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THE UNTAPPED POTENTIAL OF ARBITRATION IN HUNGARY

Summary

Arbitration in Hungary, despite its modern legal framework and strategic location in Central and Eastern Europe (CEE), remains underutilised compared to neighbouring countries such as Austria. This paper explores the reasons behind this trend, examining Hungary's arbitration landscape, strengths, and challenges. Key factors include legislative interferences, deviations from the UNCITRAL Model Law, and cost concerns. The authors argue that Hungary has a significant untapped potential in arbitration, which could be realised by addressing these challenges and leveraging its rich arbitration culture and favourable legal framework to attract more domestic and international arbitration cases.

Keywords*:* UNCITRAL Model Law, arbitration history, arbitrability, costs, business attitude towards arbitration.

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NEISKORIŠĆENI POTENCIJAL ARBITRAŽE U MAĐARSKOJ

Sažetak

Uprkos modernom pravnom okviru i strateškom položaju u centralnoj i istočnoj Evropi (CEE), u Mađarskoj arbitraža je još uvek nedovoljno iskorišćena u odnosu na susedne zemlje kao što je, na primer, Austrija. Stoga, u ovom radu autori istražuju razloge za taj trend i ispituju pravni okvir za arbitražu u Mađarskoj i prednosti i izazove istog. Ključni razlozi za neiskorišćeni potencijal arbitraže mogu se naći u zakonodavnim smetnjama, odstupanjima od UNCITRAL Model Zakona i problemima u vezi troškova. Autori stoje na stanovištu da Mađarska ima neiskorišćeni potencijal u arbitraži, koji bi mogao da se realizuje rešavanjem postojećih izazova, oslanjajući se na bogatu kulturu arbitraže u zemlji i povoljan pravni okvir za privlačenje većeg broja domaćih i međunarodnih slučajeva arbitraže.

Ključne reči: UNCITRAL Model zakon, istorija arbitraže, arbitrabilnost, troškovi, odnos poslovne zajednice prema arbitraži.

1. Introduction and Methodology

Arbitration has long been recognised as an effective alternative to traditional litigation in resolving commercial disputes, offering advantages such as speed, flexibility, and expertise. Whilst the arbitration market in Southeast and Central Europe[1] is rapidly expanding, Hungary's full potential remains untapped. Despite the country's modern arbitration laws and location in the heart of the CEE region, domestic businesses and legal practitioners have yet to fully embrace arbitration as the desired dispute resolution mechanism, and international parties often flock to the neighbouring hub of Austria, which boasts a higher international caseload (Vienna International Arbitral Centre – hereinafter: VIAC, 2022).

In this paper, the authors explore potential reasons for the underutilisation of arbitration in Hungary, examining first Hungary's position within the regional arbitration landscape and identifying the overarching trends; and proceeding to zone in on the appeals of the jurisdiction, and then flag potential challenges faced by the arbitration market in the country. Finally, the authors will propose areas for growth and development. It is ultimately the authors' observation that Hungary possesses an untapped potential, and that by becoming aware of the challenges

[1] Hereinafter referred to as the "CEE region" for ease of reference.

identified in this paper, practitioners could take steps to "put Hungary on the map" of arbitration hubs.

Over the past decades, commercial arbitration has increasingly become a preferred alternative to traditional litigation before national courts in business disputes, the main selling points being its speed and efficiency, the quality and fairness of adjudication (particularly in legal systems experiencing challenges in the rule of law), and arbitrators' specialist knowledge (Born, 2021).

On top of the baseline offerings of arbitration, there are also jurisdiction-specific factors that appeal to domestic and international parties and make some arbitration markets more successful than others (Redfern & Hunter., 2005; Bermann, 2018, pp. 341-353). These include a supporting legal framework; enforceability of awards; economic stability of the respective country; expertise and experience of the respective jurisdiction in settling high-profile disputes; and the costs of arbitration. These factors have informed our analysis of the strengths and weaknesses of the Hungarian jurisdiction, allowing us to evaluate the quality of arbitration in the country, and show that its current position in the CEE market does not reflect its true potentials.

2. Current Regional Landscape

To understand the perspectives and challenges of arbitration in Hungary, it is helpful to first take a bird's eye view at the countries considered to be part of the CEE region. Whilst doing so, we will identify the overarching trends and attitudes that might be typical for the entire CEE region. In the following chapters, we will evaluate the decreasing role of the Vienna International Arbitral Centre (VIAC) in the region, and in turn, examine the opportunities presented by other potentially competing arbitral centres.

2.1. Decreasing Utilisation of VIAC?

Austria takes the central position in the region, given its history and its leading institution, VIAC. Austria has been a significant player in the CEE arbitration market for decades, dating back to the so-called East-West disputes in the times of the Cold War (Sadowski, 2015, p. 409), which in turn ensured that VIAC enjoyed a head-start over the other regional arbitral centres, as they entered the scene after the fall of Communism.

VIAC's leading position was further reinforced by a huge influx of foreign direct investment that came with the market transition in the former Eastern Bloc countries. This advantage was coupled with the perceived underdevelopment of

the legal and judicial systems in the other CEE states, their vulnerability to various types of fraud and abuse, and the perceived risk of corruption in the eyes of the investors who sought to have their disputes resolved by a neutral forum skilled in commercial matters (Sadowski, 2015, p. 409; Korom, 2020, pp. 268-280).

In recent years, however, VIAC's popularity has been on a seemingly downward trend, as a steady drop may be observed in the new cases registered by the institution (VIAC, 2022).

Year	2011	2012	2013	2014	2015	...	2019	2020	2021	2022
Number of new cases	75	70	56	56	40	...	45	40	44	41
% of non-Austrian parties	70	48	78,6	78	75	…	67	68	75	61

The decreasing interest from parties originating in the CEE region is further underlined by the fact that parties from Germany are comfortably the second most frequent users of the VIAC services. Therefore, by now, local Austrian and German companies may be considered as the principal VIAC users (Sadowski, 2015, p. 420).

Year	2011	2012	2013	2014	2015	(…)	2019	2020	2021	2022
% of German and Austrian parties	44	83	35	35	39	…	37	35	29	53

This drop may be attributable to the general decreasing need for an *international* arbitration centre in the CEE region (Sadowski, 2015, p. 420). One reason behind this trend is that regional companies are generally cost-sensitive, and that improvements and modernisation of the arbitration laws in their respective countries could be making their "home-grown" institutions more attractive in certain cases.[2]

2.2. Regional Trends

Moving on to arbitral centres located in other CEE jurisdictions such as Poland, Czechia and Romania, it is difficult to compare them directly with Hungary, as there is scarce publicly available data on annual caseloads, amounts in dispute, and parties' nationality.

[2] In other cases, where the disputing parties prefer an international institution, they have been observed to gravitate away from VIAC and towards either the Arbitration Court of the International Chamber of Commerce (hereinafter ICC) or the Arbitration Institute of the Stockholm Chamber of Commerce (hereinafter SCC), rather than their CEE regional alternatives. For example, in 2023, 23 parties from Poland and Romania, and 20 from Czechia had a case at the ICC. Whilst there are no specific statistics available about cases administered by the VIAC for the same year, in 2022 VIAC handled only 4 Polish, 6 Romanian and 2 Czech cases, which confirms this trend (see: Sadowski, 2015, p. 420).

What is commonly observable is that the largest and oldest arbitral institutions are often the ones formerly attached to their respective country's chambers of commerce in the Communist era, mostly in the 1950s, and that their Rules of Procedures and the general legal framework have been subsequently modernised in line with the market transition by adopting the UNCITRAL Model Law on International Commercial Arbitration 1985 (hereinafter: Model Law) with slight modifications. The region is also characterised by specialist arbitration courts set up in industries including agriculture, sports, or stock and commodity markets. More recently, new arbitral centres have also emerged, such as the Court of Arbitration at the Polish Confederation Lewiatan in Poland ("Lewiatan"), the Belgrade Arbitration Centre, or the Bucharest International Arbitration Court in Romania, indicating a regional expansion of the arbitral market.

In Poland, most disputes are handled by the Court of Arbitration at the Polish Chamber of Commerce. In 2018, it opened 1365 cases in total (see: Court of Arbitration at the Polish Chamber of Commerce in Warsaw, 2024). Between 2010 and 2020, nearly 20% of the disputes it handled were international in nature (Court of Arbitration at the Polish Chamber of Commerce in Warsaw, 2024). The second largest arbitration court, Lewiatan, handles around 50 cases annually (Polish Arbitration Association, 2024), and is leading initiatives to popularise arbitration in Poland. Poland also boasts several specialist arbitration courts, such as the Court of Arbitration for Internet Domain Names, the Court of Arbitration at the Gdynia Cotton Association, and the International Court of Arbitration at the Polish Chamber of Maritime Commerce. The exact number of cases handled by these courts is not available.

The landscape in Czechia is similar. Its Arbitration Court attached to the Economic Chamber and Agricultural Chamber of the Czech Republic is the only permanent arbitration court having general jurisdiction. It was founded in 1949, but throughout the Soviet era, it could only adjudicate upon foreign trade disputes. Since the passing of a modernised Arbitration Act in 1994, both international and domestic disputes may be referred to it. There is no publicly available data on its annual caseloads.

In Romania, the most frequently used arbitration court is the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania ("CICA"), which has settled over 3000 arbitration disputes since Romania joined the European Union in 2007, including over 700 international disputes. Conversely, between 2020 and 2023, the Permanent Court of Arbitration attached to the Hungarian Chamber of Commerce (the "Hungarian Arbitration Court") administered only 305 cases in total, 15% of which included international parties (Hungarian Chamber of Commerce and Industry, 2024).

Notwithstanding the above, this overview should be read with caution due to the lack of transparent information on caseloads and disputing parties in several of the surveyed jurisdictions. Nevertheless, two conclusions may be drawn concerning the tendencies in the region.

First, whilst VIAC remains a dominant (and potentially the top-performing) arbitral institution, its significance seems to be decreasing, opening opportunities for growth for other regional centres. Second, whilst it is difficult to rank Hungary in terms of overall caseloads, in terms of the percentage of international cases taken on by national institutions (around 20% in Poland and Romania, and over 40% for VIAC), Hungary lags behind at around 15%.

3. Strengths of Arbitration in Hungary

This section explores the strengths of arbitration in Hungary, in an effort to highlight its potential. These include the exceptionally rich arbitral culture of Hungary predating the Communist regime; its now modernised *lex arbitri* (largely) in line with the UNCITRAL Model Law; the courts' pro-arbitration approach to enforcement; and the potential upside of the neutrality inherent in arbitration considering the country's democratic backsliding.

3.1. Longstanding Arbitration Culture and Centralised Structure

Hungary is a country of rich arbitration history. Its first act containing modern provisions on arbitration was passed as early as in 1911 (Act I of 1911 on Civil Procedure), and, several arbitration courts, attached to regional Chambers of Commerce, and specialist courts, colloquially referred to as "arbitral centres", were established over the following decades (László, 2020, pp. 1-33). Whilst the number of cases referred to arbitration was severely reduced in the state-controlled economy of the Communist regime, the arbitration court attached to the centralised Hungarian Chamber of Commerce commenced its operation during that era, in 1953 (Horváth, 1993, pp. 17-24). At that time, its mandate was limited exclusively to foreign trade disputes. Whilst the scope of its jurisdiction had been expanded gradually (Horváth, 1993, pp. 17-24), it was only in 1993 that arbitration was made generally permissible between businesses.

After its transition to a market economy, Hungary was quick to adopt international standards and revive its former arbitration culture. With Act LXII of 1994 on Arbitration ("the old Arbitration Act"), Hungary adopted the UNCITRAL Model Law of 1985, thus becoming the first jurisdiction that made it applicable not only to

international, but also to domestic disputes (Horváth, 1993, pp. 17-24). The adoption of the old Arbitration Act proved to be a solid foundation, reflected by the statistics of the Hungarian Arbitration Court, showing that the median number of cases had doubled on average between the mid-1990s to the mid-2000s.

Year[1]	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**
New cases	168	137	161	175	181	204
International cases	85	52	71	50	67	71
Domestic cases	83	85	90	125	114	133
Year	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**
New cases	202	255	394	590	381	1417
International cases	75	49	30	137	41	62
Domestic cases	127	206	364	453	340	1355
Year	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**
New cases	411	264	291	288	269	335
International cases	42	30	37	30	27	30
Domestic cases	369	234	254	258	242	305

Although the Hungarian Arbitration Court is the only arbitral institution with general jurisdiction, there are two specialist arbitration courts as well, which were established under separate legislative acts (Sec. 47, Act I of 2004 on Sport; Sec. 32, Act CXXXVI of 2012 on the Hungarian Chamber of Agriculture, Food Economy and Regional Development). These arbitration courts administer only a limited number of cases annually, largely due to their limited jurisdiction. Thus, the Permanent Court of Arbitration for Sports handled only 11 cases between 2018 and 2021. In the same period, the Arbitration Court attached to the National Agricultural Chamber handled 18 cases (Lukács, 2022).

3.2. Favourable Lex Arbitri

Recognising the advantages of arbitration, Hungary has established a robust, practical legal framework (Burger, 2011, pp. 15-29), the cornerstone of which is Act LX of 2017 on Arbitration (the Arbitration Act). The Arbitration Act was enacted to further align the country's legal infrastructure with international standards, and more importantly, to restore public faith in the Hungarian commercial arbitration system, which had been eroded during the socialist era (Bodzási, 2018, pp. 11-19). The main features of the Arbitration Act will be examined in this section.

The Arbitration Act applies to all arbitrations (both institutional and *ad hoc*) seated in Hungary (Sec. 1, Arbitration Act). One of the fundamental principles underlying the Arbitration Act is party autonomy. The Act allows parties significant

[3] Kecskés, 2020, p. 13.

freedom to shape the arbitration process according to their needs. For instance, parties are free to choose the applicable law (Sec. 41, Arbitration Act), the language of the arbitration (Sec. 33, Arbitration Act), and the place of arbitration (Sec. 31, Arbitration Act). This flexibility is crucial in international arbitrations, where parties from different jurisdictions may have varying preferences and requirements.

The Arbitration Act governs also the issue of arbitrability. Under Hungarian law, most disputes are arbitrable, and even where there had once been statutory obstacles,[4] those have gradually been removed (one notable remaining exception being consumer disputes).

Another key feature of the Arbitration Act is the principle of minimal court intervention. The Arbitration Act sets out, as a general rule, that state courts may only intervene in the conduct of arbitration proceedings when the Act expressly allows them to do so (Sec. 6, Arbitration Act), and therefore Hungarian courts are required to respect the autonomy of the arbitration process and are only permitted to intervene in limited instances. State courts may only intervene in:

- The appointment of arbitrators (Sec. 12, Arbitration Act),
- The removal of arbitrators (Sec. 14, Arbitration Act),
- Declaring the arbitrator's mandate has ceased (Sec. 15, Arbitration Act),
- Ruling on a jurisdictional objection, if the tribunal ruled on it as a preliminary matter and one of the parties applied for such ruling (Sec. 17, Arbitration Act),
- Setting aside proceedings (Sec. 47, Arbitration Act),
- Enforcement proceedings (Sec. 53-54, Arbitration Act).

This limited intervention is in line with international norms (Art. 5, UNCITRAL Model Law) and ensures that arbitration remains a swift and efficient alternative to litigation, extending also a robust court-based system to support arbitral proceedings if needed.

The Arbitration Act exclusively governs also the grounds for setting aside (Sec. 47, Arbitration Act), which is *largely* in line with the UNCITRAL Model Law, and includes cases where:

- A party's consent to the arbitration agreement was invalid under applicable national law,
- The arbitration agreement is invalid under the law it is subject to,
- The party who applies for setting aside was not properly notified of the appointment of arbitrators or the proceedings of the tribunal or was otherwise unable to present their case,

[4] The previous obstacles, which are capable of undermining the utilisation of arbitration, are going to be examined in the following chapter.

- The award extends to issues beyond the scope of the arbitration (e.g. not contemplated in the arbitration agreement),
- The constitution of the tribunal or the proceedings were not in accordance with the parties' agreement or the provisions of the Arbitration Act,
- The dispute is not arbitrable under Hungarian Law,
- The award is at odds with Hungarian public order,
- The arbitral tribunal has not assessed the substance of the Performance Certification Body's expert opinion submitted by either party in its award, including by giving reasons for assessing or excluding the report as evidence.[5]

In judicial practice, courts have refused to set aside awards where the only objection was that the award was unfounded on the merits, since the exhaustive list of the grounds for annulment cannot be supplemented through judicial practice (BH 1996.159). In another case, the Supreme Court further confirmed that annulment proceedings could not include the review of the merits of an award (EH 2008.1705). Thus, Hungarian courts have largely been able to lay the foundations of a pro-arbitration philosophy in practice, making Hungary an arbitration-friendly Model Law jurisdiction (Schmidt, 2020).

It is also important to note that the Arbitration Act incorporates a provision allowing the court where the application for annulment was submitted to suspend its proceedings and allow the arbitral tribunal to reopen its proceedings in order to eliminate the ground for annulment (Sec. 47(4), Arbitration Act).

3.3. Pro-Arbitration Judicial Practice Relating to the New York Convention

Hungary is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") since 1961, and the Arbitration Act incorporates the New York Convention principles (Secs. 53-54, Arbitration Act). The Act provides that the effect of an arbitral award shall be equal to a final and binding court judgment, and it must be enforced under the provisions of Act LIII of 1994 on Judicial Enforcement (Sec. 53(1), Arbitration Act). The Arbitration Act incorporates the provisions of Article 5(2) of the New York Convention as the grounds for refusal of recognition and enforcement, and therefore recognition of an award can only be refused if (i) the subject matter of the dispute is not arbitrable under Hungarian law (Sec. 54(a), Arbitration Act), or (ii) if it would be contrary to Hungarian public policy (Sec. 54(b), Arbitration Act). The case law regarding recognition and enforcement has constantly been evolving

[5] This provision was inserted into the Arbitration Act in 2023, and will be examined in more detail in Section IV.2. below.

as Hungarian ordinary courts have become increasingly exposed to arbitral proceedings following the above reforms of 1994. This evolution is the most visible in the public policy exception, which can now be considered as modern and pro-arbitration (Schmidt, 2019), in line with international standards.

Most notably, under the current well-established jurisprudence, the notion of public policy shall be construed narrowly. Therefore, a breach of a legal provision only amounts to a breach of public policy if that provision sought to protect directly the foundations of the economic and societal order (BH 2003.3.17).

Thus, the recognition and enforcement procedure cannot serve as a remedy on the merits against the arbitral award (BH 2015.209; BH 2013.31). In addition, other grounds not set out in Article V of the New York Convention cannot be referred to for a refusal of recognition, as that provides an exhaustive list of the grounds on which refusal can be sought (BH 2007.130).

3.4. Arbitration as a Neutral Forum in CEE Countries with Rule of Law Issues

The democratic backsliding in recent years in certain CEE countries, most notably Hungary, is well documented, leading to a troubled relationship with the EU (Kochenov, Magen & Pech, 2016, pp. 1043-1259). The democratic issues manifest themselves, *inter alia*, in relation to the independence of the judiciary (European Parliament, 2023). According to the European Commission's 2023 Rule of Law Report, the level of perceived judicial independence in Hungary has decreased among the general public and is low among companies (European Commission, 2023a). This is further reinforced by the fact that state-owned or state-affiliated entities continue to dominate certain sectors, especially banking services, the energy industry and transportation. In this vein, both international and domestic parties may find arbitration a safer and more predictable dispute resolution forum, instead of ordinary courts. The two main reasons given for such distrust are fear of interference or pressure from economic or other specific interests; and interference by the government or politicians (European Commission, 2023b). Such landscape could further promote the need for arbitration in Hungary, even more so as international actors investing in Hungary often prefer arbitration as a neutral dispute resolution mechanism (Boronkay &. Wellmann, 2015, pp. 1-31).

4. Challenges

Unfortunately, not all of the factors outlined in the Methodology chapter are present in Hungary, or at least not in a favourable way. This section will examine these factors individually, focusing particularly on the frequent interference with

arbitrability issues and the unnecessary deviations from the UNCITRAL Model Law, both of which, when combined, may undermine the perception of arbitration in Hungary. Additionally, the section will analyse in detail the cost factors associated with arbitration in Hungary.

4.1. Legislative Interferences with Arbitrability

As shown above, after the regime change and market transition, arbitration in Hungary hit the ground running: it was possible to build on the experiences of a strong institution, coupled with modernised arbitration law and increasingly more sophisticated and pro-arbitration judicial practice relating to arbitration. These factors resulted in a steady rise of cases until the early 2010s.

However, 2012 may be considered a turning point, after which there was a significant drop in cases administered by the Hungarian Arbitration Court.

This drop was largely attributed to two factors (László, 2015, pp. 152-160), the first being the Act CXCVI of 2011 on National Assets (hereinafter: National Assets Act), which provided for the exclusive jurisdiction of state courts in disputes relating to national assets, which in turn meant that it indirectly excluded arbitration in these matters. The Act also led to legal uncertainty prevailing at the enforcement stage: under Hungarian law, both domestic and international awards may be refused enforcement if the award was issued in a non-arbitrable dispute (Varga, 2014).

The second significant legislative change came with the amendment to the old Arbitration Act, which limited party autonomy in matters relating to rights *in rem*: in disputes regarding real estate assets located in Hungary, or in disputes relating to a lease agreement when the parties have their respective principal office in Hungary, provided that Hungarian law applied to the agreement,[6] only Hungarian institutional arbitration was available for the parties, with the language of arbitration also being mandatorily Hungarian (Cavalieros, 2014, pp. 317-328). Even though the provision on national assets was repealed mostly on the back of a large economic transaction for a new nuclear power plant financed by Russia in 2015, the case numbers did not recover to the previous levels, as shown above in Section III.1.

Although the obstacles relating to national assets are no longer present, and with the passing of the new Arbitration Act, the bar has been removed over rights *in rem*, arbitrability is still subject to statutory restrictions. As such, consumer disputes are still not arbitrable under Hungarian law (Sec. 1(3), Arbitration Act),

[6] And this was the case in almost every case, as Section 21 of the old legislative act on private international law (Legislative Decree No. 13 of 1979) provided that the law of the place where the property is situated shall apply to rights *in rem*.

except for disputes arising out of contracts setting up trusts. In our view, such outright exclusion is overprotective of the consumers, as the desired protection could also be achieved through other means, such as setting formal requirements for the arbitration agreement to be binding in B2C relations (Varga, 2018, pp. 1-24), thus recognising that in individual scenarios it might even be feasible to opt for arbitration in B2C relations as well (an option that is now excluded in its entirety). This solution can be traced back to a Guidance issued by the Supreme Court,[7] in which it was held that if the General Terms and Conditions applicable to a B2C relationship contain an arbitration agreement, that agreement must be qualified as an unfair term, and therefore null and void. However, this guidance in itself would not exclude consumer arbitration altogether, it only excludes this possibility *if* the arbitration agreement is included in GTCs.

4.2. Unnecessary Deviations from the UNCITRAL Model Law and Scepticism towards Arbitration

Even though Hungary can be considered a so-called Model Law country since the adoption of the old Arbitration Act (United Nations, 2024), it is not uncommon for the legislator to interfere with the Arbitration Act, and include provisions that might reflect a special need present in the country. However, these deviations are often counter-productive, as commercially sophisticated parties often have expectations which are in line with international standards, and these differences are capable of undermining these expectations, and in turn, the popularity of arbitration in Hungary.

First, as already mentioned, an additional ground for annulment of an award, inserted in an amendment to the Arbitration Act in 2023, has been subject to criticism as departing from the Model Law and being in disharmony with the international framework of arbitration. This ground gives rise to set aside proceedings, if the arbitral tribunal has not assessed the substance of the Performance Certification Body's expert opinion in its award submitted by either party, including giving reasons for assessing or excluding the report as evidence.

The Performance Certification Body was set up after the early 2010 financial crisis to fight against chain debts and delayed payments in the construction sector (Schmidt, 2023). It was given significant weight in commercial litigations at ordinary courts,[8] as the expert opinion issued by it had to be given more evidentiary value than opinions of party appointed experts, and the first instance judgment was

[7] 3/2013 Polgári Jogegységi Határozat.

[8] Based on Chapter 5/A of Act XXIV of 2013, which is applicable in disputes where the obtainment of such an expert opinion is mandatory, and supersedes the Rules on Civil Procedure.

enforceable regardless of any appeal, in case it upheld its opinion (Chapter 5/A, Act XXIV of 2013). However, arbitration was largely not impacted by the setup of this body, up until 2023. Arguments were made that the insertion of a new ground only helped to maintain an even playing field in construction disputes, as it was hard for ordinary courts to deviate from the expert opinion, whilst arbitral tribunals were free to do so without any consequences (Chapter 5/A, Act XXIV of 2013). This in turn could have led to more surprise awards in construction arbitrations according to some, which otherwise might be prone to deterring parties from using arbitration as a dispute resolution mechanism.

Another frequently debated provision of the Act allows for a retrial of the proceedings within one year after the receipt of the award, with an application for the arbitral tribunal based on a fresh circumstance or evidence, which was not asserted in the main proceedings outside of the asserting party's control (Sec. 48-52, Arbitration Act). The introduction of such provision was subject to scholarly debate, as according to some authors, it questioned the finality of the arbitral award and it could be at odds with the UNCITRAL Model Law, as a remedy on the merits of the decision of the tribunal, other than an application for setting aside at the state courts (Varga, 2018). According to some authors (Bodzási, 2018, pp. 11-19), this provision seeks to address the fact, that in Hungarian case law in set aside proceedings, circumstances and evidence arising after the arbitral award has been handed down cannot be examined, contrary to the rules of civil procedure applicable in regular court proceedings. They also claim that the perceived disadvantages are offset by the fact that retrial proceedings may be excluded by the parties in their arbitration agreement.[9] Indeed, it is advisable for parties stipulating Hungary as the seat of the arbitration to exclude the possibility of retrial in the arbitration clause itself.

These negative developments, coupled with the regional historic distrust of arbitration,[10] have seemingly served as hindrance to the wider adoption of arbitration as the preferred dispute resolution method, despite the country's robust legal framework for arbitration.

According to Kecskés (2020, pp. 18-20), the 2019 amendment to the Rules of Procedure of the Hungarian Arbitration Court had further detrimental effects. Before, it was clearly stipulated that any arbitrators appointed in an arbitration at the Hungarian Arbitration Court could not also act as a counsel at a different proceeding in another arbitration before the Court, until their mandate had ceased to exist. Now, with that provision repealed, the potential to interchange of arbitrator

[9] The Model Clause of the Arbitration Court attached to the Hungarian Chamber of Commerce does exactly that.

[10] As discussed above at II.1., scepticism towards arbitration may be observed in other CEE jurisdictions, attributable to longstanding historic rule of law issues (see: Sadowski, 2015, p. 422).

and counsel roles is capable of giving rise to moral reservations from the general public, which in turn may undermine the perceived integrity of arbitration.

It is also true that besides the overarching *pro arbitri* approach of state courts and even more so in Hungarian legal literature, there are certain judgments that are questionable from that standpoint. As it was pointed out by Boronkay & Wellmann (2015, pp. 8-10), the Supreme Court has shown that it is prone to interpretations that do not always recognise arbitration as equal to court litigation as a dispute resolution mechanism, which in turn may have detrimental effect on the business perception of arbitration as a viable alternative. This in turn may influence businesses to have the same views, given the authority of the highest judicial body in the country.

4.3. Cost-Related Challenges

The costs of commercial arbitration in Hungary can be broken down into two main components: the arbitration fee, and the registration fee. The cost of the entire procedure, consisting of these two types of fees, can be calculated by using the Hungarian Arbitration Court's calculator application (Hungarian Chamber of Commerce and Industry, 2024). The arbitration fee may be further broken down into sub-components: it consists of an administrative fee, the arbitrators' fee and the taxes it is subject to, a reserve fund, and the payable levies for the proceedings.

The arbitrators' fees, which often take up the largest share of the costs, are set by the Hungarian Chamber of Commerce (Magyar Kereskedelmi és Iparkamara, hereinafter MKIK) through a calculator, and are based on the disputed amount. Administrative fees generally range between 1-2% of the disputed amount. Pursuant to Section 55 of the Act XCIII of 1990 on levies, arbitrations are subject to levies. This sum is 1% of the amount in dispute, it being at least 5,000 and not more than 250,000 forints. Therefore, if the case is valued over 25,000,000 forints (roughly EUR 63,000), the payable levies are capped at that amount. Registration fee is a relatively low, non-refundable lump sum amount set at 40,000 forints (around EUR 100), payable at the beginning of the arbitration.

Some costs associated with arbitration, especially administrative and arbitrators' fees, may also hint at why this form of dispute resolution is underutilised at present, as litigation may seem, at first glance, to be a cheaper alternative. Court fees in Hungary are adjusted to the amount in dispute (typically 6%), however for first instance hearings, they are capped at around EUR 3,700 (for certain types of cases this figure is even lower) (§ 42, Act XCII. of 1990 on Duties and Taxes).

To take the example of an arbitration in which the disputed amount is 2 million euros (equivalent to 807,320,000 forints),[11] the costs relating to the proceeding are as follows.

[11] The exchange rate used is 403.66 HUF = 1 EUR, valid as of 25 October 2024.

	In HUF	In EUR
Amount in dispute	807,320,000	2,000,000
Administrative fee	4,794,280	11,877
Arbitrators' fees	14,872,968	36,845
Tax charged on arbitrators' fees	1,933,486	4,789
Reserve fund	297,459	737
Levies	250,000	619
Registration fee	40,000	99
The cost of the arbitration in total	**22,188,193**	**54,967**

5. Conclusion

Even though Hungary has a rich arbitration culture with its roots leading even back to the early 1900s, and a stable legal framework, which is largely in line with the newest international legal standards, the jurisdiction seems to lag behind its regional competitors.

This may be attributable to sporadically unfavourable Supreme Court attitudes and deviations from the UNCITRAL Model Law, and it may also be due to the perceived costs of arbitration. Whilst it is difficult to speculate over the precise causes, it is apparent from the statistics of the past three decades that the number of international arbitrations conducted in Hungary seems to stagnate, and that there is an observable relative drop in domestic arbitrations administered since the 2010s.

Whilst it is clear that there is still room for improvement in the Hungarian arbitration laws and recent judicial practice, there is nevertheless an untapped potential in the jurisdiction. Arbitration in Hungary has sound foundations, and – with the decreasing popularity of the region's largest hub, VIAC – a room for growth. Against the backdrop of general democratic backsliding and the perceived undue interferences to the judiciary both from political and economic actors, arbitration can find its footing as a neutral and efficient means to settle commercial disputes.

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