money and capital market matters.\textsuperscript{19}

People with at least 10 years of experience and below the age of 70 could apply to be included in the list.\textsuperscript{20} It is important, however, that the parties may chose arbitrators that do not appear on the list; they are therefore also free to choose arbitrators above the age of 70, and such arbitrators may also act as the chairman of a given arbitral tribunal. This is particularly important because several well-known and respected members of the Hungarian arbitration community are above 70. The mere fact that they are not included in the new roll of arbitrators does not mean that they cannot act as arbitrators in the future. Thus, the roll is a recommendation only and is mainly for information purposes. Its only actual legal significance is that, as a general rule, the Board of the Commercial Arbitration Court will appoint the missing arbitrators from the roll, e.g., if a party fails to appoint an arbitrator, or if there is no agreement as to the person of the sole arbitrator or the chairman of the tribunal.\textsuperscript{21}

Finally, while the Arbitration Act did not expressly request this, the Commercial Arbitration Court also included a sub-list of foreign practitioners in the Roll, which consists of well-known, non-Hungarian arbitrators.\textsuperscript{22}

\begin{itemize}
\item \textsuperscript{16} Sections 61(4) and 62 (4) of the Arbitration Act.
\item \textsuperscript{17} Section 61(8) of the Arbitration Act.
\item \textsuperscript{18} Section 61(2) and (7) of the Arbitration Act. A Board member may be revoked only if he/she has become unworthy of his/her office and four other Board members request his/her removal from the Board.
\item \textsuperscript{19} Section 63 of the Arbitration Act.
\item \textsuperscript{20} Section 63(5) of the Arbitration Act.
\item \textsuperscript{21} Section 12(3)(a)–(b) of the Arbitration Act.
\item \textsuperscript{22} The full Roll of Arbitrators is available on the website of the Commercial Arbitration Court (https://mkik.hu/en/roll-of-arbitrators-2018-2021, last visited December 28, 2018).
\end{itemize}
3. New Budapest Rules

The Board of the Commercial Arbitration Court created and published the new Arbitration Rules of the Commercial Arbitration Court (Budapest Rules), which are applicable in case of proceedings initiated on or after February 1, 2018. While it is not possible to give a detailed description of these new rules in this short summary, it can be stated that the new Budapest Rules are more detailed and modern than the previous ones and took inspiration from the rules of the leading international arbitration institutions.

4. Steps towards Transparency

It goes without saying that the Roll of Arbitrators, but also the composition of the Board and the Secretariat of the Commercial Arbitration Court is public. As a step towards transparency, the Arbitration Act prescribes that the Commercial Arbitration Court has to publish a redacted, non-confidential excerpt of the arbitral awards and orders terminating proceedings (e.g., on the grounds of a lack of jurisdiction) on its website within 6 months. It is important that the names of the parties will be redacted, and the Commercial Arbitration Court intends to publish summaries focusing on the main legal questions in the case, from which the identity of the parties cannot be established.

III. Procedural Reform

Both the Arbitration Act and the Budapest Rules introduced a number of new procedural provisions. It is not the aim of this chapter to give a comprehensive overview of the Hungarian arbitration law, but rather to point to a limited number of procedural rules which may be of interest.

A. General Remarks

The Arbitration Act is based on the UNCITRAL Model Law 2006, and expressly provides that it has to be interpreted in line with the explanations given by UNCITRAL to its Model Law. The Arbitration Act regulates both

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26) Section 3(3) of the Arbitration Act.
domestic and international arbitrations in a uniform manner.\textsuperscript{27}) The original wording of the Act defined its territorial scope of application in a rather unfortunate manner, which created concerns on the part of permanent arbitration institutions whether they may administer proceedings with the place of arbitration in Hungary.\textsuperscript{28}) However, the respective provision of the Arbitration Act has already been corrected and it is now clear that the Arbitration Act applies if the place of arbitration is in Hungary.\textsuperscript{29})

\section*{B. Arbitrable Disputes}

The Arbitration Act provides that only commercial disputes may be arbitrated.\textsuperscript{30}) Fortunately, matters related to ‘national assets’ are not excluded, and neither public bodies or state-owned entities are precluded from entering into arbitration agreements.

On the other hand, the Arbitration Act categorically excludes consumer contracts from arbitration.\textsuperscript{31}) This prohibition applies in case of arbitration agreements concluded before January 1, 2018.\textsuperscript{32}) The question whether and to which extend consumers need to be protected from arbitration clauses has long been disputed in Hungary. The issue mostly arose in the context of general terms and conditions containing arbitration clauses. Hungarian court practice has been clear that arbitration clauses are to be considered as ‘surprise clauses’ (\textit{Überraschungsklauseln}), which only become part of the contract if (i) the party using general terms specifically informs the consumer about the arbitration clause and (ii) the consumer expressly accepts it.\textsuperscript{33}) The court practice was less unanimous in the question of whether an arbitration clause in general terms

\begin{itemize}
\item \textsuperscript{27}) For a short time, the Arbitration Act contained a definition of international arbitration and one single provision for such proceedings (concerning the appointment of the chairman of the arbitral tribunal), however these rules were already abolished by Sections 45 and 47 of Act LIV of 2018.
\item \textsuperscript{28}) The original wording of Section 1(1) of the Arbitration Act provided that the Act is applicable if the seat of the permanent arbitration court is in Hungary. It furthermore stated that in Hungary the Commercial Arbitration Court shall act as permanent arbitration court. The ICC was in particular concerned whether these rules enable an ICC arbitral tribunal to conduct an arbitration with a seat in Budapest. This matter was discussed in detail at the arbitration conference organized by the Central European University on 17 May 2018. See also Sarolta Édua Szabó, \textit{Az új Választott-bírósági törvény tárgyi hatályával kapcsolatos koncepcionális és gyakorlati problémák}, Polgári Jog 41–73 (2018/7–8).
\item \textsuperscript{29}) Section 1(1) of the Arbitration Act, as amended by Section 44(1) of Act LIV of 2018.
\item \textsuperscript{30}) Section 3(1) item 1 of the Arbitration Act.
\item \textsuperscript{31}) Section 1(3) of the Arbitration Act.
\item \textsuperscript{32}) Section 66 of the Arbitration Act.
\item \textsuperscript{33}) Judgements of the Hungarian Supreme Court no. BH 2001.131, BH 2012.296, Kúria Gfv.VII.30.347/2013.
\end{itemize}
can be qualified as unfair, and therefore null and void. Certain courts denied this,34) others investigated the impact of the specific arbitration clauses on the specific consumer,35) while others again categorically concluded that arbitration clauses are always unfair.36) Finally, the Hungarian Supreme Court adopted the latter view and published a legally binding decision stating that, in the case of consumer contracts, an arbitration clause contained in general terms and conditions is by definition unfair and therefore null and void.37) The new Hungarian Civil Code, which entered into force in 2014, followed the Supreme Court’s view, and included a statutory provision to the same effect.38)

However, even this provision did not completely exclude consumer arbitration, as the rule only applied to general terms, thus an individually negotiated arbitration clause could still be valid. What is more, the nullity of unfair general terms is a relative one – only the consumer may invoke it.39) Consequently, even if the arbitration clause was contained in general terms, it was up to the consumer to decide whether he/she wishes to invoke this nullity, or whether he/she accepts arbitration. The new rule contained in the Arbitration Act goes much further when it completely excludes consumer contracts from arbitration proceedings. The Hungarian provision also goes beyond its Austrian equivalent, pursuant to which arbitration agreements with consumers may be validly agreed where the dispute has already arisen, provided that further preconditions are fulfilled.40)

C. Interim Measures and Preliminary Orders

The new Arbitration Act implemented the rules on interim measures and preliminary orders contained in the 2006 UNCITRAL Model Law,41) which is perhaps the most important and helpful change compared to the Arbitration Act 1994. The Hungarian rules closely follow those of the Model Law, with no fundamental deviation from them. Under the previous regime, while the arbitral tribunal had the power to issue interim measures, these were not enforceable and the related procedure was also not regulated. Based on

34) Judgement of the Metropolitan Court of Appeal of Budapest no. ÍH 2012.67., judgement of the Court of Appeal of Szeged no. BDT 2013.2923.
35) Judgement of the Court of Appeal of Pécs no. BDT 2013. 2944.
36) Judgement of the Metropolitan Court of Appeal of Budapest no. BDT 2013.3028.
37) The Hungarian Supreme Court’s law-unification decision no. 3/2013 PJE.
38) Section 6:104(i)(i) of Act V of 2013 on the Civil Code (the Civil Code).
39) Section 6:103(3) of the Civil Code.
40) Section 17 Austrian Code of Civil Procedure (Zivilprozessordnung).
these new rules, the parties may request interim measures from the arbitral tribunal which are actually enforceable.42)

The new Budapest Rules also allow the arbitral tribunal to issue interim measures, basically repeating the respective provisions of the Arbitration Act.43) Unlike many arbitration rules,44) the Budapest Rules do not (yet) contain any provision on emergency arbitrators. In this respect, they follow a similar approach as the Vienna Rules.45)

D. Intervention and Participation of Third Parties in the Arbitration

The new Arbitration Act allows, under certain circumstances, for third parties to participate in an arbitration either as parties or as intervenors. A third party may participate as a party if the claim brought by or against this third party can only be decided upon together with the legal dispute subject to the arbitration clause. A further precondition is that the third party must submit itself to the competence of the arbitration tribunal via a written declaration. Consent by all parties to the arbitration is not necessary, however the parties may unanimously opt-out from the possibility that third parties can participate as parties.46)

Interested third parties may intervene in an arbitration procedure in order to support the case of the party with whom they share interests.47) It is the arbitral tribunal which decides whether or not it allows an intervention. The intervenor may attend the hearings and submit evidence. No opt-out from the rules on intervention is possible.

With the above rules the Hungarian legislator went further than the Austrian legislator, which has refrained from inserting provisions on third party intervention or joinder into the Austrian Code of Civil Procedure. However, according to the Vienna Rules the arbitral tribunal may allow the joinder of a third party in an arbitration (upon the request of a party or a third party and after hearing all parties and the third party).48)

43) Article 33 of the Budapest Rules.
44) See, for example, Article 29 and Appendix of the ICC Arbitration Rules, Appendix II of the SCC Rules or Article 43 of the Swiss Rules of International Arbitration.
45) Article 33 of the Vienna Rules.
46) Section 35 of the Arbitration Act.
47) Section 37 of the Arbitration Act.
48) Articles 14 of the Vienna Rules.
E. Multi-party Arbitrations and Consolidation of Proceedings

The Budapest Rules regulate multi-party arbitration from the point of view of the nomination of arbitrators. The solution is generally the same as in the Vienna Rules: the claimant’s side and the respondent’s side shall each jointly nominate one arbitrator and, where such a joint nomination is lacking, the Board will appoint an arbitrator for the defaulting side or potentially even for the side which did nominate an arbitrator.⁴⁹) The main difference between the two regimes is that, under the Budapest Rules, the general rule is that the Board will appoint an arbitrator for both sides, unless it considers that it is sufficient to appoint the missing arbitrator. On the other hand, according to the Vienna Rules, the general rule is that an arbitrator will be appointed for the defaulting side only, and revocation of the appointment(s) already made by the other side is an exception. The Budapest Rules seem to favour the principle of equality of arms, while the Vienna Rules put more emphasis on party autonomy in this respect.

The Budapest Rules enable a consolidation of proceedings only if the parties agree to this (i.e. they unanimously so request or at least consent to the consolidation).⁵⁰) They do not contain an exception similar to the one in the Vienna Rules, according to which proceedings may be consolidated upon request of one party without the other parties’ consent if the same arbitrator(s) was/were nominated or appointed and the place of arbitration in all of the arbitration agreements on which the claims are based is the same.⁵¹) It is not a precondition for consolidation that the parties should be identical, thus a consolidation may result in a multi-party arbitration.

F. Independence and Impartiality of Arbitrators

Both the Arbitration Act and the Budapest Rules contain rigorous rules to ensure that arbitrators are impartial and independent. When deciding on the scope of the disclosure obligation, the Hungarian Supreme Court relies heavily on the IBA Guidelines on Conflicts of Interest in International Arbitration.⁵²) Hungarian court practice is particularly strict (possibly too strict) in situations where an arbitrator failed to disclose a circumstance that may give rise to doubts as to his or her impartiality and independence: this failure is considered in itself as a ground for setting aside the arbitral award.⁵³)

⁴⁹) Article 21(5) of the Budapest Rules, Article 18 of the Vienna Rules.
⁵⁰) Article 38 of the Budapest Rules.
⁵¹) Article 15(1) of the Vienna Rules.
Arbitration Reform in Hungary

Under the new legal regime, two specific, additional conflict of interest rules were introduced. First, Board members of the Commercial Arbitration Court are prohibited from acting as arbitrator, counsel or expert in arbitration cases before the Commercial Arbitration Court. Section 61(8) of the Arbitration Act. Second, arbitrators included in the Roll of Arbitrators are prohibited from appearing as counsel and representing parties in arbitration cases before the Commercial Arbitration Court. One could consider that these rules are too strict and have negative side-effects, such as the Board members’ lack of continuous arbitration practice (which would enable them to make better decisions e.g., when adopting amendments to the Budapest Rules), and the exclusion of potentially the best arbitration practitioners from appearing as counsel. The Vienna Rules seem to follow a more balanced approach when allowing parties to appoint Board members as arbitrators or co-arbitrators, but prohibiting that Board members be appointed as arbitrators by the Board. Article 16(5) of the Vienna Rules. As an additional precautionary measure, the Vienna Rules prohibit Board members who are or were involved in an arbitration administered by the VIAC in any capacity whatsoever from being present at, or participating in any way, in deliberations or decisions of the Board pertaining to those proceedings. Article 2(3) of the Vienna Rules. The new Hungarian conflict of interest rules were criticised, however the legislator and the Board of the Commercial Arbitration Court probably considered that the strict rules are important for sending a very clear message to the market that there is no room for partiality in arbitration.

G. Procedural Rules Aimed at Enhancing the Speed and Effectiveness of the Arbitration Procedure

The new Budapest Rules contain several provisions aimed at ensuring that arbitration procedures are carried out in a timely and effective manner. First of all, they require the claimant, similarly to the Vienna Rules, to file a full statement of claims when initiating the arbitration procedure. Articles 14–15 of the Budapest Rules, Article 7 of the Vienna Rules. A simple request for arbitration is not sufficient. Several other arbitration rules only prescribe this in case of expedited proceedings, or not at all. By this, arbitrations become shorter as one round of additional submissions can be avoided.

54) Section 61(8) of the Arbitration Act.
55) István Varga, A választottbírósági eljárásjog megújulása, supra note 24, at 4.
56) Article 16(5) of the Vienna Rules.
57) Article 2(3) of the Vienna Rules.
58) Articles 14–15 of the Budapest Rules, Article 7 of the Vienna Rules.
59) See, for example, Article 6 of the SCC Rules for Expedited Arbitrations.
60) See, for example, Appendix VI of the ICC Arbitration Rules or Article 42 of the Swiss Rules of International Arbitration.
As a substantial novelty, the Budapest Rules introduce the mandatory procedural conference, the aim of which is to discuss and agree upon the organization of the arbitration procedure.\footnote{61} The arbitral tribunal must hold such a procedural conference within 30 days after the tribunal is constituted, and must issue a procedural order within 3 days that establishes the procedural timetable as discussed during the conference. The tribunal may also decide, depending on the complexity of the case that no procedural conference is necessary. Finally, if the parties all agree, the procedural conference may continue as the first hearing, so there is no need to schedule a separate hearing day.

Finally, the Budapest Rules also set a soft deadline for closing the proceedings: the tribunal closes the arbitral procedure within 6 months as of its establishment, if possible.\footnote{62} The wording “if possible” makes it clear that this is not a hard deadline that, if violated, would cause a potential set-aside of the award. Instead, this is rather a lex imperfecta, a rule which is albeit clearly articulated but essentially without sanctions. Nevertheless, its impact cannot be ignored. It is important that this deadline only applies to the closing of the proceedings, not to the actual rendering of the award. Expedited proceedings have to be closed within three months,\footnote{63} i.e., in an even shorter period of time than under the Vienna Rules (six months).\footnote{64}

**H. Evidence taking**

The Budapest Rules adopt the same approach as the Vienna Rules when they allow the arbitral tribunal to collect evidence ex officio.\footnote{65} The author of the Budapest Rules expressly refers to the principle of “eingeschränkter Untersuchungsgrundsatz” in order to justify this provision.\footnote{66} While this rule should be applied with caution, it nevertheless enables tribunals to arrive at a decision with a stronger factual and legal foundation. The carefulness is warranted because the Budapest Rules expressly prescribe that the parties shall be treated equally,\footnote{67} which is one of the elements of the fair treatment prescribed by the Vienna Rules.\footnote{68}

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\footnote{61} \footnote{62} Article 36 of the Budapest Rules.  
\footnote{63} Article 5 of the Budapest Rules.  
\footnote{64} Article 52(12) of the Budapest Rules.  
\footnote{65} Article 45(8) of the Vienna Rules.  
\footnote{66} Article 40(1) of the Budapest Rules, Article 29(1) of the Vienna Rules.  
\footnote{67} Article 31(3) of the Budapest Rules.  
I. Truncated Arbitral Tribunals

The Budapest Rules provide a flexible solution for the problem of truncated arbitral tribunals: if the arbitrator’s mandate terminates following the closing of proceedings, the arbitral tribunal may, with the approval of the Arbitration Court, decide, before being fully re-constituted, to continue the proceedings without the nomination of a substitute arbitrator.\(^69\) The rule is broader and more flexible than the one contained in the Vienna Rules, which only allows the truncated tribunal to issue the award if the award states that one of the arbitrators refused to sign or was prevented from signing by an impediment that could not be overcome within a reasonable period of time.\(^70\) On the other hand, the Vienna Rules do not require the approval of VIAC’s Board, whereas the Budapest Rules do. The two sets of rules follow different approaches: while the Vienna Rules try to prevent an abuse of the rule by specifying the circumstances under which a truncated tribunal may issue an award, the Budapest Rules rather implement a procedural safeguard.

J. Revision of Arbitral Awards

Of the novelties introduced by the new Arbitration Act, it was the rules of revision which received the greatest attention and also criticism by arbitration practitioners. The promise of a quick and final resolution to their legal disputes is one of the main reasons why parties choose to arbitrate in the first place. However, there is also a tendency to allow, under exceptional circumstances, an arbitral award to be reviewed on the merits. Different legal systems provide different solutions to this problem: some jurisdictions only allow the revision of awards in the course of the ordinary setting aside proceedings,\(^71\) others provide for a separate remedy.\(^72\) Solutions also differ as to whether the request for revision must be made to the original arbitral tribunal or to state courts.\(^73\) The grounds for revision also vary across jurisdictions, potentially including serious flaws in the proceedings (e.g., criminal offence, procedural fraud,

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\(^69\)\) Article 26(1) of the Budapest Rules.
\(^70\)\) Article 36(3) of the Vienna Rules. A similar provision is contained in Article 43(2) of the Budapest Rules, which enables the arbitral tribunal to issue an award with only the signature of the majority of the arbitrators, provided that the award indicates the reason why a signature is missing.
\(^71\)\) This is the solution under the UNCITRAL Model Law 2006 (see Art. 34).
\(^72\)\) For example, some sort of revision or at least a similar remedy is provided for in the following European legal systems: Switzerland ("Revision"), France ("recours en révision"), the Netherlands ("herroeping"), Italy ("Revocazione"), Hungary ("eljárássújtás"). See, Nathalie Voser & Anya George, Revision of Arbitral Awards, ASA Special Series No. 38, 45–51 (2012).
\(^73\)\) In most jurisdictions the state courts decide on revision requests, with the exception of France and Hungary.
perjury, corruption, bias), or new facts or evidence which would have resulted in a different award. Finally, different legal systems provide for different time limits within which revision may be requested.

The newly established rules of revision in the Arbitration Act resemble those of French law to the extent that a request for revision has to be filed with the original arbitral tribunal.\(^\text{74}\) If one or more members of the tribunal are incapacitated, they are substituted according to the general rules on substitution. The Arbitration Act sets an absolute deadline of one year for filing the request, which starts when the arbitral award is delivered to the party.\(^\text{75}\) A relative (subjective) deadline, which would start from the date when the party learns about the ground for revision, is not provided for in the Arbitration Act.

The ground for revision resembles the respective provision of Swiss law: \(^\text{76}\) the party must rely on a new fact or piece of evidence which it did not invoke in the arbitration by no fault of its own, provided that such new fact or evidence would have resulted in a more favourable award had it been taken into account in the original proceedings. However, unlike in Swiss\(^\text{77}\) and Austrian\(^\text{78}\) law, the fact that the procedure was influenced by a criminal offence, is not expressly mentioned as a ground for revision. Such serious procedural flaws may be invoked in the course of the general setting aside action.

Most of the criticism of the new rules on revision related to the very existence of this remedy: Hungarian academics and arbitration practitioners were and still are opposed to this remedy generally.\(^\text{79}\) They feel that the finality of arbitral awards is of utmost importance, and the one-year pending situation created by the new remedy does more harm generally than the good it does in exceptional cases. While the elements of the new remedy are all present in other jurisdictions, their combination is somewhat unfortunate. The ground for revision is at the same time rather broad (any new fact or evidence suffices which the party could not invoke during the arbitration) and also too narrow, as it fails to include procedural irregularities, not even the most severe ones. The one-year absolute deadline may be considered as appropriate for new facts and evidence, however an additional shorter relative (subjective) deadline would be desirable.

\(^\text{74}\) Section 50(1) of the Arbitration Act.
\(^\text{75}\) Section 49 of the Arbitration Act.
\(^\text{76}\) Section 123(2)(a) of the Federal Tribunal Act, which is applied by analogy in arbitration proceedings, see Nathalie Voser & Anya George, *Revision*, supra note 72, at 56.
\(^\text{77}\) Section 123(2)(a) of the Federal Tribunal Act, which is applied by analogy in arbitration proceedings, see Nathalie Voser & Anya George, *Revision*, supra note 72, at 57.
\(^\text{78}\) Sections 611(2)(6) and 530(1) of the Austrian Code of Civil Procedure.
Finally, and perhaps most importantly, the Arbitration Act allows the parties to opt-out from the possibility of revision and can exclude this remedy in their arbitration agreement.\(^80\) In fact, the model arbitration clause of the Commercial Arbitration Court recommends such an exclusion.

### IV. Summary and Future Perspectives

The Arbitration Act introduced a number of important changes to the Hungarian arbitration law. The most apparent novelties are the institutional ones: the arbitration landscape was de-fragmentized by abolishing two specialized arbitration courts and transferring their cases and even the arbitration clauses appointing these abolished institutions to the Commercial Arbitration Court. The latter, surviving institution was reorganized, with a new Board, new Roll of Arbitrators and new arbitration rules (Budapest Rules).

The procedural changes are often less visible but perhaps even more important for arbitration practitioners. The Arbitration Act implemented the provisions of the UNCITRAL Model Law 2006 on interim measures and preliminary orders, which is an important and positive step forward for enhancing the effectiveness of arbitration as an alternative to litigation before ordinary courts. The new Budapest Rules are a modern and detailed set of arbitration rules which will hopefully strengthen the public’s trust in arbitration. The effect of the changes can hardly be measured in the middle of the very first year after they took effect, however the number of arbitration cases before the Commercial Arbitration Court seems to have stopped decreasing.\(^81\) What is already clear is that the new Roll of Arbitrators now includes the younger generation of arbitrators, and it is to be hoped that this new generation will bring new momentum to arbitration in Hungary, which is already a well-established and accepted dispute resolution method.

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\(^{80}\) Section 49 of the Arbitration Act.

\(^{81}\) According to the information received from the Commercial Arbitration Court, as of 31 August 2018 the number of new cases did not decrease compared to year 2017.