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Küldve: péntek 2020. szeptember 25 12:20
Címzett: Dr. Varga Norbert
Tárgy: your paper for AThens Journal of Law

Fontosság: Sürgős

Dear Dr. Varga,

I am pleased to inform you that, based on the reports of two "blind" peer reviewers, your paper: ***Provisions on Arbitration Proceedings Set Down in Cartel Agreements Based on the First Hungarian Cartel Act*** has been accepted for publication in the Athens Journal of Law.

Thank you for submitting your paper for publication at AJL.

Yours respectfully,

Prof D. A. Frenkel – co-editor in chief of AJL.

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True success in life is measured not by what you have got, but by what you have given.

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Provisions on Arbitration Proceedings Set Down in Cartel Agreements Based on the First Hungarian Cartel Act

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Abstract

The point of the cartel movement of the 20th century can be found in the self-contradiction of free trade, because the measures that limit fair trade were the direct results of free trade itself, against which the only way to oppose in order to protect the consumers' interests is to guarantee free competition, which meant nothing more and nothing less than the fundamental enforcement of public well-being, public economy and public morals. With this study, I wish to describe the regulations in connection to the stipulations of courts of arbitration by analysing archival sources. I would especially like to touch upon the role courts of arbitration played during dispute settlements between concerned parties before the first Cartel Act of Hungary came into effect in 1931.

Key words: *cartel, arbitration process, juries and arbitral tribunals, Hungary*

Procedural rules pertaining to cartels were significant among the arbitration requirements laid down in cartel agreements. It was pursuant to these rules that the parties to an agreement set down how and within what framework any potential disputes would be decided. In the case of rules on the arbitral tribunal, we need to review the relevant provisions of Act I of 1911. By analysing individual cartel agreements, we also gain an insight into the terms and conditions under which parties to various cartel agreements wished to set up their respective tribunals to deal with problem cases and the manner in which they attempted to pre-empt court proceedings.[1]

One unique feature of arbitration proceedings is that the arbitrators proceeded based on an agreement entered into by the parties. The raison d'être of these proceedings is the principle of disposal; the proceedings are thus a consequence of it. A precondition of the proceedings was that an arbitration agreement or an agreement with pertinent provisions should be made between the parties. This agreement was only valid if it was in writing and if it pertained to a specified case or a dispute arising out of a legal relationship. The parties were free to agree on the scope of the agreement, a consequence of this freedom being that the arbitral tribunal could not proceed in every matter, even if the parties had the right of disposal over that matter.[2]

First, it had to be decided who the arbitrators could be. The parties could agree on the persons of the arbitrators or designate those persons in the agreement. In the event that there was no clause to that effect in the agreement, each party could select an arbitrator. The parties to the case could select arbitrators jointly. However, if they could not agree on the persons of the arbitrators, then the matter was decided by majority vote. In the event of a tied vote, they would draw straws to decide the persons of the arbitrators. In addition to an indication of each arbitrator's occupation and address, their choice of arbitrators had to be put in writing. It also needed to be set down whether the persons thus chosen accepted the office. The one party could call on the opposing party to exercise the right of choice, for which that party had a period of

[1] Supported by János Bolyai Research Scholarship (BO/00198/18/9). A Budapesti Kereskedelmi és Iparkamara mellett működő zsűrik és választott bíróságok működése [The functioning of the juries and arbitral tribunals operating in conjunction with the Budapest Chamber of Commerce and Industry]. *Ujság*, 12 and 14 February 1930; on antecedents to civil procedure law, see A. Meszlény, *Bevezető a polgári perrendtartáshoz* [Introduction to the civil trial process]. Budapest, 1911, at 393–402.

[2] Bacsó (1917) at 323.

15 days. The person of the arbitrator had to be communicated to the opposing party, which notification had to be effected by a notary public or the district court.

In the event that an arbitrator could not fill the office for some reason (e.g. because that person had died or declined to participate in the proceedings), the party could then exercise the right of choice again. In the event that the party waived this right, the party could then withdraw from the arbitration agreement or request that an arbitrator be appointed by a court. In the latter case, the court would decide without a hearing from that party.[3]

The person selected had to declare in writing that he had undertaken this duty. This declaration thus qualified as a contract between the parties and the arbitrator. After having been selected, in the event that the arbitrator failed to perform his duty without due cause or there were delays in his fulfilling his duty, either party could then submit a petition to the court to fine the arbitrator. An appeal could be lodged against the decision. Costs and damages incurred naturally had to be paid.[4]

It was possible to use the grounds for excluding judges against arbitrators as well. In addition to applicable general rules, the following groups were excluded: women, minors, persons in care or undergoing bankruptcy proceedings, and the blind, deaf and mute, as well as persons who had lost office or were suspended from exercising their political rights as an ancillary penalty. The court would take a decision on the matter of the petition for exclusion in an oral hearing after hearing the arbitrator in question, if necessary. An appeal could be lodged against the court's decision.

The arbitration agreement ceased to have effect in the following cases: if any of the arbitrators specified in the agreement failed to undertake the arbitration proceedings, died, could not engage in the arbitration proceedings for some reason, or refused to fulfil their duty.

The parties themselves set down the type of proceedings to be used. The parties could appoint counsel to represent them, and a record was kept of the proceedings themselves. The parties could jointly determine the remuneration made to members of the arbitral tribunal. If they could not make that determination, the tribunal then took a decision on the matter, against which an appeal could be lodged with the court that would have acted as a court of appeal in the absence of an arbitration agreement. The tribunal could hear witnesses and experts. However, the tribunal could not have trial participants and parties swear an oath. The competent district court was to be turned to in the event that the tribunal was expected to engage in trial proceedings or actions for which it had no powers.

Arbitration proceedings could not be stopped by a claim made by any of the parties that the arbitration agreement was invalid, that it did not cover the matter to be decided, or that one of the members of the tribunal could not proceed on the matter, provided that a binding court decision had not been handed down following a review of these disputes. If the tribunal was delayed in making a judgement, the court set a deadline at the request of any of the parties. In the event that the deadline was missed, the arbitration agreement expired for that particular matter. In this case, the court decided in an oral hearing after hearing the members of the tribunal. The tribunal took its decisions by a majority voice vote if there were more than two members. The tribunal had to substantiate its judgement, which was signed by every member. The parties could enter into a pact with one another during the proceedings. The judgement or the pact also had to be forwarded to the competent court.

Redress by trial was not an option against a judgement passed down by an arbitral tribunal. The judgement could only be invalidated by lodging a petition with a court in the following cases: (a) if there was no arbitration agreement, if such an agreement was not valid, or if it did not pertain to the matter in question as well as if it expired before the judgement was

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[3] Kamarai választott bíróság bírája nem kamara köteles perében [An arbitrator on the chamber's arbitral tribunal in a trial not required by the chamber]. *Közgazdasági Értesítő* (30), 1935/8, at 2.

[4] Bacsó (1917) at 324–325. Magyary, (n.d.) at 733–735. Falcsik, (1908) at 376–377.

made, even in the event that the rules on the formation of the tribunal or on its adjudication were infringed; (b) if a person who had been excluded by a court took part in the adjudication; (c) if a party was not given a hearing during the proceedings; (e) if rules on signing the judgement were not observed; (f) if a judgement obliged a party to take action that is not permitted or if the section that provided for this was incomprehensible; and, finally, (g) even if there were grounds for a retrial pursuant to the Act on civil procedure, Sec. 563(5–9).

A pact entered into before an arbitral tribunal could be challenged with a petition before a court. An annulment case could be initiated within 90 days after a judgement was passed down by the tribunal. In the event that the proceedings were initiated, the court could then suspend the execution of the judgment by the tribunal, even without hearing the party. The court could also withdraw its own decision to suspend the execution of the tribunal's judgement.[5]

The term *court* should be understood to mean a court of justice which would have had jurisdiction and competence in the absence of an arbitration agreement. This court could order enforcement based on the judgement or pact. If several courts were competent in the matter, the court to which one of the parties or the tribunal had turned was the one that proceeded in the case.[6]

Next, I wish to describe arbitration rules in practice, based on archival sources on cartels. Among the Cartel Committee's materials is the Bakers Protection Pact, containing the provision on arbitration proceedings below.

A decision on any dispute and a judgement on any claim arising from the legal relationship regulated by the pact were left to the arbitral tribunal. Adjudicating appeals which were referred to the competence of the tribunal in the pact also fell within the competence of the tribunal.

The pact contained the following on the composition of the arbitral tribunal. The president of the tribunal was permanent, in this case Adolf Trutzl, with co-presidents Béla Neumann, Ferenc Holndonner Jr, Gyula Czittler and Sándor Fürst. In the event that the president was indisposed, the co-president appointed in the first place acted in lieu of the president. If he was also indisposed, the person who was next in line filled the office of president. In the event that the president or some other co-president of the tribunal could not undertake this office, then the meeting of members chose another president or co-president of the tribunal.

The parties set down the following general rules on the proceedings before the arbitral tribunal. If a person wished to lodge some dispute or other claim before the tribunal, the relevant petition, action or appeal was to be submitted to the tribunal.

The president of the arbitral tribunal himself undertook the presidency of the tribunal to be formed for a particular case or designated one of the co-presidents as president. If there were no grounds for exclusion against the president or if the president-to-be or co-presidents were indisposed, the president and the co-presidents were to be appointed by the president of the tribunal. Failure to maintain this sequence was not a grounds to challenge the legality of the formation of the tribunal.

The president or appointed president notified the claimant and the respondent in writing without delay that they should designate their own arbitrators within 48 hours of the notification and that the statements of acceptance of the office should be simultaneously attached. The parties could only designate a member of the pact or a representative as an arbitrator. In the event that one of the parties did not designate an arbitrator by the set deadline or did not attach a statement of acceptance or in the event that the designated arbitrator withdrew, the arbitrator was then appointed by the president of the tribunal. Members of the board of directors could not be presidents or members of the tribunal.

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[5] Bacsó (1917) at 326–328. Zoltán, (1986) at 472. Dobrovics (1933) at 14.
[6] Gaár (1911) at 385–411. Bacsó (1917) at 328. Magyary (n.d.) at 736–737.

No member of a committee, against whose decision an action or appeal was directed or which committee officially dealt with the matter at issue in the case, could act as an arbitrator. Persons involved in an investigative or auditory action were also excluded from the proceedings. An arbitrator also had to be excluded if any party raised serious doubts as to that person's impartiality.

In the event that an appeal had been lodged against a decision in a case involving the opposing parties, the arbitrator could then only be designated by the opposing parties. If there were more than two opposing parties, each of them could appoint an arbitrator. Several parties on the same side could designate an arbitrator jointly. If parties on the same side could not agree, the president of the tribunal designated their arbitrator.

The arbitral tribunal proceeded with the case in a hearing. The tribunal was free to set the manner of the proceedings. It presented its statements in the hearing. Evidentiary material registered by the audit committee or the consumer protection committee could be used and supplemented by the arbitral tribunal, and it could order that evidence be presented again. A judgement by the tribunal had to be justified. The tribunal could oblige the losing party to pay its costs. A judgement by the tribunal had to be delivered to the director of legal affairs at the Hungarian Royal Treasury. A decision by the tribunal could not be executed before 15 days of delivery. There was no appeal against a judgement by the tribunal.[7]

The Alföld Sugar Company materials contain a draft cartel agreement from 1942, which likewise regulated the arbitral tribunal. The draft agreement set down that the firms that sign the agreement submit to the exclusive power and competence of a three-member tribunal regulated by Act 1 of 1911, Title XVIII, to decide all disputes and matters of litigation arising from the cartel agreement, with the exception of matters whose handling the agreement expressly refers to another forum. A decision on the question of whether or not the arbitration agreement was valid also fell within the powers of the tribunal.

One member of the arbitral tribunal was selected by the party acting as the claimant or, if several took part, then jointly. The other member was chosen by the party involved in the case as the respondent. If there were several in the latter trial position, these persons made the selection jointly. As regards the arbitral tribunal, the parties declared that the "tribunal will not merely explain the operation of established law. It will also be authorised to take constitutive decisions on all questions which the inadequacy of the present agreement or other important reasons render necessary. That is, the tribunal will also be authorised to issue judgements as regards the legal relations between the parties to the agreement, which remain valid until such time as the cartel is terminated and which could otherwise only be established on the basis of a statement of will on the part of the parties to the agreement."[8]

The third member of the arbitral tribunal was the president, the person of whom was agreed by the arbitrators. If the parties could not agree on a recommendation for the person of the third member of the tribunal within 15 days, the president of the tribunal was then appointed by the chairman of the board of the Budapest Stock and Commodities Exchange.[9] If the president of the tribunal could not fulfil his duties, the vice-president would then proceed to act.

If it was established during arbitration proceedings that an action or failure to act on the part of one of the parties was in breach of an essential provision of the agreement or was

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[7] Cartel committee materials: MNL. K-148. 1934. 41. tétel. 28720. alapszám, 71729. [National Archives of Hungary. Lot K-148. 1934. 41 No. 28720, 71729]; Szentpáli (1933) at 16.

[8] MNL. (Gazdasági Levéltár) 256-V. 181. tétel 56. csomó. [National Archives of Hungary (Business Archives). Lot 256-V. 181 Batch 56.]

[9] Fifteen points in the Austro-Hungarian iron cartel agreement refer disputes to the arbitral tribunal for the Budapest Stock and Commodities Exchange. MNL. (Gazdasági Levéltár). Osztrák-Magyar Vas- és acélkartell Z 372. 43–44. tétel. A tőzsdebíróságról, mint választott bíróság szabályozásáról. [National Archives of Hungary (Business Archives). Austro-Hungarian iron and steel cartel. Lots Z 372. 43–44. On regulating the stock exchange tribunal as an arbitral tribunal.] Róth (1901) at 200–202.

"contrary to the spirit of the cartel", the relevant person could then be issued a fine of 100,000 gold pengős on a case-by-case basis. A performance obligation and compensation could also be ordered in addition to the payment of the fine. The amount of the fine had to be divided between the parties in proportion to the size of their participation. A fine could be imposed several times if the necessity arose. The sugar companies also agreed that, except in cases of termination, the cartel had to be maintained. "In this regard, the parties shall grant the most far-reaching powers to the arbitral tribunal, supported by the principle that the tribunal, by the shared will of the parties, shall first and foremost bear in mind the continued validity and inviolability of the cartel and the obligation to compel all the contracting parties to adhere to the present agreement."[10]

Among the Viktória Chemical Works materials, we find a cartel agreement that regulates the structure and proceedings of the arbitral tribunal. This agreement stands out because the parties set down detailed rules on the tribunal in a separate arbitration agreement.

The parties to the cartel agreement (Drucker Dezső Pallas Chemical Plant, United Light Bulb and Electric Company, Dr Helvey Tivadar Chemical Plant, Rosenberg Miklós Chemical Plant, Rudas Ernő Concordia Chemical Company, Soroksár First Sand Lime Brick Company and Viktória Chemical Works) stipulated that they recognise and, "in excluding the court, submit to the exclusive competence and unappealable judgement of a three-member arbitral tribunal"[11] to settle all disputes arising from the agreement and to adjudicate and collect all claims. The tribunal proceeded in cases of dispute pertaining to escrow agreements and in adjudicating and collecting related claims.[12]

The cartel agreement entered into by the firms listed above set down that the parties and the Hungarian Industry and Trade Monitoring Bank had entered into an agreement on exclusive sales of sodium silicate on commission as well as on providing control and escrow services, based on which the bank undertook an order to make such sales on commission and to provide such control and escrow services. The bank's powers included deciding disputes arising from or pertaining to legal relations, especially compensation claims, and to setting fines. The parties to the agreement likewise left the decision to the arbitral tribunal to appeal decisions taken at cartel sessions regulated in the cartel agreement. In this case, the tribunal also had three members. The claimant or claimants before the tribunal notified the respondent by registered mail in addition to simultaneously designating the arbitrator on the tribunal and forwarding the statement of acceptance from the arbitrator. The respondent had to designate the arbitrator within eight days of receiving the notification and send a statement of acceptance by registered mail. In the event that several parties entered the lawsuit on either the side of the claimant or the respondent, an arbitrator could then be selected by a simple voice majority. The president was jointly selected by the two arbitrators. If the respondent did not designate an arbitrator within eight days or if no agreement could be reached on the person of the president, the second arbitrator and the president would then be designated by the president of the National Association of Hungarian Industrialists or by his deputy if he was indisposed.

A judgement by the arbitral tribunal had to be justified, and no appeal could be lodged against this judgement. Provisions of Act XX of 1931 had to be observed during the arbitration proceedings, with the judgement to be delivered to the director of legal affairs at the Hungarian Royal Treasury. The claimant had to place the amount of the costs set by the tribunal on deposit. The provisions of the Act on civil procedure were to be applied to the formation of the tribunal

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[10] MNL. (Gazdasági Levéltár) 256-V. 181. tétel 56. csomó. [National Archives of Hungary (Business Archives). Lot 256-V. 181 Batch 56.]

[11] MNL. (Gazdasági Levéltár) Viktória Vegyészeti Művek Rt. Z 341 Ügyvezetői-igazgatóság iratai 2. raktári szám, Kartell ügyek. [National Archives of Hungary (Business Archives). Viktória Chemical Works. Z 341. Managing director's documents, Stock No. 2, Cartel cases.]

[12] *Ibid.*

and to the arbitration proceedings, provided that the parties had not regulated these areas in the agreement.[13]

It also bears mentioning that not every cartel agreement contained an arbitration clause. The Budapest Ice Sales Company and the Huszár József István Ice Company in what was then the separate town of Újpest entered into an agreement to regulate the ice trade in Budapest, Újpest and Rákospalota as well as wishing to lay down a unified and joint regulation in the agreement. They specified the terms of distributing ice, the maximum amount and the fine to be paid in the case of overproduction, and they set down the prices and the procedure to be followed against resellers. They also set down that any disputes arising from the agreement should be settled by the Budapest Central Royal District Court or the Budapest Royal Court of Justice, depending on the court's jurisdiction in respect of the value of the lawsuit.[14]

It becomes clear from the provisions on the arbitral tribunal that the structure was regulated in an essentially identical manner. The parties wished first and foremost to settle legal disputes among themselves. This is why they attempted to lay down the rules of procedure in the cartel agreements in as much detail as possible with an eye to Act I of 1911 on the civil trial process as a background law.

A judgement passed down by the arbitral tribunal could only be overturned by the Cartel Court.[15] This is why the manner in which the effect of the judgements by the tribunal was regulated was particularly significant. "There would be no purpose to the provisions of the Act on cartels if one could manage to enforce judgements by ignoring the intention of the Act on cartels and stipulating involvement by the arbitral tribunal."[16]

The Cartel Court had jurisdiction over lawsuits of public interest, over impositions of temporary measures, impositions of fines as penalty, disqualification, the annulment of any arbitration award and the suspension of the execution of any arbitration decision.[17]

The Cartel Court could only order the dissolution of a cartel and prohibit its further operation, if the cartel had engaged in conduct that was detrimental to the public interest and if that conduct could not otherwise be terminated. The Act gave the minister the right to request the dissolution directly from the court without recourse to other means. However, exercising the rights of dissolution could also constitute a restriction of fundamental rights, in particular, it could restrict the exercise of the freedom of association. Yet, constitutional rights could only be restricted by way of exception and only if the act was authorized by a statute. In any other case, the judicial measure would have been unlawful, as it would have been determined by an arbitrary exercise of law.

With the dissolution of the cartel, the court usually prohibited the cartel and its members from continuing to operate. The dissolution of the cartel did not preclude the members from keeping up the cartel's operation by acting in unison. This meant that the sentence could only be enforced if the court also prohibited the cartel from operating.

It could also happen that a cartel had been dissolved, but then it was re-established. This was not explicitly prohibited by the law, so, in practice, it meant the following. The court's decision concerned only the dissolution of and the prohibition of the operation of the cartel

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[13] *Ibid.*

[14] MNL Budapest Főváros Levéltára XI. 1105 1. kisdoboz 1 Kartell jegyzőkönyvek, megállapodások 1927–1943 [Budapest City Archives, National Archives of Hungary, Folder XI. 1105 1, Cartel minutes of meetings and agreements 1927–1943].

[15] A kartelbíróság első ügye [The first case before the Cartel Court]. *A kartel (2),* 1933/4, at 31. A Kartelbíróság megsemmisít egy választott bírósági ítéletet [The Cartel Court annuls a judgement by an arbitral tribunal]. *A kartel (2),* 1933/5, at 39–40. Ranschburg (1931) at 119–124. Magyary (n.d.) at 743–744. Kovács (1930) at 1700. Szabó (2016) at 79.

[16] Kelemen (1933) at 17.

[17] Harasztosi (1936) at 546-547. See more on this topic: *A Kartelbíróság újabb ítélete. [The Cartel Court's new ruling*], A Kartel [The Cartel] (3) 1933/1. at 8.

involved in the action. The new cartel, if it was formed as the result of a new agreement, was not covered by the previous decision. New legal action had to be initiated against the operation of the new cartel, and new evidence was needed to demonstrate that its operation was against the public interest. However, in urgent cases, the minister could consider taking provisional measures.

If the abuse committed by the cartel could be terminated by enforcing an agreement or a decision, then the court ordered the enforcement of the relevant agreement or decision. A similar decision was taken when the claim was filed for the dissolution of the cartel. On the other hand, if a claim was made for the prohibition of an agreement or a decision, the court could not pronounce the dissolution of the cartel in its ruling. Otherwise, the court would have gone beyond the scope of the claim, which would have been incompatible with Act I. of 1911 on the Code of Civil Procedure (hereinafter referred to as: CCP). The termination of the operations or of the conduct of the cartel was only requested, if the cartel's conduct could not be demonstrably linked to an agreement.

In the following case, legal action was brought to the Cartel Court because of the invalidity of the cartel contract and of the arbitration clause contained therein; and because of a failure to present the cartel contract to the minister. The contract including an arbitration clause established commitments in respect of goods in a manner that restricted competition in terms of turnover and price formation; therefore, it fell within Sections 1 and 2 of Act XX of 1931. Commercial associations also participated in the conclusion of the agreement, which, according to the Cartel Act, had to be recorded in writing and presented to the responsible minister in office for registration. The presentation was regulated by special rules, because the contract in question had been drawn up before the Cartel Act came into effect (15th October, 1931); therefore, according to Section 16 of the Cartel Act, its presentation should have been performed within 45 days after it came into effect, namely until 29th November, 1931.[18]

The Cartel Court found that the presentation had not taken place. Because of the failure to present the agreement, pursuant to Section 2 of the Cartel Act, the agreement was annulled, and the arbitration clause included therein, "*as an additional part of ancillary nature of the main agreement, sharing the fate of the main agreement, also became invalidated; therefore, the arbitral tribunal that gathered on the 9th of February in the year 1932 based on this invalidated contract could not have been instituted in a legal sense.*"[19]

Enforcing the performance of obligations based on invalid agreements through decisions of arbitral tribunals was unquestionably against the law; as a result, the legal directorate of the Treasury, acting upon the order of the minister, could ask for the invalidation of the decision of the arbitral tribunal pursuant to Section 13 of the Cartel Act. The co-defendant's reasoning that the claim in question would fall under the jurisdiction of an ordinary court instead of the Cartel Court was unfounded, because Section 2 of Section 13 of the Cartel Act stated that the legal claim could be filed at the Cartel Court exclusively. On the aforementioned grounds, the Cartel Court dismissed the judgement of the arbitral tribunal.

The Cartel Court reached a similar decision in the following case, in which, due to the failure to present the agreement, the arbitration clause, which formed part of the annulled agreement, "*sharing the fate of the main agreement, also became invalidated.*"[20] The Cartel Court declared that the Cartel Act did not contain any provisions that would have allowed the

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[18] A kartelltörvény hatálybaléptetésről szóló 5381/1931. M. E. rendelet. [Prime Minister Decree 5381 of 1931 on The Enforcement of the Cartel Act. P. IV.] 3013/1932. In: Nizsalovszky Endre - Petrovay, Zoltán - Térfy, Béla - Zehery, Lajos (1931-1932) at 577.

[19] P. IV. 3013/1932. In: GDt. vol. XXV, at 577.

[20] P. IV. 5261/1932. GDt. vol. XXVI, at 740-741. In the same decision, the Cartel Court also stated that an action of public interest can be brought "even if public interests are not threatened but one of the other criteria set out in the Act is violated." Egy elvi jelentőségű ítélet, [A Principled Decision] *Pesti Napló*, 18 August 1932, at 7.

minister to decide on appeals for the justification of the failure to present the required documents.

In the case at hand, the co-defendants of the second and third degrees concluded an agreement on 28th December 1928 and 1st January 1929 for the period between the 1st day of January 1929 all the way to the 30th day of January 1932. The agreement contained mutually binding provisions regulating the acquisition of firewood, coal, coke and smithy coal; their sale in and around the town of P. (Pápa), the determination of sales prices and sales conditions of products, the handling of the turnover of goods and the related accounting; and mutual customer protection. The aim of this agreement of the co-defendants of the second and third degrees was to determine the actions of the parties for a longer period of time, rather than to regulate the occasional conduct of their transactions. The obvious purpose of the mutual commitments included in the agreement was to regulate economic competition in terms of the said products in connection to turnover and price formation. In its decision, the Cartel Court ruled that "*such an agreement, regardless of its personal, economic or geographical scope, falls within Section 1 of the 20th Act of 1931.*"[21] Some commercial associations were contracting parties of the agreement; therefore, because of the reasons set out in the aforementioned case, the agreement should have been presented to the minister, but this had never happened. The agreement was set aside pursuant to Section 2 of the Cartel Act, and it was not altered by the fact that, after the invitation of the minister, the secondary co-defendant fulfilled its obligation to present the agreement on 1st September, 1932. "*For a case that was invalidated due to the failure to adhere to a legally pre-established deadline, cannot be made valid again by belated compliance.*"[22]

The arguments of the defence which claimed that the validity and the scope of the arbitration clause did not necessarily coincide with those of the main contract were also invalid, "*because the 'public interest' nature and the special (law enforcement) nature of the regulation of the legal relationship under discussion, and also, the purpose of the adoption of Act 20 of 1931 warrant equal evaluation of the substantive law and of the procedural law effect of the cartel agreement.*"[23]

In this case, too, the arbitration clause of the agreement was invalidated after the deadline for presentation had passed, therefore, on the basis of the invalidated clause, the arbitral tribunal could not have been formed legally; as a result, the arbitral tribunal could not even have reached a conclusion that affected the rights and commitments of the parties originating in the period of time when the cartel agreement was (lawfully) in effect. The Cartel Court held that "*both those provisions of the main agreement that are closely linked to each other and the 'inseverable amendments' [...] added later constitute a unified, single legislative act (document), which has no clauses that could be valid on their own, without a (cartel) agreement drafted in accordance with Section 1 of Act XX of the year 1931: as a result, although the defendant argued that, under Section 11 of the Act, the arbitral tribunal had legal rights to adjudicate [...] on claims that were related to the contract and that could be judged as valid despite the fact that the cartel agreement itself was invalidated, this argument was declared to be without merit.*"[24] Based on all of these, the Cartel Court dismissed the judgement of the arbitral tribunal.

Act XX of 1931 considered the assertion of the public interest key in judgements by the arbitral tribunal as well. In the event that one of the parties took exception to the cartel agreement being contrary to the public interest during a proceeding, the tribunal then had to

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[21] A szénkartel vesszőfutása a kartelbíróság előtt, [The Ordeal of the Coal Cartel in Front of the Cartel Court] *Pesti Napló*, 21 December 1932, p. 6. Kőházi (1934) at 8-9.

[22] The Cartel Court quoted the following case: P. IV. 3013/1932. In: P. IV. 5261/1932. GDt. Vol. XXVI. pp. 740-741.

[23] P. IV 5261/1932. In: GDt. vol. XXVI, p. 741.

[24] P. IV 5261/1932. In: GDt. vol. XXVI, p. 741. Co-defendants had to pay the litigation costs according to Section 9 of Act XX of 1931. and Section 425. of Act I. of 1911.

suspend the proceedings and transfer the matter to the competent minister. In the event of a breach of the public interest, at the minister's request and with a petition from the director of legal affairs, a public interest trial could be initiated, which then terminated the arbitration proceedings.[25] The protection of the public interest against private interests was powerfully asserted through the cartel agreements. This kind of intervention in private law on the part of the state stemmed from the altered economic conditions of the 20th century.

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