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The First Hungarian Competition Act in the Judicial Practice*

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Abstract

This entry will deal with the history of competition law, including the first substantive competition law of Hungary, i.e Article V of 1923, which contained provisions regarding unfair competition. Currently, unfair competition is the subject of competition law, one of the branches of economic law, which contains regulations regarding the protection of economic competition and the prevention of consumer detriment. The purpose of Article V of 1923 was to offer general protection against any form of unfair competition.

However, the description of each provision of the Article and the detailed demonstration and investigation of their practical implementation is not the topic of this entry. The present paper will specifically focus on the arbitral tribunals of the Chamber and the practice of the jury since the fact that the duty and practice of these two bodies were highly significant for the application of the law in that era can be clearly concluded from the summary of research results.

Keywords: *Unfair competition; specific act; Arbitration Institute of the Budapest Chamber of Commerce; Hungary; court.*

1. Introduction

In this paper, I will exclusively focus on the general clause expressed in section 1 of the article. Investigating the practice of Arbitral Tribunal of the Chamber of Commerce and Industry of Budapest and the Jury of the Chamber, my goal is to find out how they defined moral standards, based on which they could decide whether a certain commercial conduct was considered unfair or not. The reason I chose the practice of the Arbitral Tribunal of Budapest Chamber of Commerce and Industry is that they were the enforcing body that made its best endeavour to standardize the practice of law regarding commercial competition with their policies in the era.

I selected the 22 legal precedents in this paper based on the fact that they contain statements and explanations in connection with section 1 of the article on unfair competition, thus endeavouring to fill the category of honest commercial practice with the widest range of available content.

As sources, I mostly used the documents of the Arbitral Tribunal and the Jury of the Budapest Chamber of Commerce and Industry from 1923 - the year the article came into effect - until 1933, the first amendment of the article. In addition, I used the decisions of the Curia (the Supreme Court of Hungary) and the verdicts of the Budapest Royal Court. As secondary sources, I used literature on unfair competition and literature on private law.

2. The general rules of honest commercial practice and accepted principles of morality in the article on unfair competition

Norms always stem from a socially accepted moral principle. We can even say that law and morals are inseparable concepts. This standpoint is supported by Károly Szaladits, according to whom "with the voluntary conformity of citizens and the disapproval of unlawful procedure, morals largely provide the rule of law as well" [1] The Hungarian legal literature attributes primarily gap filling functions to the clause on accepted principles of morality and regards it to be "applicable when and insofar where legal regulation is not applied." [2]

In most cases, morality as a private law concept arises in connection with contracts, the invalidity of contracts, In the legal literature of the 19th and 20th century, it was typical to discuss the breach of accepted principles of morality within the impossibility of the service.[3] As early as in the 1800s, Ignácz Frank declared contracts not conflicting with the law void because

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1 SZALADITS, K., *Magyar magánjog I.* [Hungarian Private Law I.] Általános rész. (General Part.) Budapest, 1941, p. 7.

2 MENYHÁRD, A., *A jóerkölcsbe ütköző szerződések.* [Contracts Conflicting with Accepted Principles of Morality.] Budapest, 2004, p. 286.

3 MENYHÁRD, 2004, p. 145.

"they were not compatible with honour."[4] The legal literature of the interwar period made an attempt to distinguish contracts which were contrary to public polices and accepted principles of morality. In the latter, not only the agreements concerning individuals and families were included, but also transactions - usurious and exploitative contracts - concerning public polices and economic order.[5]

Before World War II, due to the lack of a firm distinction between public polices and accepted principles of morality, every contract that "limited individual freedom to the extent that it deprives the individual of the practice of such freedoms" were declared void.[6] This includes the limitation of industrial and economic freedom with non-compete, unlawful wage competition or anticompetitive cartel agreements,[7] but we can also find references to the accepted principles of morality in connection with unlawful pyramid schemes. We can see the phenomenon of accepted principles of morality in connection with the increased economic free competition and widespread unfair competition as the principle that provides a general starting point for the protection against unfair competition.

According to judicial practice, the accepted principles of morality expressed the general value judgement of society, the limits determined by private autonomies and common consent, the general moral norms and the standard of generally expected conduct. While the origin of accepted principles of morality as a private law category should be sought in the general value judgement of society, the starting point related to unfair competition can be found in a more limited circle, i.e. the moral judgement of the commercial and industrial world. In the following, my aim is to find out the differences between the contents of interpreting accepted principles of morality - regarding unfair commercial conduct – and the general interpretation of accepted principles of morality.

3. Honest commercial practice and accepted principles of morality as the standards of unfair competition

The central elements of Article V of 1923 on unfair competition (AUC) were obviously honest commercial practices which served as the starting point for judging each commercial act. Here, the concepts of honest commercial practice and unfair competition are worth talking about briefly.

"Any business conduct regarded as unfair competition by the commercial and industrial world is unfair competition."[8] This statement is supported by the standpoint of the Jury of the Budapest Chamber of Commerce and Industry (Jury) according to which "by causing his competitors harm or heavy losses by his success, or commercial or industrial activity with licit means, one is not engaged in unfair competition."[9] When talking about honest commercial practice and accepted principles of morality in an everyday sense, a narrower category of private law appearing in commerce, one should always mean the moral judgement of the business world.

On the one hand, a distinction was made between the proper judgement of good taste and unaccepted principles of morality. On the other, the competitors' endangered, legitimate interests were also respected in the context of honest commercial practice. From the standpoint quoted above, it can also be deduced that the harsh, ruthless battle unfolding in the commercial world, which could aim at destroying another person, the competitor or conflict with any other law provisions, did not, in itself, constitute as unfair conduct. This presupposed that the competitive intent and the applied means were not immoral.[10]

The quoted standpoint of the Jury raises several questions when the competition law categories of accepted principles of morality and honest commercial practice are analysed. On the one hand, it is clear that the standpoint according to which the concept of accepted principles of morality must be interpreted with different contents in relation to unfair competition was correct. While it can be stated that in general, the value judgements in connection with morality originated from the general judgement of society, we could only rely on the traders and manufacturers' moral judgements as far as commercial competition is concerned. In my opinion, it resulted from the fact that the society of that era would have regarded any commercial act that aimed at destroying and harming competitors or was illegal as unethical, despite the fact that these acts were not automatically constituted as unfair practices. The emphasis was on the circumstances and if the competitive intent and the applied means were not immoral, competition remained free. In my opinion, based on these, we could say that the boundaries established by the commercial and industrial world of the era proved wider than what was accepted by the general moral judgement of society. However, this is not necessarily true. During the examination of the practice, some of the cases demonstrated the opposite. It might be more accurate to state that the moral standard which had to be used when judging competitive acts could not be set accurately in a general manner. As I will seek to emphasize in my paper, whether a commercial proce-

[4] FRANK, I., *A közigazság törvénye Magyarhonban*. [The Law of Public Justice in Hungary.] Buda, 1845, p. 589.

[5] DELI, G., *A generális klauzulák dogmatikai, történeti, és összehasonlító elemzése, különös tekintettel a jóerkölcsbe ütköző szerződések tilalmára. Doktori értekezés* [The Dogmatic, Historical and Comparative Analysis of General Clauses in Particular with Respect to the Prohibition of Contracts Conflicting with Accepted Principles of Morality. Doctoral thesis] Budapest, 2009, p. 188.

[6] SZALADITS, K., *A magánjogi tényállások*. [Situations of Private Law.] In: *Magyar magánjog I.* [Hungarian Private Law I.] Budapest, 1941, p. 340.

[7] For further information see: Homoki-Nagy, M., Megjegyzések a kartellmagánjog történetéhez. [Comments on the History of Cartel Law.] In: *Versenytükör*, vol. 12, special issue II., p. 39-40, VARGA, N., Kartelljog a gyakorlatban: a bemutatási kötelezettség elmulasztása miatt indított eljárás. (Cartel Law in Practice: The Proceedings Initiated due to Presentation Omission] In: Gosztonyi, G.; Révész, T. M. (eds.) *Jogtörténeti parerga II. Ünnepi tanulmányok Mezey Barna 65. születésnapja tiszteletére.* [Legal History Addendum II. Celebratory Studies in Honour of Barna Mezey's 65th Birthday.] Budapest, 2018, p. 283-289.

[8] BÁNYÁSZ, J., *A tisztességtelen verseny legújabb joggyakorlata.* [The Latest Practice of Unfair Competition] Budapest, 1933, p. 3.

[9] Bp. Cham. Jury: Z 195. J. 473-1926.

[10] Bp. Cham. Arbitral Tribunal Z 202. Vb. 55.368-1927.

dure was legal or not always depended on the judgement of the circumstances of the particular case.[11] The category and interpretation of accepted principles of morality with the content described here is what we can summarize as honest commercial practice.

There is one more issue regarding the analysis of accepted principles of morality and honest commercial practice I would like to clarify. A conduct could automatically constitute as unfair if a commercial procedure was carried out in a way that conflicted with the law. According to Attila Menyhárd, the prohibition of conflicting with the law could be considered *lex specialis* compared to the prohibition of conflicting with accepted principles of morality.[12] Does the violation of law mean the violation of accepted principles of morality at the same time?[13] However, when we examine this question through the category of honest commercial practice, we can come to different conclusions.

The spice merchant plaintiff based his lawsuit on the defendant selling milk without a permit. The Royal Court of Budapest decided that unfair competition took place. This decision was later upheld by the Budapest Royal Court of Appeal. However, the standpoints regarding the issue[14] found the judicial practice which, based on other laws, decided that it was unfair competition resulting from punishable acts, doubtable.[15] "The purpose of the competition law was to persecute those acts and conducts that could not be persecuted based on any other law." So it is clear that an act that violates the law cannot be persecuted based on the law on unfair competition."[16] The Curia agreed with this standpoint as in its verdict, it rejected the plaintiff with the following justification. "Even if the defendant violated the regulations of milk selling permit, it does not necessarily mean that this conduct violates the AUC as in itself not every act prohibited by the law is unfair or immoral."[17] In this case the expression "in itself" had to be emphasized as, in my opinion, aforementioned standpoint, according to which an act that violates the law cannot be one to be persecuted based on the law on unfair competition, is not correct. In my opinion, the interpretation of the verdict of the Curia in this context would be misleading and would conflict with the moral content of competitive fairness. The first competition law of Hungary wanted to provide protection against any manifestation of unfair competition and provided special legal consequences – prohibitory injunction, interdiction, publication in newspapers, etc. – for competitors, since only with these means could the conducts violating commerce get back on track.[18] It would have been incorrect to deprive the competitors, against whom unfair procedures – realizing acts conflicting with other laws as well – had been carried out, of these means. As far as I am concerned, I find the approach, according to which even if a commercial act conflicted with the law, it did not automatically lose its feature of being contradictory to honest commercial practice, more accurate. According to my interpretation, what the expression "in itself" highlighted in the verdict of the Curia exactly tried to express was that in such cases, the circumstances of an act have to be investigated as well, since only in hindsight and based on the moral judgement of the commercial and industrial world could it be decided whether the act violated the requirements of honest commercial practice.[19]

Both legislation and jurisprudence have agreed that the contents of accepted principles of morality cannot be determined

[11] The right guidance has always been provided by the circumstances of the particular case, the experiences of everyday life and the phenomena of commercial life. Bp. Cham. Jury: Z 195. J. 1489/1926.

[12] MENYHÁRD, 2004, p. 252; According to his line of thoughts, the particular legal order and the value system that it conveys are also parts of the contents of accepted principles of morality.

[13] DELI, 2009, p. 169.

[14] For further information see: MESZLÉNYI, A., *A tisztességtelen versenyről szóló törvény magyarázata.* [The Explanation of the Law on Unfair Competition.] Budapest, 1936. p. 76-89.

[15] *Közigazgatási értesítő*, vol. 32, Nr. 3, XXXII. 1937, p. 4.

[16] Ibid p. 8.

[17] From verdict P. IV. 3596/1935. Of the Curia; *Közigazgatási értesítő,* vol. 31, Nr. 16, 1936, p. 5.

[18] The chapter on the transgression of the limits laid down by honest commercial practice is not exhaustive. It only provides a non-exhaustive list of the most significant cases of unfair competition. Thus, the arbitral tribunal is not barred from deciding that unfair competition took place even if they find that none of the cases of Chapter II are present. This is what the rule stated in Section 1 of the law provided a procedure for. According to the rule, commercial competition must not take place in a way that it conflicts with honest commercial practices or accepted principles of morality in general and the person whose conduct conflicts with these can be ordered to put an end to such conduct by the party so entitled. Bp. Cham. Arbitral Tribunal Z 202. Vb. 3495-1925.

[19] In verdict P. IV. 3596/1935. the Curia considered that: "Although the violation of statutory or contractual obligations does not imply that a certain conduct conflicts with the AUC as well because not every act prohibited by the law or contract is unfair or immoral in itself, but it can be so due to the nature of the act or the circumstances, namely, when the purpose, manner or means of violation is incompatible with the requirements of honest commercial practice or accepted principles of morality." The point of the following case is that the defendant was selling razor blades after closing time. According to the plaintiff, this act conflicted with Section 1 of the AUC since the plaintiff was trying to circumvent the general non-compete, which conflicted with honest commercial practice. According to the standpoint of the Curia, if the defendant had been engaged in this act in a planned, regular manner, he would have, indeed, committed an unlawful act. Here, I would like to point out that the reason the defendant's conduct constituted as conflicting with honest commercial practice might not have been that it was unlawful regarding the closing time, but because of the circumstances, namely its planned and regular manner. However, according to the judgement of the Curia, the fact that the defendant sold only one razor blade at a time and did it three times after closing time, cannot be regarded as planned conduct in that particular case. *Közigazgatási értesítő,* vo. 31, Nr. 13, 1937, p. 4.; In several similar cases, too – when a competitive action also conflicted with the law –, the Arbitral Tribunal of the Budapest Chamber of Commerce and Industry concluded that even though a certain commercial conduct conflicts with the law, it does not automatically constitute as unfair competition. Bp. Cham. Arbitral Tribunal Z 202. Vb. 32.260 – 1925., 25.277 – 1925, 13.617 – 1924.)

by law. Both leave the specification of the content in the hands of judicial practice.[20] So it was regarding the determination of the content of honest commercial practice in connection with unfair competition. At this point though, there was a substantive difference between the judicial specification of accepted principles of morality and the judicial consideration of honest commercial practices. In the latter case, enforcement had to be based on the moral judgements of the contemporary commercial and industrial world, which, in many cases, was not a simple matter for judges with no commercial expertise. This is what the legislature recognized and created opportunities to ask the chambers of commerce and industry for help and advice regarding particular cases.

4. The guidelines of the Arbitral Tribunal of the Budapest Chamber of Commerce and Industry regarding each act of competition

The arbitral tribunal procedures were not actually civil proceedings, but rather their substitutions. The state set up its own institutions of judicial protection, but did not oblige the parties to use them in case of a dispute. Rather, the parties involved were allowed to deal with their disputes between themselves, without the assistance of the state's body of judicial protection.[21] Overall, we can say that the proceedings and decision of the arbitral tribunal were based on private-law relationships and they fell under private law as they could only proceed on the basis of the contracts concluded by the parties.[22] However, if the executive power endowed the verdict of the arbitral tribunal with qualities of a public document or other qualities of a final judgement, the legislative power had an obligation to guarantee that the public interest and the legitimate private interest could not violated by the arbitral tribunal proceedings.[23] In connection to the foregoing, Article I of 1911 on the Code of Civil Procedure (hereinafter: CCP) had already contained that the effects of an arbitral tribunal verdict and the agreement are the same as that of the final judgement of a court and it sought to regulate the entire proceedings with guarantee elements.[24]

As I explained earlier, regarding specific acts of unfair competition, the aggrieved competitor had more opportunities to resort to the protection provided by the competition law. One form of enforcing rights was to initiate arbitration before the arbitral tribunals working within the organisation of the chambers of commerce and industry. Before examining the practice of the Arbitral Tribunal regarding acts of unfair competition, I would like to briefly summarise the points where essential differences occur between the arbitral tribunals of the chambers and thee arbitrations regulated in Title XVII of the CCP.

With respect to the cases described in the AUC, the arbitral tribunals are regarded as ordinary courts, while the arbitration regulated in the CCP was always exceptional. The power of the arbitral tribunals of the chambers was determined by the unilateral declaration of the plaintiff, according to which they filed the lawsuit before them, while according to the rules of the CCP, the arbitration clause was only valid if the parties stipulate it in a joint, bilateral legal act. The members of the arbitral tribunals could only be selected from the register of the jury members. Its president was always one of the judges of a High Court designated by the Minister of Justice, while, according to the regulation of the CCP, anyone could be a member of the arbitral tribunal, except for those who could be excluded on the basis of Section 774 of the CCP, and it was not mandatory to appoint a president. Nevertheless, one of the main differences was that the arbitral tribunals carried out judicial activities, they could hear witnesses and perform proofs of concept, while, according to the rules of the CCP, if an arbitral tribunal wished to carry out such activities, they had to turn to the competent District Court.[25] It was possible to appeal against the decisions of the arbitral tribunals to the competent High Court, while, according to the rules of the CCP, the decisions of the arbitral tribunals could only be challenged with lawsuits of annulment.[26]

Thus, the main difference between the chamber jury and the arbitral tribunals was the fact that while the jury provided opinions, assessments regarding specific commercial conducts, the arbitral tribunals gave irrevocable judgements in case a lawsuit was brought before them by the aggrieved party.[27] In the following, I will provide some insight, with a focus on honest commercial practice and accepted principles of morality, into the practice of the Arbitral Tribunal working within the Budapest Chamber of Commerce and Industry.

After the arguments presented by the parties, the Arbitral Tribunal determined the following facts: in their shop, the defendant served their customers asking for Franck coffee another brand of coffee. They did so without drawing their attention to the fact that they were serving another brand instead of the one the customers asked for. According to the judgement of

[20] Bálint Kolosváry emphasized that determining what the accepted principles of morality has to be sought in the current social perceptions, so he did not categorise it as a legal issue. Yet according to his opinion, the relationship of business intent and public morality was a legal matter. KOLOSVÁRY, B., *A magyar magánjog tankönyve.* [The Textbook of Hungarian Private Law.], Budapest, p. 102.; Its examination will be essential with regard to the judgement of unfair competition.

[21] GAÁR, V., *A magyar Polgári Perrendtartás magyarázata. 2. kötet.* [The Explanation of the Code of Civil Procedure. Volume 2.] Budapest, 1911, p. 385.

[22] MAGYARY, G., *Magyar polgári perjog*. [Hungarian Civil Procedure.] Budapest, 1924, p. 729.

[23] MESZLÉNYI, A., *Bevezető a Polgári perrendtartáshoz.* [An Introduction to the Code of Civil Procedure.] Budapest, 1911, p. 396.

[24] In relation to the arbitral proceedings, the Code of Civil Procedure of 1911 also determined the subject of arbitral contract and its means of validity, its discontinuation, the selection and exclusion of the members of the arbitral tribunal, as well as the judicial procedure and the actions for annulment of a decision.

[25] Bp. Cham. Arbitral Tribunal: Z 202. Vb. 3495. – 1925.

[26] Section 784 of the CCP: „The decision of the arbitral tribunal can be annulled with action before a regular court."

[27] JULOW, J., *A választott bíróságokról*. [On the Arbitral Tribunals.] Miskolc, 1926, p. 8-9. See more about this topic: VARGA, N., Introduction to the Hungarian Cartel Regulation in the Interwar Period. In:, *Krakowskie Studia Historii Panstwa I Prawa,* vol. 15, 2022, p. 215-226; VARGA, N., Lawsuits on Cartel Presentation Omission after the 20th Act of 1931 Came into Effect. In: *Journal on European History of Law*, vol. 13, Nr. 1, 2022, p. 149-155.

the Arbitral Tribunal, this procedure was, on the one hand, capable of deceiving the customers and on the other, it could put the manufacturer of the product requested by the customers at a particular disadvantage. Finally, the Arbitral Tribunal drew attention to the fact that the defendant's commercial conduct "clearly destroyed the tradesmen's respectability as the with their procedure, the defendant undermined the most important basis of commerce, namely the faith and trust in tradesmen which should have existed towards them from the manufacturer of the product and the other tradesmen as well."[28] Therefore, the conduct determined by the facts, clearly conflicted with the law and the defendant had to be made subject to an injunction prohibiting provision under Section 1 of Article V of 1923.

In the abovementioned decision by the Arbitral Tribunal, their moral judgement is made ever clearer. Their decision was not only based on whether the defendant was engaged in a commercial practice that was prohibited by the existing law, but going far beyond that, by representing every honest tradesmen and craftsmen, the Arbitral Tribunal tried to express their morality as well. They did this by laying down in judgement and detailing why the defendant's commercial practice conflicted with honest commercial conducts and what adverse consequences could it have on commercial life, which, ultimately, justified the injunction.

The Jury could not stress enough that regarding cases of competitive acts, it is always the circumstances of the case one has to focus on. This resolution by the Jury was expressed to the full in every arbitration.[29]

In a case that started in 1933, the plaintiff complained that the defendant, a charcoal vendor, put charcoal packages labelled as "white impregnated charcoal" on the market, advertising them as odourless. The plaintiff attached the results of the examination carried out by the Royal Joseph University to the lawsuit. The examination determined that the examined charcoal "had an unpleasant odour and the effects of examined charcoal wares not different from that of the ones without the white coating."[30] Based on the arguments, referring to Section 1 of the AUC, the plaintiff requested the Arbitral Tribunal to ban the defendant from such means of advertisement and also requested the decision to be published in the specialist magazine titled Fűszerkereskedők Lapja and the newspaper titled Ujság at the defendant's expense. In their decision, the Arbitral Tribunal stated that the defendant admitted that the package of the charcoal said that it was smokeless and odourless but according to their defence, it meant that the charcoal was smokeless and odourless when it was not used, but it gave off a slight smoke and coal odour when used. According to the discretion of the Arbitral Tribunal, "the customer who was offered smokeless and odourless charcoal by the vendor, did not put the emphasis on the fact that the charcoal they purchased had these qualities when not used, but clearly interpreted the advertisement as meaning that the charcoal did not give off an unpleasant smell and smoke when used."[31] According to the resolution of the Arbitral Tribunal, the defendant's act deceived the public, which ultimately constituted as unfair competition, thus they had to be banned from continuing this activity. "The Arbitral Tribunal banned the defendant, under the penalty of a 50-pengo per package fine, from selling charcoal in packages stating that the coal is smokeless and odourless, and also obliged the defendant to pay the plaintiff a 250-pengo litigation cost within 15 days."[32] As the Arbitral Tribunal did not find the defendant's procedure such a serious offence to be punished with the burden of being published in a newspaper, they gave the plaintiff permission to publish the decision without giving away the defendant's name and address in a newspaper at their own cost.

Based on the decision of the Arbitral Tribunal, the successful party had three more possibilities. In case the defendant did not comply with the decision, they could institute enforcement proceedings and pursue their claim by a lawsuit before the competent royal court. Finally, if the defendant was still engaged in their unlawful conduct after the decision took effect or after the deadline for compliance with the decision – with regard to the fact that they obviously acted despite their better knowledge –, they could initiate prosecution.[33]

As I have pointed out multiple times when discussing the practice of the Jury, regarding their specific resolutions, the Jury increasingly tried to avoid their decisions to be regarded as fundamental statements. However, contrary to this, the Arbitral Tribunal also expressed fundamental decisions in their judgements, contributing to the even clearer assessment of competitive acts.

In the following case, it was not the exactly the non-compliance with honest commercial practice of a specific commercial

[28] Budapesti Kereskedelmi és Iparkamara. In: *Kamara évkönyve*. Budapest, 1925, p. 132.

[29] Bp. Cham. Arbitral Tribunal: Z 202. Vb. 15.326. – 1925.

[30] Bp. Cham. Arbitral Tribunal: Z 202. Vb. 14.215. – 1933

[31] Bp. Cham. Arbitral Tribunal: Z 202. Vb. 14.215. – 1933

[32] Bp. Cham. Arbitral Tribunal: Z 202. Vb. 14.215. – 1933.; *The decision of injunction imposed a fine in case the defendant did not comply with the decision by adding that the imposed fine can be collected as many times as the defendant violates the provisions of the decision."* In cases permitted by the law, the decision could also order publications in newspapers and made arrangements regarding the matters of paying the litigation cost and its amount. BÁNYÁSZ, 1927, p. 139-140.

[33] KOVÁCS, M., *A polgári perrendtartás magyarázata.* [The Explanation of the Code of Civil Procedure] Budapest, 1933, p. 1598. Based on the decision of the arbitral tribunal, the execution petitions always had to be submitted to the arbitral tribunal itself, which forwarded the documents to the competent royal district courts. I will summarise the possibilities that could be considered during the enforcement proceedings as follows. Based on the conviction of the arbitral tribunal, the purpose of the execution petition would be that the court banned the defendant from continuing their conduct and repeating their act with imposing a fine. However, in case the arbitral had already imposed the fine in their decision – see the case above –, it was only the repetition of the banned activity that the plaintiff had to prove in order for the court that enforced the measures to collect the fine. These, however, were only applied to cases in which the measures expressed in the decisions were physically unenforceable – e.g. spreading false information, touch customers –since in case the measure proved enforceable, the court, beyond collecting the fine, banned the forbidden activity by enforcing the measures via its delegate.

conduct that the Arbitral Tribunal had to assess, but they had to decide whether an idea, a unique advertising method, a commercial notion could be defended on the basis of the law on unfair competition. In their lawsuit, the plaintiff presented that they had been using a unique propaganda instrument for marketing their lozenges for almost a year. It consisted of an advertising character depicting a chimney sweeper holding a sign advertising the lozenge "Negro", placed in front of lozenge shops or in their shop windows. According to the plaintiff, "the defendant violated the intangible rights implicit in this propaganda instrument by their practice of placing a child's figure standing next to a snow pile, holding their hand in front of their mouth with a sign advertising the Kaiser toffee on s sign attached to a pole."[34] The de facto basis of the plaintiff's lawsuit was laid down on the second page of the lawsuit. According to it, "the use of such advertising characters was their idea, they acquired the right to this idea and made it renowned at great effort and cost. The defendant's committed their actions violated honest commercial practice by copying this idea."[35] The defendant requested the rejection of the lawsuit as according to their opinion, the way they used the advertisement was widespread. Moreover according to their view, he had started this method of advertisement earlier than the plaintiff.

The Arbitral Tribunal considered that the plaintiff's idea was neither ne, nor unique. It was, indeed, well-known that the advertisement method used by both the defendant and the plaintiff had been common, widely used for years and the use of suspended, free-standing boards or ones that could be placed in shop windows and depicted human characters could not be considered as an idea that would create monopoly for someone."[36] We can see that in this, but not only this case, the Arbitral Tribunal proceeded on the basis of the moral judgement of the business world and concluded that nobody could consider an existing commercial practice their own, thus that could not be defended. Beyond what has been mentioned above, though, a more important decision of principle is evident from the arbitration, which could be regarded as guidance in the assessment of competitive acts with a comparable situation. On the basis of the decision, we can say that in this case, the specificity of the idea – the application of advertisements on the human figures – might not refer to the general usage placement of the figures, but exclusively in the application of a particularly shaped figure. Solely because somebody used a particularly shaped figure as an advertising instrument, others still had the right to apply other figures, i.e. the use of figures depicting humans could not be appropriated.[37]

5. Conclusion

In my article, I sought to choose legal cases which are specifically related to Section 1 of the article on unfair competition, as in these cases, the particular moral standard, the content of which I was focusing on, had to be applied. Due to the limited length the length limit, I could not present all the 22 chosen cases in detail in my paper, so in many cases, I elaborate using footnotes.

Summarising my results, I assume that the foundations of the chamber work were obviously professionalism, moral reliability and promptness. In the course of their work, the endeavour of the acknowledged experts gathering in the arbitral tribunals of the chamber and juries was always for their moral resolutions and decisions to comply with the public perception of the commercial and industrial world of the era. Despite the fact that the resolutions provided by the jury were not binding on the accountable competitors, it was, of course, permitted to refer to them. In my opinion, Sections 44-45 of the Article on unfair competition have definitely fulfilled their purpose as our courts preferred to turn to the chambers of commerce and industry if they had doubts on the assessment of specific business conducts. The arbitral tribunals before which disputes regarding unfair competition were brought, were often criticised for applying excessively strict standards. At the same time, though, we could see that they sought to bear the decade-long business habits and procedures in mind and they tried to break them down step by step, gradually.[38]

As the primary objective of my paper, I set out the examination of the standard of honest commercial practice and demonstrating how the practice of the chambers tried to fill it with content. according to my point of view based on the practice of the Jury and the Arbitral Tribunal of the Budapest Chamber of Commerce and Industry, we can clearly state that the content of the conception of honest commercial practice is slightly different from the well-known private law categories of accepted principles of morality and honesty. On the basis of the cases presented in my entry, we can say that the content of honest commercial practice sometimes showed a stricter and in some other cases, a more lenient standard compared to the general moral judgement of society.[39] For this reason, it would be right to say that in general a stricter standard always had to be applied against commercial conducts that were classified on the basis of honest commercial practice. In this case, I accept the investigation method expressed by the Jury so many times as right, according to which, all the circumstances of business conducts had to be assessed. There is no doubt that it was not an easy task to classify the commercial conducts and to determine whether they conflicted with the article on unfair competition. Nevertheless, the benefit of variety and diversity of the cases, makes this topic interesting and special.

[34] Bp. Cham. Arbitral Tribunal: Z 202. Vb. 19.349. – 1933.
[35] Bp. Cham. Arbitral Tribunal: Z 202. Vb. 19.349. – 1933.
[36] Bp. Cham. Arbitral Tribunal: Z 202. Vb. 19.349. – 1933.
[37] Moreover, in their lawsuit, the plaintiff pointed out the fact that for them, trademark was registered for the "chimney sweeper" figure. In relation to this, the Arbitral Tribunal pointed out that in this regard, the fact that the plaintiff got the trademark and set up human figures in front of shops in the lozenge business makes no difference as it was merely a matter of detail. The advertising character depicting a human figure had been generally used for years, thus the idea could not be regarded as the plaintiff's exclusive right and a right to be protected.
[38] Bp. Cham. Arbitral Tribunal: Z 202. Vb. 31.885.-1925.
[39] Constituted more severe including: Bp. Cham. Arbitral Tribunal: Z 202. Vb. 15.326. – 1925.; Constituted less severe, for example: Bp. Cham. Arbitral Tribunal: Z 202. Vb. 55.368-1927.