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ISTVÁN VARGA*

Setting Aside Hungarian Arbitral Awards Without Time Limit?

I. Introductory remarks

The Hungarian Code on Arbitration, regulating both national and international arbitration, Act Nr. LXXI of 1997 (hereinafter: HAA), is in the overwhelming majority of its provisions in conformity with the world's mainstream legislation on arbitration by implementing the Model Law on Arbitration created by UNICITRAL in 1985.

There is only a small, however very important couple of rules, in which the Hungarian lawmaker deviated from the Model Law.[1] This article deals with one of these rules, which happens to be of outstanding significance for the legal practice and in a broader sense for the Hungarian arbitration community and Hungary as place of arbitration: the time limit for instituting setting aside procedures set forth in sec. 55 (1) HAA. The provision in question reads as follows:

(1) The party, furthermore any person who is affected by the award, may file for action–within sixty days of the date of delivery of the award of the arbitration tribunal–at the court of law to have the award set aside if:

a) the party having concluded the arbitration agreement was lacking legal capacity or competence;

b) the arbitration agreement is not considered valid under the law to which the parties have subjected it, or in the absence of such indication, under Hungarian law;

* Ph.D, Associate Professor, Head of the Department of Civil Procedure at ELTE Law School Budapest.
E-mail: vargai@ajk.elte.hu

[1] For an exhaustive list of differences between HAA and Model Law see Varga, I. in: Liebscher, C.–Fremuth-Wolf, A. (eds.): *Commercial Arbitration in Central and Eastern Europe*. New York, 2006. 10 et seq.

c) the party was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or was unable to present his case due to other reasons;

d) the award was made in a legal dispute to which the clause for submission to arbitration did not apply or that was not covered by the provisions of the arbitration agreement; if the award contains decisions on matters beyond the scope of the arbitration agreement where the decisions on matters submitted to arbitration can be separated from those to which the clause for submission to arbitration did not apply, only that part of the award which contains decisions not submitted to arbitration may be set aside;

e) the composition of the arbitration tribunal or the arbitration procedure did not comply with the agreement of the parties, unless such agreement was in conflict with any provision of this Act from which the parties cannot derogate, or failing such agreement, was not in accordance with this Act.

(2) An action for setting aside the arbitral award may also be filed alleging that:

a) the subject-matter of the dispute is not capable of settlement by arbitration under Hungarian law; or

b) the award is in conflict with the rules of Hungarian public policy.

(3) Failing to keep the time limit specified in Subsection (1) entails the forfeiture of right. In the case of a supplementary award the time limit shall be reckoned from the delivery thereof.

Subsections (1) and (2) reflect therein the traditional distinction between the two groups of grounds for cancellation/setting aside of an award: absolute and relative ones. Although this distinction is not correctly reflected by the pertinent part of the HAA [sec. 55 (1)–(2).] This negligence of the Hungarian legislator can be traced back to the fact that the relevant HAA-provisions have been designed on the basis of an unsatisfactory Hungarian translation of Article V of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (hereinafter referred to as the "New York Convention"), specifying the grounds for refusal of recognition and enforcement.[2] The legislator most probably used such a Hungarian translation

[2] See the ministerial explanatory note to Sections 54–57 of Arbitration Act:

"Az érvénytelenítésre lehetőséget adó okok megegyeznek a külföldi választottbírósági határozatok elismerésére és végrehajtására vonatkozó, 1958-ban megalkotott New York-i Egyezményben az elismerés és végrehajtás megtagadását lehetővé tevő okokkal. (Az Egyezménynek Magyarország is tagja.)"

„The grounds for setting aside are in accordance with the grounds for refusal of the recognition and enforcement stipulated in the Convention on the Recognition and

of the New York Convention, which–as opposed to the original English version–does not correctly express the distinction between the both sets of grounds for refusal.[3]

In theory, one of the differences between absolute (or rather objective) and relative (or rather subjective) grounds for cancellation of an award and for refusal of recognition and enforcement is whether the court the suit for cancellation has been filed with and accordingly the authority (in Hungary the court) competent to recognize the award shall take account of it ex officio or solely at the request of the plaintiff or of the judgment debtor. This distinction can be clearly read out of the New York Convention and also from various foreign laws regulating arbitration. Most importantly, German law, as the traditionally most influential foreign example for the Hungarian lawmaker, and specifically sec. 1059 of the German Code of Civil Procedure (Zivilprozessordnung, hereinafter referred to as the "ZPO") leaves no doubt that the relative grounds are only to be examined if the party substantiates and argues them, whereas both absolute grounds (lack of arbitrability of the subject matter and infringement of ordre public) have to be considered by the court even if no such party application has been made.

It is a well-known tradition in regulating commercial arbitration shared by all major legal systems that there is no ordinary remedy against an arbitral award. Once an arbitral tribunal has decided on the merits of the case brought to it, the award containing the meritorious decision becomes final and binding

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Enforcement of Foreign Arbitral Awards, done in New York, in 1958. (Hungary is also a member of the Convention.)"

[3] The Hungarian translation reads as follows:

55. § (1) A fél, továbbá az, akire az ítélet rendelkezést tartalmaz, a választottbíróság ítéletének részére történt kézbesítésétől számított hatvan napon belül keresettel az ítélet érvénytelenítését *kérheti* a bíróságtól, ha […]

(2) A választottbírósági ítélet érvénytelenítése arra hivatkozással is *kérhető*, hogy […]

The same in English:

55. § (1) The party, furthermore any person who is affected by the award, may file for action – within sixty days of the date of delivery of the award of the arbitration tribunal – at the court of law to have the award overturned if […]

(2) An action for overturning the arbitration award *may also be filed* alleging that […]

On the contrary the original version of UN Convention:

Article V

Recognition and enforcement of the award may be refused, *at the request of the party* against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that […]

Recognition and enforcement of an arbitral award may also be refused *if the competent authority* in the country where recognition and enforcement is sought *finds* that […].

against which only an extraordinary remedy with strict and exceptional requirements can be brought, i.e. a setting aside claim.

As opposed to award enforcement, setting aside claims can be instituted exclusively in the respective jurisdiction which served as place of arbitration. The respective national courts seized with setting aside claims apply naturally their procedural *lex fori* with respect to all aspects of the setting aside proceedings, i.e., among the others, to qualification and length of the time limit for instituting the procedure. Therefore, peculiarities, inconsequences or even uncertainty regarding the details of the regulation of the possibility and contents of setting aside can and, as it will be shown, do lead to serious problems, like in Hungarian practice. For instance, it needs no sophisticated explanation that once a jurisdiction seems to open the door for time-limitless setting aside actions, then this circumstance will certainly to a considerable extent discourage the actors of cross border commerce to designate that jurisdiction as place of arbitration.

Oddly enough, the named example poses an actual question in contemporary Hungarian civil procedural and arbitration law as show a series of setting aside proceedings which the author of this contribution had the chance to assist as party representative. In these unpublished decisions Hungarian courts repeatedly confirmed their view that the two so-called objective setting aside grounds, i.e. the lack of arbitrability and the violation of *ordre public (sec. 55(2) HAA)*, could be relied on as causes of action even after the lapse of the 60 days time limit stipulated by sec. 55(1) HAA.

Before showing that such an interpretation of the law is not only wholly mistaken but also outstandingly dangerous, it seems to be of some use to highlight the main types, attributes and consequences of time limits existing in Hungarian law.

II. Different kinds of time limits in Hungarian law

There are three aspects which serve as basics for the distinction of time limits in Hungarian law.

(1) A distinction is drawn between time limits of substantive nature (hereinafter: substantive time limits) and time limits of procedural nature (hereinafter: procedural time limits);

(2) Another differentiating feature relates to the consequences of failing to meet a time limit. Here one can distinguish between “forfeiture time limits” and the “lapsing or statute of limitations-like time limits”;

(3) Finally a distinction can be drawn with a view to the criterion as to from when the time limit begins to run. In this respect a time limit is either an "objective" or a "subjective" one.

These distinctions are not only of theoretical nature. Their practical significance flows from the fact that each of them has different legal effects and attributes regulated in Hungarian civil substantive and/or procedural law.

Ad (1) Regarding the distinction between substantive and procedural time limits it is at the outset important to bear in mind that the difference between both types has nothing to do with the type of source of law that establishes them. A time limit established in a civil procedural law source, e.g. in the Code on Civil Procedure can evenly be a substantive time limit and vice versa, a time limit established by substantive law can be interpreted as a procedural time limit. In other words, the main differentiating factor is not the form, but the function.[4]

Substantive time limits govern basically still undisturbed legal relationships, i.e such legal affairs which have not yet reached the phase of an institutionalized law enforcement procedure, while procedural time limits govern the course of such procedures.

Since the institution of an action, i.e. typically the filing of a complaint with the competent court stands on the threshold leading from the named first phase to the second and at the same time linking both, it is a crucial question whether the time limit for starting a court action is of substantive or of procedural nature.

In Hungarian civil law there is no specific time limit established for institution of an action. A general provision is that statute-barred claims cannot be enforced in a judicial way. Nevertheless, there are some specific fields of law where a time limit for filing a claim is specially stipulated. One of these special time limits is the subject matter of this essay, namely the time limit for instituting a claim for setting aside of an arbitral award.

The time limit for filing a claim is[5] necessarily a substantive time limit, since the statement of claim is not inherent but an instrument for initiating a civil procedure in order to enforce a right. By the time the claim is filed, the dispute may have already arisen between the parties, the judicial procedure

[4] Cf. the Civil Law Directive Decision of the Hungarian Supreme Court No. 3/2004 and further for a recent very comprehensive overview *Kisfaludi*, A.: *Társasági jog* [Company Law]. Budapest, 2007. 226 et seq.

[5] The exeptions are discussed infra in connection with procedural deadlines.

starts, however, only with submission of the claim. From this it follows that, as it is explicitly stipulated in the Civil Law Directive Decision of the Hungarian Supreme Court No. 3/2004, the rule set forth in sec. 105(4) of the Act III of 1952 on the Code on Civil Procedure (hereinafter: CCP) is not applicable to the time limit for filing a claim, since it applies only to procedural time limits, which require the judicial procedure to have been instituted.[6]

The fact that not the above-cited provision of CCP but the ones stipulated in substantive law[7] are applicable to the time limit for filing an action causes that the instrument for enforcing a right of substantive nature shall arrive at the addressee, in the case of a statement of claim at the court, on the last day of the time limit at the latest (in fact, prior to close of office-hours of the court's registrar).

If the plaintiff fails to keep the substantive time limit for filing the claim, the court dismisses the claim according to sec. 130 (1) (h) CCP without deciding on the merits of the case.

Procedural time limits on the other hand exist logically only within the procedure, that is, once the procedure has been initiated. A procedural time limit means a period of time in the framework of the proceedings, which is set by law or by the court and within which an act shall, or may be performed. Failing to meet a procedural time limit causes that the act bound to the time limit cannot be carried out anymore with the proper legal effect.

The above cited eased requirement for the compliance with time limits set forth in sec. 105 CCP (registered mail on the last day sufficient) applies accordingly only for these procedural time limits.

Notwithstanding the basic principle that the time limit for filing a claim is of substantive nature, there are two exceptions.

In one of these exceptional cases, the procedural nature of the time limit for filing the claim can be justified by the specific characteristic that the claim initiates the civil proceedure, which is, however, only the second or third phase of the whole legal procedure itself. This special civil procedure is the judicial review of an administrative decision where the judicial procedure is in fact a kind of extraordinary remedy.

In the other exceptional case, namely in labor suits, the protection and preference of the employee as the weaker party of the employment relationship

[6] *"Consequences of failing to meet the time limit cannot be applied if the submission addressed to the court has been posted by registered mail on the last day of the time limit at the latest."*

[7] Law-Decree Nr. 11 of 1960 on the Entry into Force and Implementation of Civil Code, sec. 3 (1)–(3).

could be a possible reason for the deviating regulation. In these two types of civil procedure the exceptional procedural character of the claim time limit can be thus regarded as justified.

In case of the claim for setting aside an arbitral award, it is obvious that the time limit for filing the claim can only be of substantive nature, since the judicial procedure meaning the procedure of the state court, only begins with the submission of the claim. The time limit is furthermore declared by the HAA to be a forfeiture time limit, which is also an indication for its substantive nature. The consequences of this classification are the following: the statement of claim for setting aside an arbitral award has to arrive at the court on the last day of the time limit (till the close of office-hours), i.e. at the latest on the 60th day after the plaintiff of the setting aside suit received the award.

Ad (2) The distinction between forfeiture time limits and statute of limitations-like time limits only has meaning in the context of substantive time limits. Once a forfeiture time limit has been missed, not only the claim, that is, the possibility of enforcement of the right in judicial way, but also the right itself ceases to exist. For the reason that the above legal consequence is very rigid, the consistent case law follows the manner of interpretation that a time limit is deemed to be a forfeiture time limit only if this character is explicitly set out by the legislator. In case a statute of limitations-like time limit has been missed, it does not result in losing the right itself, in fact: it does not necessarily mean an obstacle for the trial, that is, for the decision on the merits of the claim, either. The circumstance that the claim is statute-barred has to be as a rule explicitly referred to by the counterparty. The lapse of a statute of limitations-like time limit only terminates the claim, i.e. the opportunity of enforcement of the right in a judicial way, but does not affect the existence of the right itself. In addition, if a time limit is not a forfeiture time limit, it is allowed to verify the failure.

Considering that the time limit for filing a setting aside claim qualifies as a substantive time limit, the categories in question can be applied. Sec. 55 (1)–(3) HAA establishes a 60 days time limit for filing the action, and declares it explicitly to be a forfeiture time limit. Consequently, the statement of claim shall be filed with the court till the close of office-hours of the court's registrar; otherwise the possibility to have the arbitral award set aside in a judicial way ceases to exist.

Ad (3) The last aspect of classification is the question whether the time limit begins to run when the legally relevant event occurs or when the party

concerned takes notice of it. In the first case the time limit is a so-called "objective" time limit, while the latter type is referred to in the case law as "subjective" time limit. In the case of an objective time limit, the time of taking notice of the legally relevant event, e.g. the failure to perform a procedural act or an obligation stipulated by substantive law, remains out of consideration.

The time limit for filing the claim for setting aside set forth in sec. 55(1) HAA is an objective time limit, since the time limit begins to run when the arbitral award is in fact or presumably[8] delivered to the party. The time of taking actual notice has no relevance.

III. The time limit for setting aside claims

As it has been mentioned in the introductory remarks of this essay, Hungarian court practice has led to some uncertainty in connection with the nature and duration of the time limit open for filing the complaint in setting aside actions. It seems that the courts tend to establish a kind of deadline dualism by differentiating as to whether the action is based on one of the subjective setting aside grounds or on one of the objective ones.

For this reason–and for the sake of simplicity the main question of this contribution can be formulated as follows: Does the HAA determine only one uniform time limit applicable for instituting setting aside claims based on any of the grounds listed in sec. 55(1)–(2), or–and this seems to be the prevailing interpretation–are there two different time limits, i.e. one explicitly set forth for the relative grounds (60 days), the other implicitly for the absolute grounds ("infinite")?

The legislator makes a distinction between the two groups of setting aside grounds, which, as a consequence of the codification technique used, takes shape in two different subsections. Unfortunately the pertinent 60 days time limit has been codified in the first subsection containing also the relative/subjective grounds, whereas the second separate subsection has been dedicated to the absolute/objective grounds. This shaping of the rule leaves admittedly some room for such interpretation that the 60 days time limit would apply only for the relative grounds with which it shares the subsection. On the other hand, subsection (2) can also be interpreted–at least for the purposes of the time limit–as a mere continuation of subsection (1).

The right interpretation of the named provision is the latter one. Each of the two groups of grounds is homogenous respectively in the sense, that the

[8] Cf. sec. 99 CCP for the delivery presumption.

relative grounds are destined for safeguarding the interests of the parties (and those who are affected by the award), especially the losing ones, who can plead these grounds in a short period of time in order to have the arbitral award set aside. Since these grounds are granted by the state in order to safeguard the basic interests of the parties, or at least those which are deemed to be basic by the legislator, their common feature is that they are exclusively open to be pleaded by the interested party.

The reasoning behind the relative grounds is that through them the interests of the parties are intended to be protected. This momentum can be also interpreted as a kind of paternalism over the arbitration, by not letting the dispute settlement (and its procedure) completely getting out of state control. After a certain period of time it can be deemed, that causes for pleading these grounds have not occurred, otherwise they would have been risen by the party, thus the legislator rules these to be forfeited and allows no verification as exoneration for running out of this time limit, nor lets these grounds possible to be pleaded in a later exequatur.

As an opposition to these–and this specialty of the absolute grounds is usually shown by the arbitration codes–the other group of grounds are not intended to safeguard the interests of the parties firstly, rather to protect the public order and public interests in a broader sense. International practice clearly shows, that the challenge of an arbitral award is only possible through a setting aside claim, in which the claimant is to cite the ground on which he relies as setting aside basis. But once the claim has been filed, the court is free, moreover it is his legal duty, to examine criteria set out in the two objective grounds also, i.e. whether the public order or the objective inarbitrability are infringed. Nevertheless the issue that these are to be examined by the court *ex officio*, once the claim has been filed, shapes a completely different question, and does not mean at all that these ground i.e. the absolute grounds would be free to be pleaded in a setting aside claim limitlessly.

By taking a closer look at the ministerial explanatory note to sections 54–57 of the HAA one can find an explicit reference to this time limit.[9] By reading the note carefully it becomes obvious that the text says nothing about the grounds, but without slightest touch on differentiation between the groups of grounds it explicitly speaks about *the* claim: "For instituting such a claim a time limit of 60 days is open...". Thus in my opinion the explanatory note

[9] For instituting such a claim a time limit of 60 days is open, which may be a short period of time, but in the frames of arbitration the disputes should be solved quickly, and the suspension of persistent uncertain situtations are to be avoided. Hence the time limit is forfeiting.

clearly shows that after the 60 days elapse, there is no opportunity (since the legislator does not want so, instead orders forfeiture as consequence of running out from the time limit) for any setting aside claim to be filed anymore, based on whichever ground. This note explicitly confirms the opinion that there is no difference among the grounds with regard to the time limit for instituting the claim, citing whichever ground.

All this means that although the grounds are different from the viewpoint of their main aim, the different safeguarded interests, their ability to be taken into account by the court *ex officio* or only on the basis of citation by the party, and the possibility of serving as a pleading in a later exequatur, there is at least one point where they are all to be treated equally: the time limit open for filing the setting aside claim enforcing them.

IV. Comparative law aspects

Finally, the overwhelming majority of procedural legal systems playing substantial role in international commercial arbitration and with a Model Law-based legislation can be cited in favor of our above outlined view.

The time-limit is exactly the same for relative and absolute grounds without any further differentiation in Germany,[10] which is of major importance due to the traditionally strong influence of German procedural law on Hungarian legislation and practice. In addition to the German example, an overview of a series of foreign legal systems having substantial weight in the international commercial arbitration community provide for a same solution, i.e. the time-limit is exactly the same for the relative and for the absolute grounds. Here only some examples of major importance shall be listed. The jurisdictions listed all play a significant role in international arbitration and their regulations provide like the German one for a uniform time limit: the Netherlands,[11] in Spain,[12] in the United Kingdom,[13] in Italy,[14] in France,[15] in Austria,[16] in Sweden[17] or in the USA.[18]

[10] § 1059 Zivilprozessordnung, establishing a general 3 months time limit.
[11] Art. 1065(7) of the Dutch Code of Civil Procedure.
[12] Art. 41(4) of the Spanish Arbitration Act.
[13] Sec. 70(3) of the English Arbitration Act.
[14] Art. 828 Codice di procedura civile.
[15] Art. 1486 Nouveau Code de procédure civile.
[16] Art. 611(4) Österreichische Zivilprozessordnung.
[17] Sec. 34 of the Swedish Arbitration Act.
[18] Sec. 12 of the Federal Arbitration Act and in conformity with it the state laws.

All of the listed countries can be regarded like the Hungarian HAA as UNCITRAL-harmonized systems. This constitutes in my view additional and satisfactory evidence that the Hungarian courts' interpretation of the time-limit is clearly mistaken. The right interpretation of the–admittedly uncertain and misleading–wording of the HAA in sec. 55(1) must thus be that the time-limit for the filing of the action does not differ along with the different grounds for setting aside.

There are on the other hand only a few jurisdictions where a problem comparable to that in Hungary seems to exist, i.e. where the legislator establishes different time limits for setting aside claims arising out of different challenges. So in Ireland, by the Arbitration (International Commercial) Act of 1998[19] the Model Law has been adopted. The Act explicitly rules that time limit specified in Art. 34(3) of Model Law shall not be applicable to setting aside claim on the ground of ordre public.

Apparently there is therefore no specific time limit for this kind of challenge in contemporary Irish law. It has to be noted that this legislation is harshly criticized in Ireland and furthermore it is planned to be replaced by a specific regulation establishing a time limit in the near future.[20] The weakness of this construction is shown by the fact that it is not reasoned in the explanatory memorandum of the Act at all, but the memorandum only repeats the texts of the act. Recently there is a new Bill drafted in which the time limit open for ordre public ground claim is planned to be fixed.[21]

The reasoning behind the interpretation (which follows from the explanatory note, the wording of the HAA, the formal logic and the international practice also) of the subject matter this way, that every different interpretation leads to a legal nonsense, namely, a remedy infringing legal certainty. Duly examining the–in our opinion–false interpretation, it clearly follows that only the first interpretation of Section 55 could and can be the real motion of the legislator.

As it is stated also in the *supra* quoted explanatory note, and also as it is well-known, one of the main advantages of arbitration is its quickness and the fact that arbitration is able to give a definite, professional answer to legal disputes, which is of course very important especially in case of business

[19] See full text at site http://www. irishstatutebook.ie/1998/en/act/pub/0014/.

[20] Cf. e.g. Leila *Anglade*–Challenge, recognition and enforcement of irish and international arbitral awards under the Irish 1997 Arbitration (International Commercial) Bill.

[21] See http://www.justice.ie/ga/JELR/Arbitraton%20Memo.PDF/Files/Arbitration%20Memo.PDF

issues. The main reason of ruling on a relative short period open for filing a setting aside claim is the requirements of promptness and avoidance of persistent uncertainties concerning the relationship or rights and duties of the parties and the future enforceability of the award.

Establishment of a timely limitless possibility for the setting aside procedure, which is the only way for challenging an arbitral award, would straightly mean a ruling opposite of this advantages of arbitration and to the aim of legislator. In case we would accept this interpretation, in the same time we would accept an interpretation that is in total divergence with the international practice. The consequence of such an interpretation would be that Hungarian arbitration would become very uncomfortable for parties who may solve their possible disputes through arbitration, since there would be no final deadline when the winning party would be safe about the final result of the award.

Nevertheless we should bear in mind that with our interpretation the opportunity of safeguarding the interests (at first place the state's but in some way also those of the losing party) is still open, since the absolute grounds, namely the infringement of the *ordre public* and the objective inarbitrability are still possible to be pleaded as grounds for refusal of execution in the exequatur, even after the time limit for the institution of the setting aside claim has elapsed and no such action has been brought.

On the contrary, a subjective ground, if not relied on in a timely instituted setting aside action, becomes excluded also in its capacity as ground for refusal of exequatur. Absolute grounds are absolute only in the meaning that they do not get lost as exequatur objections and thus they protect the ordre public of the respective enforcement jurisdictions without timely limitation.

This protection satisfies wholly the interest of public order. Nevertheless this protection does not apply through the infinite challengeabilityof the award, but in another phase of the dispute, in the exequatur, through refusing the execution of any award that infringes the interests protected by the absolute grounds.

V. Summary and conclusion

According to nowadays prevailing Hungarian court practice the 60 days deadline for filing a setting aside claim to be counted from the service of the award would not apply to the absolute grounds, i.e. both inarbitrability and ordre public infringement regulated in sec. 55(2) HAA.

The Hungarian regulation is certainly not entirely clear on this issue. Section 55(2) HAA can be interpreted as a mere addition to Section 55(1) containing

the named time limit, meaning that the absolute grounds listed in subsection (2) shall be raised under the same (timely) conditions as the relative ones in subsection (1).

There is, however, also another possible interpretation according to which subsection (2) contains a completely different group of setting aside grounds which shall be excepted from the scope of subsection (1), consequently also from the time limit laid down in subsection (1).

Taking a closer look at the ministerial explanatory note to sections 54–57 of the HAA one can find an explicit reference to this time limit. From this reference it follows beyond any doubt that–as has been shown–the lawmaker did not intend any differentiation, so that the time limit *generally* applies to *each* ground for setting aside. Hungarian doctrine is somewhat surprisingly uncertain on this question. The ministerial explanatory note justifies the relative shortness of the time limit by listing the requirements to the arbitration proceedings such as promptness and avoidance of persistent uncertainties concerning the relationship or rights and duties of the parties and the future enforceability of the award. Such a differentiation makes some sense in only one case, i.e. in the case of application for recognition and enforcement of a domestic award.

An absolute ground like infringement of the ordre public can be relied on as a ground for refusal of exequatur even after the time limit for the institution of the setting aside claim has elapsed and no such action has been brought.

On the contrary, a subjective ground, if not relied on in a timely instituted setting aside action, becomes excluded also in its capacity as ground for refusal of exequatur. Absolute grounds are absolute only in the meaning that they don't get lost as exequatur objections and thus they protect the ordre public of the respective enforcement jurisdictions without timely limitation. This protection satisfies wholly the interests of public order. It certainly does not render the objective grounds timely limitless causes of action. It can easily be recognized that the opposite would lead to unbearable consequences from the viewpoint of legal certainty.