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I. Introduction

Discovery confirmed that artworks once attributable to Baron Mór Lipót Herzog became the sole, separate, and distinct property of one of three heirs (András Herzog, István Herzog, and Erzsébet Weiss de Csepel) following his death in 1934 and his wife's death in 1940. Since 1940, each of the 44 artworks identified in the Complaint has had a distinct and unique provenance. Following the war, and in keeping with Hungary's obligations under the Treaty of Peace with Hungary, Feb. 10, 1947, 61 Stat. 2065 T.I.A.S 1651 ("Peace Treaty"), Hungary began the process of returning specific artworks to the heir (or representative) to whom that artwork was attributed. In 1948, those returns were halted and returned artworks were reclaimed after Mrs. István Herzog was indicted and (following trial) convicted of violating pre-war cultural patrimony laws that prohibit removal from Hungary of artworks of cultural significance. Other artworks were taken or acquired by the Hungarian State during the Communist Era. But all artworks have two things in common: (1) the historical events involving the artworks occurred in Hungary, and (2) none have express or implied bailment agreements specifying performance or any obligations in the United States.

In 1999, Martha Nierenberg filed suit in Hungary, asserting ownership of twelve artworks attributed to her mother, Erzsébet Weiss de Csepel. Between 1989 and 2000, Hungary returned to Ms. Weiss de Csepel and Ms. Nierenberg artworks that it determined were not property of Hungary, with the requirement that the artworks could not leave Hungary. In 2008, after nearly a decade of litigation and appeals, the independent Hungarian courts ruled that Hungary was the owner of the remaining claimed artworks under several distinct, legitimate legal theories. Ownership of the artworks claimed by the Italian Plaintiffs (twenty-four artworks) or attributed

to István Herzog (eight artworks) was not adjudicated in the lawsuit, as those heirs affirmatively chose not to assert claims. *See* Declaration of Jessica Walker (“Walker Decl.”), Exh. 1.

Sixty-five years after the end of World War II and more than twenty years after the fall of communism, Plaintiffs filed a complaint in the United States asserting that this Court should take the extraordinary steps of stripping Hungary of its presumptive immunity and questioning the legitimacy of Hungary’s ownership of artworks. To do this, Plaintiffs attempt to redefine Hungary’s actions as both commercial *and* sovereign, subjecting Hungary to the Court’s jurisdiction under both the commercial activity exception and the expropriation exception.

These creative legal theories attempt to re-cast Hungary’s post-war possession and ownership as bailments and violations of international law. The theories are not, however, supported by the facts confirmed following complete discovery, which make clear that the parties did not contemplate performance of any “bailment agreements” in the United States to trigger the commercial activity exception. Performance in the United States, absent clear agreement of the parties, would violate Hungarian law. Indeed, the Italian Plaintiffs confirmed in direct testimony that they never contemplated such an action. Further, Hungary is not a proper party to this action under Section 1605(a)(3) of the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. § 1330 *et seq.* Hungary’s current ownership of the artworks is the result of post-war actions and the 2008 legal decision confirming Hungary’s ownership of eleven artworks is not a taking in violation of international law. As neither exception applies, Hungary cannot be forced to defend its laws, its courts, its history, or its actions in this Court.

As an European Union member and U.S. ally, with its own independent courts and post-Communist compensation programs, Hungary asks no more than any other European Union member state or the U.S. itself would ask: that modern-day property and restitution claims

arising from historical events in Hungary during the World War II and Communist eras be heard by Hungarian courts in a manner that respects all parties' due process rights under Hungarian law.

II. The FSIA's Commercial Activity Exception Does Not Apply to Provide This Court with Subject Matter Jurisdiction Over Hungary

A. The First and Second Clauses of Section 1605(a)(2) Do Not Apply to Provide This Court with Jurisdiction over Hungary

Section 1605(a)(2) of the FSIA provides that a foreign state shall not be immune from the jurisdiction of courts of the United States in a case

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States[.]

28 U.S.C. § 1605(a)(2). In their Complaint, Plaintiffs invoked the Court's jurisdiction under the third clause of this provision:

Under 28 U.S.C. §§ 1603(a) and 1605(a)(2), a foreign state (including an agency or instrumentality thereof) shall not be immune from suit in any case "in which the action is based upon . . . an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States."

Compl. ¶ 35 (quoting the third clause of Section 1605(a)(2)). In its April 19, 2013, decision, the D.C. Circuit addressed only the second and third requirements of the above clause "[b]ecause Hungary's actions *obviously occurred outside the United States . . .*" *de Csepel v. Republic of Hungary*, 714 F.3d 591, 598 (D.C. Cir. 2013) (emphasis added).

Plaintiffs now invoke the first and second clauses of Section 1605(a)(2) – clauses that are not referenced in Plaintiffs' Complaint. *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (1992), cited by Plaintiffs, notes that in examining Section 1605(a)(2), "the critical inquiry is

whether there is ‘a nexus between the defendant’s commercial activity in the United States and the plaintiff’s grievance.’” *Id.* at 709 (citation omitted). Plaintiffs’ claims are not based on Hungary soliciting U.S. tourists, selling tickets in the U.S. over the internet, or other limited activities in the United States, but on post-war bailments and actions that took place in Hungary.¹

Siderman, moreover, was decided before the Supreme Court issued its decision in *Saudi Arabia v. Nelson*, 507 U.S. 349 (1993). In *Nelson*, the Court examined the phrase “based upon,” which is relevant to all three of Section 1605(a)(2)’s clauses. 507 U.S. at 356-58. The Court explained that “a claim is ‘based upon’ commercial activity if the activity establishes one of the ‘elements of a claim that, if proven, would entitle a plaintiff to relief under his theory of the case.’” *Odhiambo v. Republic of Kenya*, 764 F.3d 31, 36 (D.C. Cir. 2014) (quoting *Nelson*, 507 U.S. at 357). “In other words, the alleged commercial activity must establish ‘a fact without which the plaintiff will lose.’” *Id.* (citation omitted).

Plaintiffs’ claims for bailment and conversion are not “based upon” Hungary’s promotion in the United States of books or Hungarian tourism, Compl. ¶¶ 4, 32, 37; nor are these claims “based upon” Hungary’s promotion in the United States of educational exchange programs or Hungarian culture, Compl. ¶¶ 4, 33-34, 37. Plaintiffs themselves assert that their claims are based not on the “initial expropriation of the Collection during the Holocaust[,] but instead [on] Hungary’s creation and repudiation of subsequently formed bailment agreements.” Opp. at 27-28 (quoting *de Csepel*, 714 F.3d at 598, 600); *see also* Opp. at 27 (asserting that “discovery has

¹ Plaintiffs assert that “in addition to Plaintiffs’ bailment claims, the Complaint also asserts claims for conversion, constructive trust, accounting and unjust enrichment.” Opp. at 43. But “constructive trust,” “accounting,” and “restitution based on unjust enrichment” – the actual claim identified in Plaintiffs’ complaint – are not causes of action, but remedies. *See, e.g., Sabre Int’l Sec. v. Torres Advanced Enter. Solutions, Inc.*, 820 F. Supp. 2d 62, 71 (D.D.C. 2011); *Haynes v. Navy Fed. Credit Union*, 52 F. Supp. 3d 1, 10 (D.D.C. 2014) (quoting *Armenian Assembly of America, Inc. v. Cafesjian*, 692 F. Supp. 2d 20, 48 (D.D.C. 2010)); *Chase Manhattan Bank v. Burden*, 489 A.2d 494, 497 (D.C. 1985).

only confirmed that Plaintiffs' claims are 'based upon' Defendants' repudiation of various post-war bailment agreements"). As Plaintiffs claims are "based upon" on "an act *outside the territory of the United States* in connection with a commercial activity of the foreign state elsewhere," 28 U.S.C. § 1605(a)(2) (emphasis added), the first two clauses are not applicable.

B. Plaintiffs Provide No Evidence of A "Direct Effect" in the United States

1. Discovery Confirmed that Each Artwork Has Separate and Distinct Ownership

Discovery has confirmed that each artwork is separate and unique property attributable to only one of three Herzog siblings. Prior to this lawsuit, Plaintiffs and their predecessors maintained that the artworks are separate property. *See* Dkt. No. 15-3; Declaration of Irene Tatevosyan (Dkt. Nos. 106-1-6) ("Tatevosyan Decl."), Exhs. 25-26, 47-48, 56. This is not a new position for Plaintiffs and their predecessors, and predates "the heirs' present-day agreement." *Opp.* at 5. In fact, the Herzog siblings attributed artworks separately amongst themselves as early as 1946 and 1947, consistent with the current attribution. Walker Decl., Exhs. 5-7.

Even now, Plaintiffs and their family members continue to recognize that the artworks are attributable to only one sibling – the Italian Plaintiffs maintain that they are the exclusive owners of artworks attributable to András Herzog (*see* Declaration of Thaddeus Stauber, (Dkt. Nos. 106-9-10) ("Stauber Decl.")), Exh. 11 at 18:6-9, 28:21-29:18; *id.*, Exh. 12, and the "assignment" made by the heirs of István Herzog to David de Csepel specifically identifies artworks that are the subject of the 2008 assignment. Plaintiffs contend that the Complaint "clearly pleads the existence of multiple post-war bailments," conceding that the artworks cannot be treated as a whole. *Opp.* at 37. Plaintiffs now assert that one artwork they previously attributed to András should, in fact, be attributed to István, *see* Declaration of Alycia Regan

Benenati (Dkt. 110-1-9) (“Benenati Decl.”), Exh. 1, but they do not assert a shared or group ownership of the works, beyond a 2008 assignment. *See* Walker Decl., Exh. 1.

Plaintiffs’ predecessors’ ownership of separate artworks has been recognized repeatedly by Hungary.² Plaintiffs assert collective legal treatment based on statements made by Dr. Mojzer, the former director of the MFA, in meetings in 1997. As explained by Dr. Balázs Sámuel, Leader of the Secretariat of the General Directorate of the Museum of Fine Arts, while reference to items once owned by a single person (Baron Herzog) as the “Herzog Collection” may make sense from an art historian’s perspective, it does not signify the legal status of individually registered artworks. Stauber Decl., Exh. 4 at 76:20-25; *see also id.*, Exh. 10 at 58:13-22. And contrary to Plaintiffs’ statements, Dr. Sámuel explained this position (and his disagreement with Dr. Mojzer’s statements) both before *and* after a break in his deposition. Benenati Decl., Exh. 16 at 75:4-76:5, 76:20-77:6.

2. *Plaintiffs Do Not Identify A Direct Effect In the United States*

The parties agree that an effect is “direct” if “it follows ‘as an immediate consequence of the defendant’s . . . activity.’” Opp. at 34 (quoting *Republic of Argentina v. Weltover*, 504 U.S. 607, 618 (1992)). Plaintiffs fail, however, to identify any evidence of a “direct effect” in the United States to support stripping Hungary of its presumptive immunity.

a. *The Appellate Court’s Pre-Discovery Inferences Are Not Supported By the Evidence*

In 2013, the Appellate Court, looking only at Plaintiffs’ Complaint, found that

² When seizing artworks belonging to all three Herzog siblings in connection with the smuggling investigation, Hungary was not treating the Herzog artworks as an indivisible, single collection. Instead, it was responding to concerns that representatives of András Herzog and Erzsébet Weiss de Csepel would smuggle their artworks out of the country just as Mrs. István Herzog had smuggled works belonging to her husband. Contemporaneous documents list artworks owned by each sibling and call for the seizure of the artworks to keep them in the country. *See* Tatevosyan Decl., Exh. 18; Walker Decl., Exh. 8 at HUNG011609-10. These documents indicate concern about losing significant artworks motivated the investigation, not persecution of the owners.

Although the complaint never expressly alleges that the return of the artwork was to occur in the United States, we think this is fairly inferred from the complaint's allegations that the bailment contract required specific performance – i.e., return of the property itself – and that this was to be directed to members of the Herzog family Hungary knew to be residing in the United States.

De Csepel, 714 F.3d at 601. But this statement was made prior to discovery.

At the time that the appellate court issued its decision, neither this Court nor the appellate court were in possession of evidence affirming that there is *no* connection (now or in the past) between Hungary, the Italian Plaintiffs, the artworks attributed to András Herzog, and the United States. Nor were the courts aware of evidence confirming that there has never been an agreement between the Italian Plaintiffs and any other family members to share possession or any interest in the artworks attributable to András Herzog. Neither court knew that the Italian Plaintiffs had written to Hungary in 1998 noting that, if works were returned to them, they would place them in an apartment in Hungary. Neither court knew that, when deposed in 2015, Plaintiff Angela Herzog would testify that she had never contemplated sending any of the artwork attributable to their father to the United States.³ Nor did either court have evidence confirming that there was no connection between Hungary, the heirs of István Herzog, the artworks attributable to István Herzog and the United States before 1999, when István Herzog's second wife (and heir) left a partial interest in István's estate to American citizen relatives.

³ In the April 22, 2015, email from Plaintiffs' counsel, Plaintiffs' counsel stated: "Julia does not contradict any of the questions we specifically asked her about yesterday and today except that she thinks that they may have stopped coming back to Hungary with her mother closer to the 1948-49 time frame than to 1955 (and Angela said she could not recall the end date). . . . Without a copy of the transcript, we were not able to repeat every question asked in the deposition and every answer given by Angela. We do not expect that she will otherwise contradict anything Angela said. We will of course let you know if that changes after we get the transcript back and can review it with her." Stauber Decl., Exh. 12. After the transcript was circulated in May, Julia Herzog failed to contradict any statement made by her sister, and Plaintiffs' counsel did not communicate their inability to review the transcript with Ms. Herzog. Nor have Plaintiffs submitted declarations or documents from Herzog heirs or witnesses supporting a direct effect.

Plaintiffs contend that the artworks seized by Hungary following the criminal smuggling proceedings against Mrs. István Herzog were “official measures” that “*simultaneously* impacted Elizabeth Weiss de Csepel (in the United States), the Italian Plaintiffs (in Italy), and István Herzog (in Hungary) *simultaneously*.” Opp. 38 (emphasis added). “Official measures” taken by Hungary in October and November 1950 were not commercial acts, they were the acts of a sovereign. But even if these acts could somehow be regarded as violations of post-war bailments, the violating acts would necessarily be just as “multiple” as the underlying “bailment agreements” had been. The fact that the violating acts were “simultaneous” would not mean that the same violation caused direct effect both in the U.S. and in Italy or Hungary. The violation of a particular bailment could cause an effect only in Hungary or the country where the beneficiary of the alleged bailment resided.

Similarly, the Hungarian Court’s 2008 decision was a sovereign act – not a commercial activity. But even if a judicial decision could constitute a breach in 2008 – the date “Plaintiffs assert that the relevant breaches occurred,” Opp. at 42 – these “breaches” relate *only* to those claims previously advanced by Martha Nierenberg. As neither the Italian Plaintiffs nor the heirs of István Herzog pursued claims in Hungary, their bailment claims could not have been breached or repudiated with the Hungarian court’s 2008 decision.⁴

b. No Direct Effect “Flows In A Straight Line Without Deviation Or Interruption”

Plaintiffs contend that they “always had the ability to request that their art be sent to the United States.” Opp. at 43. If the hypothetical ability to request that property be sent to the U.S. is sufficient to strip a foreign sovereign of its presumed immunity, then Section 1605(a)(3)’s

⁴ Ms. Nierenberg’s claim to a twelfth artwork (Compl. ¶ 16(xxxiv)) – included in the pending lawsuit, but not referenced in Ms. Nierenberg’s complaint – was denied by Hungary in 2002. See Tatevosyan Decl., Exhs. 65-70.

“direct effect” requirement would be rendered meaningless. Here, until the current lawsuit, performance in the U.S. was never demanded. Indeed, when deposed on April 21, 2015, Plaintiff Angela Herzog *still* did not demand return of artworks to the United States, noting that she had never considered this question. Stauber Decl., Exh. 11.

Hungarian law precludes items of cultural patrimony from leaving the country. Such laws pre-date World War II and are comparable to laws throughout Europe that are designed to protect a country’s cultural heritage. These laws are well known to Plaintiffs and their predecessors. When the Munkácsy’s Christ in White Robe was returned to Ms. Nierenberg in 2000, after Hungary determined that she was the lawful owner, Ms. Nierenberg’s representative took legal ownership of the artwork with full knowledge that the artwork could not leave Hungary. Ms. Nierenberg entered into a “consensual agreement” with the Museum of Fine Arts such that the museum would continue to physically hold the work for a short period of time, but the cultural protection placed on the work to prevent it from leaving the country was imposed by law, not with Ms. Nierenberg’s “consent.” Artworks returned to her mother, Erzsébet Weiss de Csepel, in 1989, when Hungary determined that she was the lawful owner, also remained in Hungary as required by Hungary’s cultural patrimony law.⁵

Plaintiffs note that in 1948, another Hungarian family sought, and received, permission to export artworks from Hungary. Yet, the Commission for the Export of Paintings opposed the proposed export of “the Her[z]og collection safeguarded in the . . . Museum of Fine Arts” due to “the fact that these are art treasures of extremely high value.” Walker Decl., Exh. 9. And Dr.

⁵ With no support, Plaintiffs contend that by 2008, they could have requested export of the artworks to the United States “regardless of where Plaintiffs themselves resided, given Hungary’s status as a member of the European Union.” Opp. at 42. But countries throughout the European Union have similar laws, Renewed Motion to Dismiss (Dkt. No. 106) at 35, and Plaintiffs do not identify a European Union law or directive that would require Hungary – or any other EU country – to limit or disregard long-standing cultural patrimony laws.

Sámuel confirmed that no export permits were granted after 1949. Thus, there is no basis for Plaintiffs to assume that, after 1949, they would be granted a permit to export artworks, and Dr. Sámuel's statement that Hungary would never permit export of artworks is not "speculative," Opp. at 41, but supported by the facts. *See* Dkt. 106-11 at ¶¶ 7-8; Walker Decl., Exh. 10.

Each artwork is registered as separate and unique property, even if recorded in the same document. Each "act" of registration could affect only the specific owner of each separate and unique property, not non-owner family members. The only document Plaintiffs identify as an "express written agreement" creating a bailment, Opp. at 29, does not identify a place of performance. Tatevosyan Decl., Exh. 23. Tatevosyan Declaration Exhibit 64, the document Plaintiffs cite for the proposition that bailments were "documented less formally," Opp. at 29, likewise does not mention a place of performance. Tatevosyan Decl., Exh. 64. (The other cite for this proposition, Benenati Declaration Exh. 3, Opp. at 29, is the declaration of Dr. Tamás Lattmann and does not support any creation of bailments, formally or informally. Exhibit 4 to the Benenati Declaration, which discusses the arrangement for András Herzog's jewelry collection to be moved to the Museum of Applied Arts for safekeeping in 1944, does not mention a place of performance or return either.) The document discussing a "draft deposit contract" to be signed by Dr. Lóránt in 1951 (which was not located in discovery) lists seven artworks, all of which appear in Tatevosyan Exh. 23, and does not mention a place of performance either. Tatevosyan Decl., Exh. 63, Opp. at 15. Plaintiffs do not dispute that under Hungarian law, Hungary – the location of the obligor – is the default place of performance. *See* Declaration of Zoltán Novak (Dkt. Nos. 106-7-8) ("Decl. Novak"), Exhs. 4, 6.

But even if export was "possible . . . with Defendants' consent," Opp. at 41, such export could only follow specific performance (completion) of the bailment in Hungary. In other

words, the “bailment” transaction (with performance in Hungary) and the “export” transaction (with performance outside of Hungary) are two separate and distinct transactions. Thus, post-bailment performance export of those artworks could not be regarded as a direct effect from a bailment, but as an independent act.

The D.C. Circuit’s recent analysis of “direct effect” confirms that no direct effect exists here. In *Helmerich & Payne International Drilling Co. v. Bolivarian Republic of Venezuela*, 784 F.3d 804 (D.C. Cir. 2015), the Oklahoma-based plaintiff asserted that Venezuela’s breach of drilling contracts caused a direct effect in the United States. Because the case involved a contract executed and performed outside the United States, the court analyzed the third clause of the FSIA’s commercial activity exception. *Id.* at 817. Prior to the breach, a defendant Venezuelan subsidiary made payments to the plaintiffs’ bank in Oklahoma. *Id.* at 818. The plaintiffs argued a direct effect in the United States because defendants failed to make additional payments to the plaintiffs’ Oklahoma bank following defendants’ breach.

The plaintiffs relied on *Weltover*, where, as a result of Argentina’s failure to pay bondholders in New York, a payment was not made to accounts in the United States. *See id.* (citing 504 U.S. at 609-10). But the D.C. Circuit quickly distinguished *Weltover*. The appellate court found critical the fact that under the Venezuelan contracts, the defendants could choose to deposit payments in the United States *or* in Venezuelan banks – i.e., the place of performance was subject to the “exclusive discretion” of the defendants. *Id.* In *Weltover*, in contrast, defendant Argentina was contractually required to make payment to a bank in the United States. 504 U.S. at 618-19. In finding no “direct effect” caused by the defendants’ breach of contract, Judge Tatel, writing for the majority, concluded, “where, as here, the alleged effect depends solely on a foreign government’s discretion, we cannot say that it ‘flows in a straight line without

deviation or interruption.” 784 F.3d at 818 (quoting *Princz v. Federal Republic of Germany*, 26 F.3d 1166, 1172 (D.C. Cir. 1994)); *see also Goodman Holdings v. Rafidain Bank*, 26 F.3d 1143, 1146 (D.C. Cir. 1994) (recognizing that where sovereign defendant had discretion in place of performance of payment, plaintiffs could not establish direct effect under *Weltover*).

As with *Helmerich & Payne*, *Princz*, and *Goodman Holdings*, Hungary was under no contractual obligation to send any artworks attributable to the Herzog siblings to the United States. Plaintiffs assert that Hungary *could* grant export permits to allow the artworks to leave Hungary, but that action is solely within Hungary’s discretion. Because the “alleged effect depends solely on [Hungary’s] discretion,” the alleged effect does not “flow [] in a straight line without deviation or interruption,” to permit application of the third clause of the commercial activity exception. 784 F.3d at 818 (quoting *Princz*, 26 F.3d at 1172).

Rather than identify a legally relevant “direct effect” in the United States, Plaintiffs assert that certain actions “do not prove the absence of a ‘direct effect’ in the United States.” Opp. at 42. But it is not Hungary’s obligation to prove a negative. Plaintiffs’ burden may not be great at the Rule 12(b)(1) phase, but where, as here, Defendants challenge the factual basis for the court’s subject matter jurisdiction and the parties have completed fact discovery, “the court may not deny the motion to dismiss merely by assuming the truth of the facts alleged by the plaintiff.” *Phoenix Consulting, Inc. v. Republic of Angola*, 216 F.3d 36, 40 (D.C. Cir. 2000). Before the burden of persuasion shifts to Hungary, Plaintiffs must producing evidence to show that there is no immunity and that the court has jurisdiction over their claims. *See Bell Helicopter Textron, Inc. v. Islamic Republic of Iran*, 734 F.3d 1175, 1183 (D.C. Cir. 2013); *Daliberti v. Republic of Iraq*, 97 F. Supp. 2d 38, 42 (D.D.C. 2000). They have not met this burden.

As Plaintiffs have not shown any evidence of a direct effect at this stage, after complete discovery – not just limited or jurisdictional discovery – Plaintiffs have failed to satisfy Section 1605(a)(2). This Court should reject Plaintiffs’ demand that the Court employ the FSIA’s commercial activity exception to strip Hungary of its presumptive immunity, particularly as to the Italian Plaintiffs who have little to no connection to the United States and, by their own acknowledgment, never contemplated that the artworks attributable to their father would be sent to the United States.

3. *Plaintiffs Do Not Identify an Enforceable Bailment*

Plaintiffs point to deposit lists and museum registrations as “proof” of enforceable bailments. But the “deposit” lists were drawn up by governmental bodies charged with the task of identifying, collecting, registering, and safekeeping artworks that had been lost or abandoned during World War II. These governmental entities did not engage in “commercial acts,” and the registrations cannot be considered commercial activities (bailment agreements).

Moreover, the registration processes, prescribed by museum rules and regulation are not commercial acts. As with deposit lists, artworks are registered pursuant to state-approved museum regulations that museum employees are required to follow. They are not commercial acts. In fact, for each of the ten artworks listed in the deposit inventory, the “mode of acquisition” column (which contains the name of a depositor in the case of commercial deposits) indicates “Governmental Commission” – not a Herzog family member. In contrast, “deposit” entries for other works formerly part of the Herzog Collection clearly refer to individual Herzog family members in the “mode of acquisition” column. Such artworks include the Dutch Portrait of a Lady, which was returned to Erzsébet in 1989 (mode of acquisition: “Mrs. Weiss – Herzog”) and a sculpture on The Conversion of Paul the Apostle, which had been placed in the museum

long before the war (mode of acquisition: “Mór Lipót Herzog in 1921”). *See* Tatevosyan Decl., Exh. 2; Walker Decl., Exh. 11. This demonstrates that the latter two entries were based on “commercial” deposit agreements concluded with individuals, while the ten works with “deposit” entries in this action were not held as deposits for individuals, but held by the museum per government mandate. *See* Walker Decl., Exh. 12 at 17:14-18:9 (noting that “customs authorities or police, also place its items into the deposit with us” where those items “are confiscated or seized because they were being smuggled out or in the country”). The deposit information about The Conversion of Paul the Apostle (deposited in 1921) also illustrates that formal commercial deposit agreements had been entered into prior to the creation of the current deposit inventory system in 1958, and thus contradicts Plaintiffs’ assertion that bailments “were documented less formally” before 1958 (Opp. at 29). *See* Tatevosyan Decl., Exh. 2; Walker Decl., Exh. 11; *see also* Benenati Decl., Exh. 18 at 19:18-20:13.

Discovery revealed limited evidence that a bailment agreement may have existed at one time for one artwork, the Giampietrino (Compl. ¶ 16(xv)), attributed solely to András Herzog and thus solely an Italian heir claim. This work was placed in the museum under a written agreement, along with the three artworks returned to Erzsébet in 1989, the Munkácsy that was returned to Ms. Nierenberg in 2000, and eight other artworks that are claimed in this lawsuit. *See* Tatevosyan Decl., Exh. 23 at HUNG000012663. This document is the *only* document Plaintiffs point to as an “express written agreement” creating bailments. Opp. at 29. While this document contains language that the “National Center for Museums and Monuments is handling these works of art as deposits, with acknowledgment of the owner’s title,” the document contains no agreement or instructions as to specific performance of the bailment, the circumstances under which the artworks may be returned, or the location to which the artworks could be returned, let

alone any statement that indicates performance in the United States was contemplated by either side. Tatevosyan Decl., Exh. 23.

This “bailment” was, however, repudiated in 1961, when in response to an inquiry from Plaintiffs’ representative, the Museum informed a government branch that the painting became property of the state through purchase, forfeiture, or failure to pay taxes. For all other artworks on this “bailment” document, either Plaintiffs’ predecessor’s ownership was recognized (and the works were given back to Martha Nierenberg or her mother) or a bailment agreement could not have been created as the financial police could not consent to the creation of a bailment prior to the prosecutor’s determination of the works’ legal status and further, the documents demonstrate that the artworks were seized by the police, forfeited in criminal proceedings, left in the museum because of “exorbitant repatriation duties” or were otherwise taken by and forfeited to the State such that there could be no deposit. Police seizures, criminal procedures, and taxation are not the kind of activities in which a private person can engage and, therefore, cannot be part of a “commercial activity.”

Hungary asserts that this bailment agreement is neither valid nor enforceable, but even if it was valid – even if there had not been criminal proceedings that resulted in the seizure of specific artworks or forty-five years of Communist governments or treaties or claims processes – even if a bailment agreement could conceivably exist for *any* of the claimed artworks, this Court lacks jurisdiction under the FSIA’s commercial activity exception because Plaintiffs cannot demonstrate a “direct effect” in the United States.

III. The FSIA’s Expropriation Exception Does Not Apply to Provide This Court with Subject Matter Jurisdiction Over Hungary

Plaintiffs’ Opposition asserts that most of the artworks claimed in this lawsuit were “taken” from Plaintiffs’ predecessors during the Holocaust in violation of international law.

Opp. at 46. But the Opposition does not dispute that certain artworks did not come into Hungary's possession until years after the war, through state seizure during the Communist Era (Cranach, Compl. ¶ 16(vi)) or donation (the Opie, Compl. ¶ 16(xiii)).⁶

Further, nineteen of the remaining forty-two claimed artworks were legally and physically returned to Plaintiffs' predecessors or their representatives shortly after the war, thereby remedying the "taking" – and completing performance of any purported expropriation-related bailment. Any subsequent post-return taking was not a taking in violation of international law to trigger the expropriation exception.⁷

A. Claims for World War II Takings are Addressed by the Peace Treaty, Which Conflicts Expressly with the FSIA

In its 2013 decision, the appellate panel summarized Hungary's argument that Peace Treaty Articles 27 and 40, taken together, "establish an exclusive treaty-based mechanism for

⁶ As noted in the Renewed Motion to Dismiss, Dkt. 106 at 9, the Ferenczy painting, (Compl. at 19(i)), attributed by Plaintiffs to András Herzog, was *purchased* by the Museum of Fine Arts, Budapest at an auction in 1961. *See* Tatevosyan Decl., Exhs. 30, 31.

⁷ To dispute the original returns, Plaintiffs point to documents showing some of the nineteen artworks returned following the war came back into the museums' possession. Opp. at 10 n.5, 12 n.8. A close look at the documents reveals, however, the returns did happen, with later events bringing the artworks back into the museums' ownership. The Zurbarán Saint Andrew (Compl. ¶ 16(xxi)) was physically returned to Mrs. István Herzog on July 17, 1947, and later seized in October 1948, in connection with the smuggling action. Walker Decl., Exh. 2 at Compl. ¶ 16(xxi)). The Giovanni Santi (Compl. ¶ 16(xviii)) was legally released in 1947, seized by the tax authorities to secure public debts in 1949, and returned to Mrs. István Herzog's representative by November 1950. Walker Decl., Exh. 2 at Compl. ¶ 16(xviii). The painting returned to Hungary in 1951. *Id.*

Plaintiffs cite to Tatevosyan Decl., Exh. 23 at HUNG012663, as including "at least the following seven artworks which Defendants claim were 'returned'." Opp. at 12, n.8. The returns of these artworks in 1946 and in 1947 to Plaintiffs' representatives are documented. *See* Tatevosyan Decl., Exhs. 76, 6-15. Exhibit 23, dated May 1950, is Dr. Emil Oppler's offer to place the artworks into the museums' possession from outside locations, thus proving that these artworks had been returned to Plaintiffs' representatives following the war, as they otherwise would not have had the artworks to hand back to the museums. *See* Tatevosyan Decl., Exh. 23 at HUNG012663; Walker Decl., Exh. 2.

resolving all claims seeking restitution of property discriminatorily expropriated during World War II from individuals subject to Hungarian jurisdiction.” *de Csepel*, 714 F.3d at 602.

The panel then rejected Hungary’s proposed application of the treaty exception argument

[F]or the simple reason that [Plaintiffs’] claims fall outside the Treaty’s scope. Article 27 concerns property discriminatorily expropriated during World War II. As we have explained, however, the family’s claims rest not on war-time expropriation but rather on breaches of bailment agreements formed and repudiated after the war’s end.

de Csepel, 714 F.3d at 602. The panel found that it was Plaintiffs’ claim of commercial bailment – not a taking in violation of international law – that provided the basis, at the pre-discovery phase, for a court to take jurisdiction over Hungary. *Id.* (“These allegations [of bailment] distinguish this case from one ‘in essence based on disputed takings of property’ and thus outside the purview of the commercial activity exception” (quoting *Garb v. Republic of Poland*, 440 F.3d 579, 588 (2d Cir. 2006)).⁸

⁸ The panel’s reference to *Garb* is instructive. In that case the plaintiffs sought redress for property taken in post-War Poland. *Garb*, 440 F.3d at 582. Like the Plaintiffs here, the *Garb* plaintiffs asserted that the court could take jurisdiction over defendants under both the commercial activity exception and the expropriation exception. The court found that while the plaintiffs brought claims for property taken in violation of international law, the expropriation exception did not apply because the plaintiffs failed to satisfy the remaining elements of Section 1605(a)(3). Turning to the commercial activity exception, the court noted that “regardless of the subsequent commercial treatment of the expropriated property, plaintiffs’ claims are ‘based upon’ the acts of expropriation.” *Id.* at 586. The appellate court then rejected the plaintiffs’ assertion that the commercial activity exception applied to their claims “because this assertion simply recharacterizes plaintiffs’ ‘takings’ argument.” *Id.* at 588.

As the panel noted, “[f]ederal courts have repeatedly rejected litigants’ attempts to establish subject matter jurisdiction pursuant to other FSIA exceptions when their claims are in essence based on disputed takings of property.” *Id.* (citing *De Sanchez v. Banco Central de Nicaragua*, 770 F.2d 1385, 1398 (5th Cir. 1985)); *see also Chuidian v. Philippine Nat’l Bank*, 912 F.2d 1095, 1106 (9th Cir. 1990); *see also id.* at 587 (noting that “subsequent commercial transactions involving expropriated property do not give rise to subject matter jurisdiction over claims arising from the original expropriation”). Thus, if this action is based on a taking in violation of international law, then the Court should consider whether Plaintiffs’ claims are subject to the expropriation exception – not the commercial activity exception. But if, instead, Plaintiffs claims are based on a commercial activity, then the Court should consider whether

The panel's reasoning was employed by Judge Howell in *Simon v. Hungary*, 37 F. Supp. 3d 381 (D.D.C. 2014), in which she found that the *de Csepel* panel's interpretation of the FSIA's treaty exception in this action necessitated a finding that the Peace Treaty barred the war-time takings claims of other Hungarian plaintiffs. *See id.* at 420-21. The *Simon* court, noting the *de Csepel* panel's careful distinction between war-time taking claims and post-war allegations, recognized that the plaintiffs' claims against the Hungarian defendants pertained to "property or rights expropriated during World War II," and that the "exclusive mechanism for resolution of disputes regarding 'the interpretation or execution' of the 1947 [Peace] Treaty was provided in Article 40." *Id.* at 424. Therefore, the court found, "the 1947 [Peace] Treaty constitutes an 'existing agreement' to which the United States was a party prior to the enactment of the FSIA that 'expressly conflicts' with the FSIA, meaning the 1947 [Peace] Treaty controls." *Id.* at 424 (citation omitted). As a result, the court recognized that the Hungarian defendants "are entitled to sovereign immunity except as modified by the 1947 [Peace] Treaty and, consequently, the plaintiffs' claims must be dismissed for lack of subject matter jurisdiction." *Id.*

Moreover, offensive use of a pre-existing agreement to assert claims in U.S. courts against a sovereign state may run counter to the "long recognized . . . presumption against finding treaty-based causes of action, because the decision to create a private right of action is one better left to legislative judgment in the great majority of cases." *McKesson Corp. v. Islamic Republic of Iran*, 672 F.3d 1066, 1080 (D.C. Cir. 2012) (citations omitted); *see also* Walker Decl., Exh. 17 (Andrew Martin, *Private Property, Rights, and Interests in the Paris Peace Treaties*, 24 Brit. Y.B. Int'l L. 273, 289 (1947) (recognizing that Articles 26 and 27 of the Peace Treaty provide the exclusive remedy for taken property claims in Hungary)).

Plaintiffs' claims are subject to the commercial activity exception – not the expropriation exception. It is one or the other, not both.

B. Certain Claims Advanced by Plaintiff de Csepel Are Covered by the 1973 Agreement

Even if one accepts Plaintiffs' interpretation of the scope of the Agreement Between the Government of the United States of America and the Government of the Hungarian People's Republic Regarding the Settlement of Claims, March 6, 1973, 24 U.S.T. 522, T.I.A.S. 7569, 938 U.N.T.S. 167 ("1973 Agreement") it clearly applies to those claims advanced by Plaintiff de Csepel that are premised on a taking that occurred after his grandmother became a citizen in 1952. Two artworks – the Opie and the Cranach – came to Hungary's possession for the first time in 1952 (Cranach) and 1963 (Opie). *See* Decl. I. Tatevosyan, Exhs. 29, 32. Because these works were taken by Hungary after Ms. Weiss de Csepel became a U.S. citizen and before the 1973 Agreement was signed, they are covered by this agreement. In both instances, Hungary's possession of the artworks was not the result of a World War II seizure, but a Communist taking, as claimed by Erzsébet Weiss in her Foreign Claims Settlement Commission ("FCSC") claims and recognized by the FCSC in their awards. Contrary to Plaintiffs' assertion that Hungary misled Ms. Weiss de Csepel about the state ownership of the two works by incorrectly stating they came under state ownership through the 1954 Museum Act, Opp. at 17, Hungary never mentioned the 1954 Museum Act and stated, in accordance with its internal registries, that the two artworks became museum property in the 1960s. Benenati Decl., Exh. 21 at HUNG013096; Tatevosyan Decl., Exh. 33 at HERZOG00000323-24.

C. Plaintiffs Have Not Alleged a Violation of International Law that Permits the Court to Take Jurisdiction over Hungary Under the Expropriation Exception

Plaintiffs' Complaint focuses on a "wartime looting and seizure of the Herzog Collection" upon which Plaintiffs' post-war bailment claims are premised. Opp. at 3; *see also* Compl. ¶¶ 1, 3, 29, 36, 53-62. Plaintiffs now contend that a "breach" of bailments that occurred when the Hungarian court issued its final decision in 2008, regarding only works claimed by

Martha Nierenberg – alleged by Plaintiffs to be a commercial act, Opp. at 39, 42 – is also a “taking in violation of international law” triggering the expropriation exception. Opp. at 50. But a written judicial decision from a court of a European Union member state following submission of briefs and evidence, after many public hearings and appeals, and where both Martha Nierenberg and Hungary were represented by counsel of their choice, cannot be deemed either a “breach” of bailments by Hungary or a “taking in violation of international law.”

Plaintiffs attempt to analogize this case to *Agudas Chasidei Chabad of U.S. v. Russian Federation*, 528 F.3d 934 (D.C. Cir. 2008) where following a Russian court’s decision that found the plaintiff was the lawful owner of property in Russia, the Russian executive branch refused to abide by the Russian court decision. The D.C. Circuit found that Russia’s refusal to recognize and follow its own court decision constituted a taking distinct from the taking which led to the plaintiff’s original loss. *Id.* at 944-45. But, this case is not *Chabad*. Hungary’s judiciary and executive branches operate independently, and Plaintiffs have not provided any evidence that the Hungarian judiciary was acting under the control of the executive branch or that it misapplied Hungarian law in a discriminatory manner in 2008. *See Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 679 (7th Cir. 2012).

Plaintiffs also contend that the seizure and forfeiture of artworks in connection with the criminal smuggling proceedings against Mrs. István Herzog was a taking in violation of international law.⁹ Opp. at 52 n.31. But the seizure was not a taking in violation of law – international or otherwise. The forfeiture followed several years of criminal proceedings after

⁹ Plaintiffs contend that the “impact” of the 1950s criminal proceedings against Mrs. István Herzog and subsequent forfeiture “is less than clear,” Opp. at 51, and that because the forfeiture did not involve *all* of the artworks listed in the Complaint, the court should “decline to dismiss Plaintiffs claims to individual artworks at the motion to dismiss stage when such dismissals would not impact jurisdiction overall,” Opp. at 52. But the impact of the 1950s criminal proceedings and forfeiture *is* clear – all forfeited artworks were taken over as state property.

the war, during which Mrs. Herzog was represented by a lawyer. Moreover, Mrs. Herzog (herself not Jewish) was a Hungarian citizen, prosecuted for violating pre-war laws, not in connection with the Holocaust. Thus, even if Plaintiffs could show that the criminal action was somehow unlawful, it was not a violation of *international law*.¹⁰

D. This Court Cannot Take Jurisdiction Over Hungary Under the Expropriation Exception

Garb, relied on by the appellate panel as support for why Plaintiffs' claims should be analyzed under the commercial activity exception, highlights the foreign policy reasons for why Hungary cannot be a defendant in this action under the expropriation exception. In *Garb*, Jewish claimants, who had owned real property in Poland between 1939 and 1945, sued the Republic of Poland and the Ministry of the Treasury of Poland for the expropriation of that property following the war. The *Garb* court noted that to trigger this exception, a plaintiff must demonstrate each of the following four elements:

- (1) that rights in property are at issue;
- (2) that the property was "taken";
- (3) that the taking was in violation of international law; *and either*
- (4)(a) "that property . . . is present in the United States in connection with a commercial activity carried on in the United States by the foreign state," *or*

¹⁰ Plaintiffs assert that the Defendants "predicated those [criminal] proceedings on a Holocaust-era agreement between István Herzog and his wife that Defendants knew to be invalid." Opp. at 52 n.31. Post World War II Hungarian law allowed Hungarians to challenge war-time agreements like the gift deed between István Herzog and his wife. See Reply Declaration of Zoltán Novak ("Reply Decl. Novak"), Exh. A (Prime Minister Decree No. 200/1945 of the Provisional National Government on the Nullification of the Jewish laws and decrees). The gift deed between István and his wife was not, however, challenged within the statutory deadline and therefore remained in effect. Walker Decl., Exh. 13. Thus, the Hungarian court's order to confiscate artworks given to Mrs. Herzog in the gift deed was supported by non-discriminatory post-war law and involved the Hungarian State taking action against a Hungarian citizen regarding property in Hungary.

(4)(b) “that property . . . is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States[.]”

440 F.3d at 588 (quoting 28 U.S.C. § 1605(a)(3)). The *Garb* panel assumed, for purposes of analysis, that the first two elements were satisfied. *See id.* at 588-589. The court noted that it was not yet a settled question whether a taking by Poland from Polish citizens would be considered a violation of international law and focused its decision, instead, on the fourth element. *See id.* at 589. Because the property claimed – Polish land – was not “present in the United States,” the court found that the first clause of the fourth element could not apply. *Id.*

Turning to the second clause, the panel noted:

In order to satisfy the fourth element of the “takings” exception where, as here, the property at issue is located outside the United States, plaintiffs must show that the property they seek to recover is “owned or operated by an agency or instrumentality of a foreign state.

Id. at 590 (citation omitted). The panel affirmed the lower court’s finding that the court could not take jurisdiction over Poland because Poland “is not an ‘agency of instrumentality’ of a foreign state,” but “the foreign state itself.” *Id.* at 589.

The court went on to analyze whether the Polish Ministry should be considered an “agency or instrumentality” – a separate legal person from Poland – or part of Poland and, thus, not within this second clause. *Id.* at 590-91. In doing so, the court employed the “core functions” analysis set for in the D.C. Circuit’s decision in *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 151 (D.C. Cir. 1994). After examining the background and legislative history of the FSIA, the *Transaero* court concluded that a foreign entity’s status as a “separate legal person” from a foreign state depends on “whether the core functions” of the foreign entity are “predominantly governmental or commercial.” 440 F.3d at 591 (quoting *Transaero*, 30 F.3d at 151); *see also Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 234 (D.C. Cir. 2003). Thus,

the question of whether the court is permitted to exercise jurisdiction over the remaining Hungarian defendants depends on “whether the core functions” of the three museums and university “are predominantly governmental or commercial.” *Transaero*, 30 F.3d at 151.

In *Garb*, the defendants asserted that the Polish Ministry was not an agency or instrumentality, but part of the foreign state itself, because the ministry “exists to act on behalf” of Poland, noting that it “manages property, including land, on behalf of the Polish State” and that it “does not hold property separately from the Polish State.” *Id.* at 595. Based on the full record, the court found that the Polish Ministry was “an integral part of Poland’s political structure” and that its “‘core function . . . is indisputably governmental’ rather than commercial.” *Id.* Here, it is not disputed that the artworks are owned by Hungary, not by the Hungarian entities. *See* Walker Decl., Exh. 14 at 16:10-14 (“Well, the owner is the Hungarian state.”), 17:15-20, 33:3-7, 33:19-24; *id.*, Exh. 15 at 15:5-16:8, 29:2-30:6, 34:2-35:2; 65:11-17. These entities record, house, and display the artworks, as required by Hungarian laws, regulations and procedures. Thus, like the Polish Ministry, they could be considered part of Hungary, not independent “agenc[ies] or instrumentalit[ies].” *Garb*, 440 F.3d at 598.

As the U.S. Solicitor General has counseled in another modern day art restitution claim arising from World War II:

Where a plaintiff alleges that the property at issue “*is present in the United States* in connection with a commercial activity carried on in the United States by the foreign state,” 28 U.S.C. 1605(a)(3), then there is jurisdiction over the foreign state itself based on its own commercial activities within this country. But where a plaintiff alleges that the property is “owned or operated by an agency or instrumentality of the foreign state * * * engaged in a commercial activity in the United States,” then there is jurisdiction over only the foreign agency or instrumentality that has availed itself of American markets, *not the foreign state*.

Brief for the United States as *Amicus Curiae* in *Kingdom of Spain, et al., v. Estate of Claude Cassirer* (10-786) at 15 (emphasis added); *see also id.* at 16 (noting that “other foreign states

should not be subject to the jurisdiction of United States courts based on the possession of expropriated property by their agencies and instrumentalities”);¹¹ Walker Decl., Exh. 16.

Thus, even if the Court found it premature to gauge whether the public Hungarian entities are integral to the Hungarian State or are separate legal entities with commercial core functions, neither clause of Section 1605(a)(3)’s fourth element can apply to permit this court to take jurisdiction over *Hungary* under the expropriation exception (regardless of whether based on World War II or post-war events) where the property claimed is not present in the United States and Hungary is not an “agency or instrumentality,” but a foreign state.¹² *See, e.g., Freund v. Republic of France*, 592 F. Supp. 2d 540, 562 (S.D.N.Y. 2008)).

E. This Court Should Decline to Take Jurisdiction Over the Unexhausted Claims Associated with András and István Herzog

Hungary does not assert in this motion that Plaintiffs’ claims are *barred* by statutory exhaustion or a court-imposed exhaustion requirement. Hungary asserts, instead, that principles of international comity are best served if the Court *declines* to exercise discretion, so that the claimant can pursue a remedy in the court of the country alleged to have committed the wrong.¹³

¹¹ Available at: <http://www.justice.gov/sites/default/files/osg/briefs/2010/01/01/2010-0786.pet.ami.inv.pdf>.

¹² The *Garb* dissent argued that because of the “seriousness of the events alleged” in the plaintiffs’ complaint, the panel should expand the “restrictive theory” of sovereign immunity under the FSIA and look past the majority’s finding that the Polish Ministry is “part and parcel” of Poland to take jurisdiction over the ministry. 440 F.3d at 597 n.24, 598 (dissent). The majority rejected this suggestion, noting that regardless of the nature of the plaintiffs’ claims,

we are bound to apply the doctrine of state sovereign immunity, which itself protects important principles, not the least of which is that, except when a small number of special circumstances prevail, sovereign states are granted immunity from suit in the courts of other sovereign states—a reciprocal norm that significantly insulates the United States from suits in foreign countries.

Id. at 597 n.24.

¹³ The U.S. Court of Appeals for the D.C. Circuit has previously recognized the need for exhaustion, even though it may not be statutorily mandated. *See Agudas Chasidei Chabad of*

Because Hungary is not asking the Court to consider an argument made previously, the prudential law-of-the-case doctrine does not preclude this Court's consideration of Hungary's direct effect argument. *See, e.g., LaShawn A. v. Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996); *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739-40 (D.C. Cir. 1995).

Plaintiffs contend that they should be excused from having to exhaust claims attributable to the Italian Plaintiffs or István Herzog, asserting that "other members of the Herzog family reasonably believed that any further efforts to pursue judicial claims in Hungary in 2008 would have been futile." Opp. 58. After the completion of discovery, there is no evidence from the heirs to support this now unsubstantiated lawyers' claim. All Plaintiffs rely on is the same attorney declaration submitted in the first motion to dismiss briefing in which this Court recognized the 2008 decision under international comity. Further, none of the cited "evidence" suggests that judicial remedies in Hungary are "futile or imaginary," *Fischer*, 777 F.3d at 858. The Italian Plaintiffs and the heirs of István Herzog *chose* not to participate in the Hungarian litigation, electing to withhold evidence in their possession. *See Tatevosyan Decl.*, Exh. 54. But as they have not shown that the Hungarian judicial systems are a "sham," "inadequate," or "unreasonably prolonged," they "should pursue and exhaust their domestic remedies in Hungary." *Abelesz*, 692 F.3d at 681.

IV. Conclusion

For the reasons set forth above, Defendants respectfully request that the Court grant the Renewed Motion to Dismiss and dismiss Plaintiffs' Complaint on the ground that this Court lacks subject matter jurisdiction over Hungary.

U.S., 528 F.3d at 949. The court ultimately excused the claimant's failure to exhaust remedies, but only after confirming that the "only remedy Russia has identified is on its face inadequate," and, therefore, the taking could not be remedied by Russia. *Id.*; *see also Abelesz*, 692 F.3d at 682; *Fischer v. Magyar Államvasutak Zrt.*, 777 F.3d 847, 855 (7th Cir. 2015).

Dated: July 9, 2015

Respectfully submitted

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Economics***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of July, 2015, I caused the foregoing Renewed Motion to Dismiss and Memorandum of Points and Authorities in Support Thereof to be served, via the Court's ECF electronic filing system, upon the following counsel of record in this matter:

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DAVID L. de CSEPEL, <i>et al.</i>,)	
)	
)	
Plaintiffs,)	
)	
vs.)	
)	No. 1:10-cv-01261(ESH)
REPUBLIC OF HUNGARY, <i>et al.</i>,)	
)	
)	
Defendants.)	
)	
)	
)	

REPLY DECLARATION OF ZOLTÁN NOVÁK

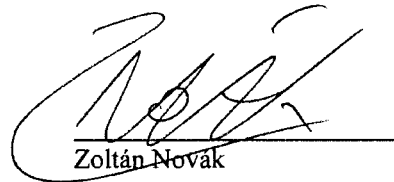
Zoltán Novák states as follows:

1. I am over the age of eighteen and am otherwise competent to make this Declaration. I make this Declaration based on my personal knowledge and in support of the Reply in support of the Renewed Motion to Dismiss by the Republic of Hungary, The Hungarian National Gallery, The Museum of Fine Arts, The Museum of Applied Arts, and The Budapest University of Technology and Economics (collectively “Hungary”).
2. I am an associate attorney at TaylorWessing e|n|w|c Attorneys at Law, an international law firm with twenty-two offices in thirteen countries. I am based in the Budapest office of TaylorWessing e|n|w|c and, as a part of my current duties and responsibilities, I assist in the representation of Hungary in the above-captioned matter.
3. I have been practicing law in the Republic of Hungary for the past year as a bar qualified attorney and 4 years before that as a trainee attorney.
4. As an attorney practicing in the Republic of Hungary, I am familiar with Hungary’s various sources of legal authority, both judicial and legislative.

5. The following is a copy of a document which I obtained from electronic sources which are routinely recognized by the Hungarian judicial system in the resolution of legal disputes within the Republic of Hungary:

- a. Attached hereto as Exhibit A is a true and correct copy of Prime Minister Decree No. 200/1945 of the Provisional National Government on the Nullification of the Jewish laws and decrees. I obtained this document from the electronic database "Jogtár". „Jogtár” is published by a private company, Wolters Kluwer Kft. (part of the Wolters Kluwer Group), and is routinely used by law firms and the courts in Hungary in the resolution of legal disputes.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Budapest, Hungary on the 9th day of July, 2015.



Zoltán Novák

EXHIBIT A

Lezárva: 2014. augusztus 1. 14:54
 Hatály: 1945.III.17. - 2001.X.21.
 Joganyagok - 200/1945. (III. 17.) ME rendelet - a zsidótörvények és rendeletek

Jogtár
 Bánki és Társai Ügyvédi Iroda
 1. oldal

200/1945. (III. 17.) ME rendelet

a zsidótörvények és rendeletek hatályon kívül helyezéséről

Az Ideiglenes Nemzetgyűlés által 1944. évi december hó 22. napján adott felhatalmazás alapján az Ideiglenes Nemzeti Kormány a következőket rendeli:

1. § Az összes jogszabályokat, amelyek a zsidókra vonatkozó hátrányos megkülönböztetéseket tartalmaznak, így különösen az 1938. évi XV. tc.-t, az 1939. évi IV. tc.-t, az 1940. évi IV. tc. 12., 40., 41. §-ait, az 1940. évi XXXIX. tc. 4. § (1) bekezdését, az 1941. évi XV. tc. 9., 10., 14., 15., 16. §-ait, az 1942. évi VIII. tc.-t hatályon kívül helyezi és alkalmazásukat megtiltja.

Mindazokat a törvényeket és rendeleteket, amelyek az 1. bekezdésben felsorolt törvényeknek az életbeléptetését elrendelték, végrehajtásuk és alkalmazásuk módját szabályozták, módosították, vagy kiegészítették, teljes egészükben hatályon kívül helyezi. Hatályon kívül helyezi a más tárgyban kibocsátott törvényeknek és rendeleteknek ama rendelkezéseit is, amelyek a polgári egyenjogúság elvét sértik.

2. § Megállapítja az Ideiglenes Nemzeti Kormány, hogy ezek a törvények és rendelkezések a magyar nép alkotmányos érzületével ellentétben állanak és a polgárok közötti teljes egyenjogúságot ünnepélyesen újból kinyilvánítja.

3. § Az 1. §-ban felsorolt törvények és rendeletek alapján megindult büntető ügyeket meg kell szüntetni, aki az ilyen büntető ügyből kifolyólag bírói ítélet hatálya alatt áll, haladéktalanul szabadlábra helyezendő, illetve vele szemben a kiszabott és be nem hajtott pénzbüntetés törlendő. A felsorolt törvények és rendeletek megszegése miatt jogerősen elítélteket büntetett előéletűeknek tekinteni nem lehet és így kiszabott büntetésüket az Országos Bűnügyi Nyilvántartó Hivatal nyilvántartásából törölni kell.

A kormány hatályon kívül helyezi a 2823/1938. ME rendeletet és megszünteti az e rendelettel létesített Értelmiségi Munkanélküliségi ügyek Kormánybiztosságát.

Közalkalmazottak visszavétele

4. § Azokat a közalkalmazottakat, akiket az 1. §-ban felsorolt törvények és rendeletek alapján, vagy általában zsidó származásuk, vagy házastársuk zsidó származása miatt elbocsátottak, nyugdíjaztak, vagy végelbánás alá vontak, 1945. évi március hó 31. napjáig előterjesztett kérelmük alapján állásukba vissza kell helyezni.

Az 1945. évi február hó 1. napja után Magyarországra visszatérő ilyen közalkalmazottak visszatérésüktől számított hatvan napon belül kérhetik állásukba való visszahelyezésüket.

5. § A visszavett közalkalmazottat lehetőleg abba az állásba kell visszahelyezni, amelyet elbocsátása (nyugdíjazása, végelbánása) előtt betöltött. Amennyiben az a köz érdekének sérelmébe ütköznék, úgy más, a réginél nem alacsonyabb rendű munkakörben kell foglalkoztatni.

Az elbocsátás és visszavétel közötti időt a visszavett közalkalmazott előléptetése és nyugdíjjogosultsága szempontjából teljes egészében be kell számítani. A végkielégítés címén felvett összegeket azonban netán újabb elbocsátása esetén fizetendő végkielégítési összegből le kell vonni.

6. § Állásába nem helyezhető vissza az a közalkalmazott,

- a) aki kérelmét a 4. §-ban írt időben elő nem terjeszti, a késedelmének elfogadható okát nem adja,
- b) aki a 4. § szerint előterjesztett kérelem benyújtásának évében, vagy az azt követő évben életkora alapján nyugdíjazandó volna,
- c) aki vagyon, vagy szemérem elleni bűncselekmény miatt elítélte.

A b) pontban említett közalkalmazott nyugdíjba helyezendő.

7. § A visszahelyezés iránti kérvényt annál a hivatali eljárásnál kell benyújtani, akinek a visszahelyezést kérő közvetlenül alá volt rendelve, vagy a tartózkodási helyéhez legközelebb eső hasonló hivatali eljárónál. Kérelmezőnek a kérvényben a 15/1945. ME rendelet 4. §-ában foglaltakra is részletesen nyilatkozni kell és elő kell adnia, hogy állásának elvesztése után milyen foglalkozást folytatott. A kérvényhez erkölcsi bizonyítványt kell mellékelni.

8. § A visszavételt kérő igazolási eljárás alá kell vonni. Az eljárás a 15/1945. ME rendelet 12. §-ában foglaltak szerint történik.

A 77/1945. ME rendelet 4. §-a alapján feltételes igazolásnak van helye a visszavett közalkalmazottal szemben akkor,

ha sürgős szükség indokolja állásába való nyombani visszahelyezését és

ha kérelméhez erkölcsi bizonyítványt mellékelni nem tudott, de büntetőjogi felelőssége tudatában kijelenti, hogy a 6. § c) pontjában akadály vele szemben nem forog fenn. Az erkölcsi bizonyítvány utólagos bemutatásával az igazolás feltétlennek tekintendő.

Magánjogi ügyletek megtámadása

9. § Az az uzsorás szerződés, kizsákmányoló ügylet, egyoldalú fizetés- vagy kötelezettségvállalás, amelyben a kötelezett fél az 1. §-ban felsorolt jogszabályok hatálya alá tartozott - megtámadható, s a teljesített szolgáltatások visszakövetelhetők. Annak elbírálásánál, hogy a szerződés (kötelezettség vállalás, szolgáltatás) uzsorás vagy kizsákmányoló, az 1932. évi VI. tc. irányadó azzal, hogy jelen rendelet 1. §-ában foglalt jogszabályok hatálya alá tartozás önmagában elegendő a szorult helyzet bizonyítására.

Az 1932. évi VI. tc. 9. §-ában foglalt elévülés a rendelet hatálybalépésének napjától veszi kezdetét. Ha a megtámadásra jogosított nem tartózkodik az ország területén, az elévülés hazatérése napján veszi kezdetét. Amennyiben a kizsákmányoló fél nem tartózkodik az ország területén, vagy ismeretlen helyen van, úgy az elévülés csak a 45030/1945. IM rendelet hatályon kívül helyezésének napjával kezdődik.

1950. évi január hó 1. napja után a kizsákmányolt fél jogait per útján többé nem érvényesítheti.

Lezárva: 2014. augusztus 1. 14:54

Hatály: 1945.III.17. - 2001.X.21.

Joganyagok - 200/1945. (III. 17.) ME rendelet - a zsidótörvények és rendeletek

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Vegyes és büntető rendelkezések

10. § Budapest székesfővárosnak a polgári közigazgatásba való bevonásától számított harminc napon belül rendezni a kormány a zsidó vagyonok kérdését.

11. § Azt a közalkalmazottat, aki közhivatali eljárás során az 1. §-ban felsorolt valamely törvényt vagy rendeletet alkalmaz, fegyelmi elbánás alá kell vonni.

12. § Ez a rendelet kihirdetése napján lép hatályba.

Prime Minister's Decree No. 200/1945. (III. 17.)

on the nullification of the Jewish laws and decrees

In exercise of the powers conferred by the Provisional National Assembly on December 22, 1944, the Provisional National Government hereby decrees as follows:

Art. 1 All of the laws and regulations that call for the negative discrimination of Jews, and thus especially Act XV of 1938, Act IV of 1939, Articles 12, 40 and 41 of Act IV of 1940, Article 4, paragraph (1) of Act XXXIX of 1940, Articles 9, 10, 14, 15 and 16 of Act XV of 1941, Act VIII of 1942, shall be nullified and their application shall be prohibited.

All the laws and decrees that ordered the enactment of the laws listed in paragraph 1, regulated the manner of their enforcement and application, amended or supplemented them, shall be nullified in their entirety. Such provisions of laws and decrees, issued in other matters, as breach the principle of civil equality shall also be nullified.

Art. 2 The Provisional National Government establishes that such laws and provisions run counter to the constitutional sentiment of the Hungarian people, and therefore it hereby ceremoniously proclaims the reinstatement of full equality between citizens.

Art. 3 Criminal cases launched on the basis of the laws and decrees listed in Article 1 must be terminated, and anyone who is currently subject to a court judgment as the result of such criminal case must be released without delay, and/or any as yet uncollected fine imposed on him/her must be cancelled. Persons condemned due to a breach of the listed laws and decrees may not be regarded as having a criminal record, and the punishments thus imposed must be deleted from the registry of the Office of Criminal Records.

The government hereby nullifies Prime Minister's Decree No. 2823/1938, and dissolves the Office of the Government Commissioner for White Collar Unemployment.

Reinstatement of civil servants

Art. 4 Civil servants who were dismissed, pensioned or subjected to early retirement on the basis of the laws and decrees listed in Article 1, or in general due to their Jewish ethnicity or the Jewish ethnicity of their spouse, must be reinstated on the basis of their application to be filed by March 31, 1945.

Such civil servants who return to Hungary after February 1, 1945 may request reinstatement in their former positions within sixty days from their return.

Art. 5 Reinstated civil servants must, where possible, be reinstated to the position from which they were dismissed (pensioned, dismissed through early retirement). If this would result in a breach of the public interest, they must be employed in a different job that is not of a lower status than the old one.

The time elapsed between the dismissal and reinstatement must be taken into account, in its entirety, for the purposes of promotion and pension entitlement. The amount received as a redundancy payment, however, must be deducted from the redundancy payment made in the event of a possible subsequent dismissal.

Art. 6 A civil servant may not be reinstated who

- a) does not file his/her application in the time specified in Article 4, and gives no acceptable reason for the delay,
- b) in the year of submission of the application filed in accordance with Article 4, or in the following year, would be pensionable on the basis of age,
- c) has been condemned for a crime against property or decency.

A civil servant mentioned in point b) shall be pensioned.

Art. 7 The request for reinstatement must be submitted to the prefecture to which the person requesting the reinstatement was directly subordinated, or to the prefecture closest to his/her place of abode. In the application, the applicant is also required to make a detailed statement in respect of Article 4 of Prime Minister's Decree No. 15/1945, and must describe what occupation he/she pursued after losing his/her job. A certificate of good moral standing must be enclosed with the application.

Art. 8 The person requesting reinstatement must be made the subject of a screening procedure. The procedure takes place in accordance with Article 12 of Prime Minister's Decree No. 15/1945.

On the basis of Article 4 of Prime Minister's Decree No. 77/1945, conditional certification is possible with respect to the reinstated civil servant if

his/her immediate reinstatement is warranted by an urgent need, and

if he/she was unable to attach a certificate of good standing to his/her application, but on penalty of perjury he/she declares the obstacle described in Article 6, point c) does not apply with respect to him/her. Upon the retrospective presentation of the certificate of good moral standing, the certification shall be regarded as unconditional.

Contesting private law transactions

Art. 9 A usury contract, exploitative transaction, non-reciprocal payment or commitment in which the obliged party came under the effect of the laws and regulations listed in Article 1 may be contested and a refund of the services performed may be demanded. When assessing whether the contract (commitment, service) constitutes usury or exploitation, Act VI of 1932 shall apply with the proviso that coming under the effect of the laws and regulations set forth in Article 1 of this decree is in itself sufficient proof of coercion.

The limitation period specified in Article 9 of Act VI of 1932 shall begin on the day of entry into force of the decree. If the person authorized to contest the transaction does not reside within the country's territory, the limitation period shall begin on the day of his/her return. If the exploiting party is not within the territory of Hungary, or if his/her whereabouts are unknown, the limitation period shall only begin on the day of annulment of Minister of Justice Decree No. 45030/1945.

After January 1, 1950, the exploited party may not enforce his/her rights by way of a lawsuit.

Closed: August 1, 2014 2:54 p.m.
Effective: March 17, 1945 – Oct. 21, 2001
Legislation – Prime Minister's Decree No. 200/1945. (III. 17.) on the nullification...

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Page 2

Miscellaneous and penal provisions

Art. 10 The government shall resolve the issue of Jewish assets within thirty days from the incorporation of the capital city of Budapest into civil public administration.

Art. 11 A civil servant who, in the course of official proceedings, applies any law or decree listed in Article 1, shall be subjected to a disciplinary proceeding.

Art. 12 This decree shall enter into force on the day of its promulgation.



CERTIFICATE

The attached translation has been prepared by Impact Language Solutions Kft.
The translation reflects the text, where legible, of the appended source
Hungarian document in all respects.

July 7, 2015

A handwritten signature in dark ink, appearing to read "Adiel Stephenson". The signature is written over a circular, faint background stamp that contains some illegible text. Below the signature is a horizontal dotted line.

Adiel Stephenson
Managing Director

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DAVID L. de CSEPEL, *et al.*,

Plaintiffs,

vs.

REPUBLIC OF HUNGARY, *et al.*,

Defendants.

No. 1:10-cv-01261(ESH)

DECLARATION OF JESSICA N. WALKER

I, Jessica N. Walker, declare as follows:

1. I am over the age of eighteen and am otherwise competent to make this Declaration. I am an attorney with the law firm Nixon Peabody LLP, attorneys of record for defendants the Republic of Hungary, The Hungarian National Gallery, The Museum of Fine Arts, The Museum of Applied Arts, and The Budapest University of Technology and Economics (collectively “Hungary”). I make this Declaration based on my personal knowledge and in support of Hungary’s Reply in support of its Renewed Motion to Dismiss filed concurrently herewith.

2. Attached hereto as Exhibit 1 is a true and correct copy of an updated chart created by counsel for Hungary summarizing information in the Complaint and other produced documents. The chart is compiled from information in the following documents:

- a. Plaintiffs' Complaint;
- b. Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories No. 7 at 11 (Exhibit 5 to this declaration, described below);

- c. the Nierenberg Complaint (Dkt. No. 15-3);
- d. the 2008 Decision in Nierenberg Litigation (Dkt. No. 15-4);
- e. Exhibits 2 through 4 to the Declaration of Irene Tatevosyan;
- f. Exhibits 65 through 70 to the Declaration of Irene Tatevosyan;
- g. Plaintiffs' Amended Response to Defendants' Interrogatory No. 7 (Exhibit one to the Declaration of Alycia Regan Bebenati).

3. Attached hereto as Exhibit 2 is a true and correct copy of an updated chart created by counsel for Hungary summarizing information in the Complaint and other produced documents. The chart is compiled from information in the following documents:

- a. Plaintiffs' Complaint;
- b. Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories No. 7 at 11 (Exhibit 5 to the Declaration of Irene Tatevosyan);
- c. Exhibits 2 through 4 to the Declaration of Irene Tatevosyan;
- d. Exhibits 6 through 16 to the Declaration of Irene Tatevosyan
- e. Exhibits 3 to 4 to this Declaration, described below.

4. Attached hereto as Exhibit 3 is a true and correct copy of documents produced by Hungary with bates numbers HUNG015297-309.

5. Attached hereto as Exhibit 4 is a true and correct copy of documents produced by Hungary with bates numbers HUNG012420-438.

6. Attached hereto as Exhibit 5 is a true and correct copy of documents produced by Plaintiffs with bates numbers HERZOG00000372-376.

7. Attached hereto as Exhibit 6 is a true and correct copy of documents produced by Hungary with bates numbers HUNG010771-777.

8. Attached hereto as Exhibit 7 is a true and correct copy of documents produced by Hungary with bates numbers HUNG010787-791.

9. Attached hereto as Exhibit 8 is a true and correct copy of documents produced by Hungary with bates numbers HUNG011602-612.

10. Attached hereto as Exhibit 9 is a true and correct copy of documents produced by Hungary with bates numbers HUNG012504-516.

11. Attached hereto as Exhibit 10 is a true and correct copy of documents produced by Plaintiffs with bates numbers HERZOG00000383.

12. Attached hereto as Exhibit 11 is a true and correct copy of documents produced by Hungary with bates numbers HUNG020289-317.

13. Attached hereto as Exhibit 12 is a true and correct copy of excerpts from the 30(b)(6) deposition of Mária Mihály, dated April 16, 2015. This exhibit contains portions of the deposition testimony quoted or referenced in the Reply and not previously included in either the Stauber Declaration or the Benenati Declaration, which both contained other excerpts from this deposition.

14. Attached hereto as Exhibit 13 is a true and correct copy of documents produced by Hungary with bates numbers HUNG011310-312.

15. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from the 30(b)(6) deposition of Dr. Zoltán Molnar, dated February 3, 2015.

16. Attached hereto as Exhibit 15 is a true and correct copy of excerpts from the 30(b)(6) deposition of Dr. Balázs Sámuel, dated April 15, 2015. This exhibit contains portions of the deposition testimony quoted or referenced in the Reply and not previously included in either the Stauber Declaration or the Benenati Declaration, which both contained other excerpts from this deposition.

17. Attached hereto as Exhibit 16 is a true and correct copy of the August 12, 2011 Order Dismissing the Kingdom of Spain (Docket No. 119) from *Cassirer v. Kingdom of Spain and Thyssen-Bornemisza Collection Foundation*, Case No. CV 05-3459 in the Central District of California.

18. Attached hereto as Exhibit 17 is a true and correct copy of the following law review article: Andrew Martin, *Private Property, Rights, and Interests in the Paris Peace Treaties*, 24 Brit. Y.B. Int'l L. 273 (1947).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Los Angeles, California, on the 9th day of July, 2015.

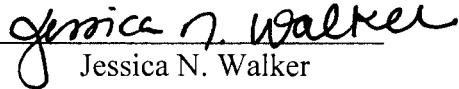

Jessica N. Walker

EXHIBIT 1

(Updated) Herzog Siblings' Inheritance of Artworks

24 Artworks Inherited by András Herzog (Hungarian citizen)¹			
Compl. Para. No.	Artwork	Inventory No.	Nierenberg litigation
16(iii)	Camille Corot, Lady with a Marguerite (c. 1870), oil on canvas, 78 x 58 cm. Museum of Fine Arts, Budapest.	501 B	Referenced in Complaint
16(vii)	El Greco, The Apostle Saint Andrew (around 1610-14), oil on canvas, 70 x 53.5 cm, signed with the artist's Greek cursive initials on the lower shaft of the cross: "d.t." Museum of Fine Arts, Budapest.	51.800	Referenced in Complaint
16(ix)	El Greco, The Agony in the Garden (around 1610-14), oil on canvas, 170 x 112.5 cm, signed bottom right in Greek cursive letters: "doménikos theotokópoulos époiei." Museum of Fine Arts, Budapest.	51.2827	Referenced in Complaint
16(xii)	Polidoro da Lanciano, Christ and the Adulteress (c. 1550), oil on canvas, 163 x 202 cm, inscription to the left, on a piece of paper in the hand of one of the donors: "FRANC/ISCI/FILIUS BERNARDUS." Museum of Fine Arts, Budapest.	51.808	Referenced in Complaint
16(xiv)	Eugenio Lucas Padilla, The Revolution (c. 1869), oil on canvas, 59.5 x 79 cm. Museum of Fine Arts, Budapest.	480 B	Referenced in Complaint
16(xv)	Giampietrino, Christ Carrying the Cross (around 1520-30), oil on panel, 62 x 49 cm. Museum of Fine Arts, Budapest.	58.2	Referenced in Complaint
16(xvi)	Bernardino Licinio Pordenone, Portrait of a Lady (c. 1522), oil on panel, 83.5 x 71.5 cm. Museum of Fine Arts, Budapest.	51.802	Referenced in Complaint
16(xxiv)	Sculptor of Schwarzwald, Saint Agnes (c. 1430), painted black poplar, 77 x 22 x 17 cm. Museum of Fine Arts, Budapest.	L.4044	Referenced in Complaint
16(xxv)	Sculptor of Sixteenth Century, Saint Catherine, painted and gilded wood sculpture, 105 x 53 x 30 cm. Museum of Fine Arts, Budapest.	L.4041	Referenced in Complaint
16(xxvi)	Sculptor of Sixteenth Century, Circle of Ludwig Jupan von Marburg (documented between 1486 and 1538), Saint	L.4046	Referenced in Complaint

¹ The information in this chart is drawn from: (1) Plaintiffs' Complaint (Dkt. No. 1); (2) Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories No. 7 at 11 (Tatevosyan Decl. Exh. 5); (3) the Nierenberg Complaint (Dkt. No. 15-3); (4) the 2008 Decision in Nierenberg Litigation (Dkt. No. 15-4); and (5) Plaintiffs' Amended Response to Defendants' Interrogatory No. 7 (Benenati Decl. Exh. 1). The highlighted artworks are listed in the museums' "Core" Inventory. The remaining artworks (without highlight) are listed in the museums' "deposit" inventory. See Tatevosyan Decl., Exhs. 2- 4. Per Plaintiffs' Amended Response to Defendants' Interrogatory No. 7 (Benenati Decl. Exh. 1), the El Greco Espolio, Compl. ¶ 16(viii), has been moved from András Herzog to István Herzog. This marks the only change from Tatevosyan Decl., Exh. 1.

(Updated) Herzog Siblings' Inheritance of Artworks

	Barbara, limewood, 129 x 53 x 30 cm. Museum of Fine Arts, Budapest.		
16(xxvii)	Sculptor from circa 1400, The Virgin of the Annunciation, limestone, 88 x 34 x 22 cm.	L.4050	Referenced in Complaint
16(xxviii)	Sculptor from circa 1500, Workshop of Erasmus Grasser, A Carved Bust of a Prophet, limewood, 58 x 39 x 15 cm.	L.4045	Referenced in Complaint
16(xxvix)	Sculptor from Florence (Niccoló Pizzolo?), The Virgin Mary with Child (c. 1540), painted and gilded wood relief, 88 x 57 cm.	L.4047	Referenced in Complaint
16(xxx)	Sculpture from Fourteenth Century (English sculptor?), The Nativity, alabaster, 41.5 x 24 cm.	L.4042	Referenced in Complaint
16(xxxi)	Attic votive banquet relief (4th century B.C.) Carved marble relief. Dimension: 36.9 x 50.4 cm. Museum of Fine Arts, Budapest.	50.960	
16(xxxii)	Ancient Gold Jewels and Coins (jewels, coins, cameos, intaglios, etc.) Museum of Fine Arts, Budapest.	55.156 to 55.176, 55.197.1-2 to 55.212, 55.214, 55.216 to 55.219	Referenced in Complaint
16(xxxvi)			
17(i)	József Borsos, Portrait of the Architect Mátyás Zitterbarth (1851), oil on canvas, 134 x 113.5 cm, signed and dated lower right. Hungarian National Gallery	50.517	Referenced in Complaint
18(i)	"Meuron á Paris" Musical Clock, lower portion of clock (end of the 18th century), amboina-wood wainscoting based on pinewood, marquetry made from different woods, brazen embossing, fragments of the musical mechanism. The Museum of Applied Arts.	62.272	
18(ii)	Jewelry Bowl (17th century, Transylvanian goldsmith), silver, parcel-gilt (the interior) cast with two handles, 14.8 x 16.4 cm. Height: 4.1 cm. The Museum of Applied Arts.	54.1637	
19(i)	Károly Ferenczy, Landscape with a Fenced Enclosure (Houses in Fernezely) (1912), oil on canvas, 95 x 115 cm. Budapest University of Technology and Economy.	No number	Referenced in Complaint

The following artworks, attributable to András Herzog, cannot be identified as being in Defendants' possession, and thus are not in either the "core" inventory or "deposit" inventories:

Compl. Para. No.	Artwork
16(xxxiii)	Four Ancient Egyptian Sculptures, Statues and Steles
16(xxxv)	Four ancient silver coins
17(v)	Lajos Deak Ebner, Fair in Szolnok City

(Updated) Herzog Siblings' Inheritance of Artworks

8 Artworks Inherited by István Herzog (Hungarian citizen)²			
Compl. Para. No.	Artwork	Inventory No.	Nierenberg litigation
16(v)	Gustave Courbet, <i>The Spring</i> (c. 1863), oil on canvas, 65.5 x 81 cm. Museum of Fine Arts, Budapest.	458 B	Referenced in Complaint
16(viii)	El Greco, <i>The Disrobing of Christ</i> ("El Espolio") around 1579-80), oil on canvas, 129 x 160 cm. Museum of Fine Arts, Budapest.	50.747	Referenced in Complaint
16(xvii)	Augustin Theodule Ribot, <i>Still Life</i> (c. 1875), oil on canvas, 60 x 74.5 cm. Museum of Fine Arts, Budapest.	457 B	Referenced in Complaint
16(xviii)	Giovanni Santi, <i>Misericordia Domini, The Man of Sorrows</i> (c. 1480), oil on canvas, transferred from panel, 66.5 x 54.5 cm. ³ Museum of Fine Arts, Budapest.	51.799	Referenced in Complaint
16(xx)	Alvise Vivarini (Giovanni Battista da Udine), <i>Madonna and Child with Saints John the Baptist and Jerome</i> (c. 1496), oil on canvas, 83.3 x 73.3 cm, traces of original signature and date. Museum of Fine Arts, Budapest.	50.748	Referenced in Complaint
16(xxi)	Francisco de Zurbarán, <i>Saint Andrew</i> (around 1635-40), oil on canvas, 146 x 61 cm. Museum of Fine Arts, Budapest.	50.749	Referenced in Complaint
16(xxii)	Jacopo della Quercia, <i>Sapientia</i> (15th century), plaster cast or stucco with traces of painting, fixed on wooden base and back, 43.5 x 37.5 x 14 cm. Museum of Fine Arts, Budapest.	L.4037	Referenced in Complaint

The following artwork, attributable to István Herzog, cannot be identified as being in Defendants' possession, and thus are not in either the "core" inventory or "deposit" inventories:

Compl. Para. No.	Artwork
16(xxiii)	The Virgin and Child, Italian, 15 th century, terracotta, 70 cm high.

² The information in this chart is drawn from: (1) Plaintiffs' Complaint (Dkt. No. 1); (2) Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories No. 7 at 11 (Tatevosyan Decl. Exh. 5); (3) the Nierenberg Complaint (Dkt. No. 15-3); (4) the 2008 Decision in Nierenberg Litigation (Dkt. No. 15-4); and (5) Plaintiffs' Amended Response to Defendants' Interrogatory No. 7 (Benenati Decl. Exh. 1). The highlighted artworks are listed in the museums' "Core" Inventory. The remaining artworks (without highlight) are listed in the museums' "deposit" inventory. See Tatevosyan Decl., Exh. 2-4. Per Plaintiffs' Amended Response to Defendants' Interrogatory No. 7 (Benenati Decl. Exh. 1), the El Greco *Espolio*, Compl. ¶ 16(viii), has been moved from András Herzog to István Herzog. This marks the only change from Tatevosyan Decl., Exh. 1.

³ Identified in the Complaint as "The Dead Christ with Two Angels, also known as Christ the Dolorous, Christ with a Fly."

(Updated) Herzog Siblings' Inheritance of Artworks

12 Artworks Inherited by Erzsébet Weiss de Csepel (Hungarian citizen, U.S. citizen in 1952)⁴			
Compl. Para. No.	Artwork	Inventory No.	Nierenberg litigation
16(i)	Barthel Bruyn, Portrait of Petrus von Clapis (c. 1530), tempera on panel, 37 x 26 cm (painted surface); original frame 41 x 32.5 cm. Museum of Fine Arts, Budapest.	50.754	Ownership Resolved
16(ii)	Alonso Cano, Infante Don Baltasar Carlos (around 1634-35), oil on canvas, 144 x 109 cm. Museum of Fine Arts, Budapest.	51.2828	Ownership Resolved
16(iv)	Gustave Courbet, Le Château de Blonay (c. 1875), oil on canvas, 50 x 60 cm. Museum of Fine Arts, Budapest.	59.534	Ownership Resolved
16(vi)	Lucas Cranach, The Annunciation of Saint Joachim (c. 1518), oil on panel, 60.5 x 51 cm, signed with Cranach's device (the winged serpent) and dated 1518. Museum of Fine Arts, Budapest.	62.3	Ownership Resolved
16(x)	Pier Francesco Fiorentino, The Madonna and Child with Saint Catherine of Alexandria and Angels (around 1450-99), tempera and oil on panel, transferred to canvas, 99 x 60.5 cm. Museum of Fine Arts, Budapest.	50.752	Ownership Resolved
16(xi)	El Greco, The Holy Family with Saint Anne (around 1610-20), oil on canvas, 138 x 103.5 cm. Museum of Fine Arts, Budapest.	50.755	Ownership Resolved
16(xiii)	John Opie, Portrait of a Lady (c. 1798), oil on canvas, 73.4 x 63 cm. Museum of Fine Arts, Budapest.	63.15	Ownership Resolved
16(xix)	Copy after Sir Anthony van Dyck, Portrait of a Lady (Margaret of Lorraine 1615-1672) (17th century), oil on canvas, 1117.5 x 87.5 cm. Museum of Fine Arts, Budapest.	50.750	Ownership Resolved
16(xxxiv)	József Borsos, Girls with Garlands of Flowers (The Three Graces) (1850s), oil on canvas, 168 x 138 cm, oval, no signature. Hungarian National Gallery.	75.25T	Hungary rejected claim in 2002. Tatevosyan Decl., Exhs. 65-70
17(ii)	Károly Brocky, Sleeping Bacchante (after 1850), oil on canvas, diameter 46 cm. Hungarian National Gallery.	50.525	Ownership Resolved

⁴ The information in this chart is drawn from: (1) Plaintiffs' Complaint (Dkt. No. 1); (2) Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories No. 7 at 11 (Tatevosyan Decl. Exh. 5); (3) the Nierenberg Complaint (Dkt. No. 15-3); (4) the 2008 Decision in Nierenberg Litigation (Dkt. No. 15-4); and (5) Plaintiffs' Amended Response to Defendants' Interrogatory No. 7 (Benenati Decl. Exh. 1). The highlighted artworks are listed in the museums' "Core" Inventory. The remaining artworks (without highlight) are listed in the museums' "deposit" inventory. Tatevosyan Decl., Exhs. 2-4. Per Plaintiffs' Amended Response to Defendants' Interrogatory No. 7 (Benenati Decl. Exh. 1), the El Greco Espolio, Compl. ¶ 16(viii), has been moved from András Herzog to István Herzog. This marks the only change from Tatevosyan Decl., Exh. 1.

(Updated) Herzog Siblings' Inheritance of Artworks

17(iii)	Mihály Munkácsy, The Afternoon Visit (La Visite) (1879), oil on canvas, 86 x 115 cm, signed. Hungarian National Gallery.	L.U. 64.2	Ownership Resolved
17(iv)	Mihály Munkácsy, In the Studio (1876), oil on panel, 50 x 60.8 cm. Hungarian National Gallery.	L.U. 67.9	Ownership Resolved

EXHIBIT 2

(Updated) 19 Artworks Legally and Physically Returned to Herzog Siblings and Their Representatives Following World War II

6 Legally and Physically Returned Artworks Inherited by András Herzog (Hungarian citizen)¹		
Compl. Para. No.	Artwork	Returned
16(xv)	Giampietrino, Christ Carrying the Cross (around 1520-30), oil on panel, 62 x 49 cm. Museum of Fine Arts, Budapest.	Returned in 1946 . Tatevosyan Decl., Exh. 6 at HUNG015127; Exh. 10 at HUNG011341.
		In May 1950 , handed over to the museums' possession in connection with the Kiss smuggling action by Richárd Csátáry. <i>Id.</i> , Exh. 23 at HUNG012663.
16(xxvii)	Sculptor from circa 1400, The Virgin of the Annunciation, limestone, 88 x 34 x 22 cm.	Returned in 1947 . <i>Id.</i> , Exh. 10 at HUNG011341; Exh. 13 at HUNG011973.
		Forfeited in October 1950 in connection with the Kiss smuggling action. Benenati Decl., Exh. 17 at HUNG013202.
17(i)	József Borsos, Portrait of the Architect Mátyás Zitterbarth (1851), oil on canvas, 134 x 113.5 cm, signed and dated lower right. Hungarian National Gallery	Returned in 1947 . Tatevosyan Decl., Exh. 10 at HUNG011341.
		Seized by the Financial Police in connection with the Kiss smuggling action prior to May 1950 . <i>Id.</i> , Exh. 23 at HUNG012663.
19(i)	Károly Ferenczy, Landscape with a Fenced Enclosure (Houses in Fernezely) (1912), oil on canvas, 95 x 115 cm. Budapest University of Technology and Economy.	Returned in 1947 . <i>Id.</i> , Exh. 10 at HUNG011341.
		Sold in 1947 by Mr. Greiner through Professor Elemér Varju. <i>Id.</i> , Exh. 10 at HUNG011341.
		Put up for auction as property of István Balogh in April 1961 . <i>Id.</i> , Exh. 30 at HUNG017240. Sold at auction to the Ministry of Education, Department of Visual Arts by July 1961 . <i>Id.</i> , Exh. 31 at HUNG017253.

The following artworks, attributable to András Herzog, cannot be identified as being in Defendants' possession, and thus are not in either the "core" inventory or "deposit" inventories:

Compl. Para. No.	Artwork	Returned
16(xxxiii)	Four Ancient Egyptian Sculptures, Statues and Steles	Returned in 1947 Tatevosyan Decl., Exh. 14 at HUNG011072 (two pieces returned, a stone head and a stele).
17(v)	Lajos Deak Ebner, Fair in Szolnok City	Returned in 1947 . <i>Id.</i> , Exh. 15 at HUNG011036.

¹ The information in this chart is drawn from: (1) Plaintiffs' Complaint (Dkt. No. 1); (2) Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories No. 7 at 11 (Tatevosyan Decl. Exh. 5); (3) Plaintiffs' Amended Response to Defendants' Interrogatory No. 7 (Benenati Decl. Exh. 1) and (4) the Exhibits to the Tatevosyan Declaration, Benenati Declaration, and Walker Declaration referenced in each row. The highlighted artworks are listed in the museums' "Core" Inventory. The remaining artworks (without highlight) are listed in the museums' "deposit" inventory. Tatevosyan Decl., Exh. 2-4.

(Updated) 19 Artworks Legally and Physically Returned to Herzog Siblings and Their Representatives Following World War II

7 Legally and Physically Returned Artworks Inherited by István Herzog (Hungarian citizen) – Additional Details About Returns And Subsequent Events²		
Compl. Para. No.	Artwork	Returned
16(v)	Gustave Courbet, <i>The Spring</i> (c. 1863), oil on canvas, 65.5 x 81 cm. Museum of Fine Arts, Budapest.	Returned in 1946 . Tatevosyan Decl., Exh. 7 at HUNG010688. Seized by police in connection with the Kiss smuggling action and sent to the museum by the Eisler company, a freight forwarding company, as a deposit of the Financial Police on October 22, 1948 . Walker Decl., Exh. 3 at HUNG015307-308. <i>See also</i> Tatevosyan Decl., Exh. 16 at HUNG012004, Exh. 21 at HUNG008014. <i>See also</i> Benenati Decl., Exh. 17 at HUNG013202.
16(xvii)	Augustin Theodule Ribot, <i>Still Life</i> (c. 1875), oil on canvas, 60 x 74.5 cm. Museum of Fine Arts, Budapest.	Returned in 1946 . Tatevosyan Decl., Exh. 7 at HUNG010687. Seized by police in connection with the Kiss smuggling action and sent to the museum by the Eisler company, a freight forwarding company, as a deposit of the Financial Police on October 22, 1948 . Walker Decl., Exh. 3 at HUNG015307-308. <i>See also</i> Tatevosyan Decl., Exh. 16 at HUNG012004, Exh. 21 at HUNG008014. <i>See also</i> Benenati Decl., Exh. 17 at HUNG013202.
16(xviii)	Giovanni Santi, <i>Misericordia Domini, The Man of Sorrows</i> (c. 1480), oil on canvas, transferred from panel, 66.5 x 54.5 cm. ³ Museum of Fine Arts, Budapest.	Legally returned in 1947 . Tatevosyan Decl., Exh. 8 at HUNG010930. Seized by tax authority to secure public debts in January 1949 . <i>Id.</i> , Exh. 58 at HUNG011770. As noted in the November 28, 1950 memorandum, “The criminal forfeiture does not apply to item no. 15 as this painting was in the meantime released to Mrs. István Herczog’s agent.” <i>Id.</i> , Exh. 21 at HUNG008014. The Santi painting was item no. 15, <i>see</i> Walker Decl., Exh. 4 at HUNG012432, and was crossed out on the original Hungarian list, <i>see</i> Tatevosyan Decl., Exh. 21 at HUNG008013.

² The information in this chart is drawn from: (1) Plaintiffs’ Complaint (Dkt. No. 1); (2) Plaintiffs’ Objections and Responses to Defendants’ First Set of Interrogatories No. 7 at 11 (Tatevosyan Decl. Exh. 5); (3) Plaintiffs’ Amended Response to Defendants’ Interrogatory No. 7 (Benenati Decl. Exh. 1) and (4) the Exhibits to the Tatevosyan Declaration, Benenati Declaration, and Walker Declaration referenced in each row. The highlighted artworks are listed in the museums’ “Core” Inventory. The remaining artworks (without highlight) are listed in the museums’ “deposit” inventory. Tatevosyan Decl., Exh. 2.

³ Identified in the Complaint as “The Dead Christ with Two Angels, also known as Christ the Dolorous, Christ with a Fly.”

(Updated) 19 Artworks Legally and Physically Returned to Herzog Siblings and Their Representatives Following World War II

16(xx)	Alvise Vivarini (Giovanni Battista da Udine), Madonna and Child with Saints John the Baptist and Jerome (c. 1496), oil on canvas, 83.3 x. 73.3 cm, traces of original signature and date. Museum of Fine Arts, Budapest.	Returned in 1946 . Tatevosyan Decl., Exh. 7 at HUNG010687. Seized by police in connection with the Kiss smuggling action and sent to the museum by the Eisler company, a freight forwarding company, as a deposit of the Financial Police on October 22, 1948 . Walker Decl., Exh. 3 at HUNG015307-308. <i>See also</i> Tatevosyan Decl., Exh. 16 at HUNG012004, Exh. 21 at HUNG008014. <i>See also</i> Benenati Decl., Exh. 17 at HUNG013202.
16(xxi)	Francisco de Zurbarán, Saint Andrew (around 1635-40), oil on canvas, 146 x 61 cm. Museum of Fine Arts, Budapest.	<p>Legally released on June 25, 1947 pending payment of public dues. Tatevosyan Decl., Exh. 8 at HUNG01009930-931.</p> <p>Physically returned to Mrs. István Herzog on July 17, 1947. <i>Id.</i>, Exh. 8 at HUNG010927.</p> <p>On July 6, 1948, the Zurbarán was still out of Hungary's custody, at a commercial bank. <i>Id.</i>, Exh. 18 at HUNG011321-22.</p> <p>The Zurbarán "was retained by the said bank in pledge for its costs and then transferred to the Museum of Fine Arts at the order of the authorities" in connection with the Kiss smuggling action. <i>Id.</i>, Exh. 19 at HUNG008086. The Financial Police seized the Zurbarán in October 1948 and it was and sent to the museum by the Eisler company, a freight forwarding company, as a deposit of the Financial Police on October 22, 1948. Walker Decl., Exh. 3 at HUNG015305-308.</p> <p>Because of the smuggling action, the Zurbarán was back in Hungary's possession by November 20, 1948. Tatevosyan, Exh. 64 at HUNG011376-78.</p>
16(xxii)	Jacopo della Quercia, Sapientia (15th century), plaster cast or stucco with traces of painting, fixed on wooden base and back, 43.5 x 37.5 x 14 cm. Museum of Fine Arts, Budapest.	<p>Returned in 1948. <i>Id.</i>, Exh. 11 at HUNG010861.</p> <p>Seized by tax authority to secure public debts in January 1949. <i>Id.</i>, Exh. 58 at HUNG011770.</p>

The following artwork, attributable to István Herzog, cannot be identified as being in Defendants' possession, and thus are not in either the "core" inventory or "deposit" inventories:

Compl. Para. No.	Artwork	Returned
16(xxiii)	The Virgin and Child, Italian, 15 th century, terracotta, 70 cm high.	Returned in 1947. Tatevosyan Decl., Exh. 12 at HUNG012032.

(Updated) 19 Artworks Legally and Physically Returned to Herzog Siblings and Their Representatives Following World War II

6 Legally and Physically Returned Artworks Inherited by Erzsébet Weiss de Csepel (Hungarian citizen, U.S. citizen in 1952)⁴		
Compl. Para. No.	Artwork	Returned
16(i)	Barthel Bruyn, Portrait of Petrus von Clapis (c. 1530), tempera on panel, 37 x 26 cm (painted surface); original frame 41 x 32.5 cm. Museum of Fine Arts, Budapest.	Returned in 1946 . Tatevosyan Decl., Exh. 6 at HUNG015127; Exh. 10 at HUNG011341; Exh. 9 at HERZOG000000063.
		In May 1950 , handed over to the museums' possession in connection with the Kiss smuggling action by Odon Graf. <i>Id.</i> , Exh. 23 at HUNG012663.
16(ii)	Alonso Cano, Infante Don Baltasar Carlos (around 1634-35), oil on canvas, 144 x 109 cm. Museum of Fine Arts, Budapest.	Returned in 1946 . <i>Id.</i> , Exh. 6 at HUNG015127; Exh. 10 at HUNG011341; Exh. 9 at HERZOG000000063.
		In May 1950 , handed over to the museums' possession in connection with the Kiss smuggling action by Richárd Csatóry. <i>Id.</i> , Exh. 23 at HUNG012663.
16(x)	Pier Francesco Fiorentino, The Madonna and Child with Saint Catherine of Alexandria and Angels (around 1450-99), tempera and oil on panel, transferred to canvas, 99 x 60.5 cm. Museum of Fine Arts, Budapest.	Returned in 1946 . <i>Id.</i> , Exh. 6 at HUNG015127; Exh. 10 at HUNG011341; Exh. 9 at HERZOG000000063.
		Seized by the Financial Police in connection with the Kiss smuggling action prior to May 1950 . <i>Id.</i> , Exh. 23 at HUNG012663 (listed as "Madonna of Florence"), <i>see also</i> Benenati Decl., Exh. 17 at HUNG013202.
16(xi)	El Greco, The Holy Family with Saint Anne (around 1610-20), oil on canvas, 138 x. 103.5 cm. Museum of Fine Arts, Budapest.	Returned in 1946 . Tatevosyan Decl., Exh. 6 at HUNG015127; Exh. 10 at HUNG011341; Exh. 9 at HERZOG000000063.
		Seized by the Financial Police in connection with the Kiss smuggling action prior to May 1950 . <i>Id.</i> , Exh. 23 at HUNG012663.
16(xix)	Copy after Sir Anthony van Dyck, Portrait of a Lady (Margaret of Lorraine 1615-1672) (17th century), oil on canvas, 1117.5 x 87.5 cm. Museum of Fine Arts, Budapest.	Returned in 1946 . <i>Id.</i> , Exh. 9 at HERZOG000000063; Exh. 7 at HUNG010692.
		Seized by the Financial Police in connection with the Kiss smuggling action prior to May 1950 . <i>Id.</i> , Exh. 23 at HUNG012663.

⁴ The information in this chart is drawn from: (1) Plaintiffs' Complaint (Dkt. No. 1); (2) Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories No. 7 at 11 (Tatevosyan Decl. Exh. 5); and (3) the Exhibits to the Tatevosyan Declaration, Benenati Declaration, and Walker Declaration referenced in each row. The highlighted artworks are listed in the museums' "Core" Inventory. The remaining artworks (without highlight) are listed in the museums' "deposit" inventory. Tatevosyan Decl., Exhs. 2-4.

**(Updated) 19 Artworks Legally and Physically Returned to Herzog Siblings and
Their Representatives Following World War II**

17(iv)	Mihály Munkácsy, In the Studio (1876), oil on panel, 50 x 60.8 cm. Hungarian National Gallery.	Returned in 1946 . <i>Id.</i> , Exh. 6 at HUNG015127; Exh. 10 at HUNG011341.
		In May 1950 , handed over to the museums' possession in connection with the Kis smuggling action by In May 1950, handed over to the museums' possession in connection with the Kiss smuggling action by Richárd Csátray. <i>Id.</i> , Exh. 23 at HUNG012663.

EXHIBIT 3

Iktatószám: 410

1948

h. v. ar. 515/
1950

A beadvány { száma:
kelte:
beérkezése: 128

Előirat:

Utóirat: 12/949

Ezzel clintézve:

Határidő:

Tisztázta:

Osszeolvasta:

Elküldetett:

Kivezette: Dr. Pataky

Tárgy:

A Pesti M. Kereskedelmi Bank letétjében
Herzog-féle gyűjteményből származó
évó Zurbaran-festmény átvétele.

A Gazdasági Rendőrség letéteként
ati elismervény szerint az Eisler cégtől
arb. és a Kereskedelmi Banktól 1 db
et letétként átvettük.
Bpest, 1948. évi nov. 2.

Dr. Pataky Dénes muz. ör felhatalmazása,
a Zurbaran-festménynek átvétele a Szépművé
szeti Múzeumban való megőrzés végett.

Budapest, 1948. évi okt. 28.

Genthon István s.k.

Genthon

410/948

A Pesti Magyar Kereskedelmi Bank Igazgatóságának,

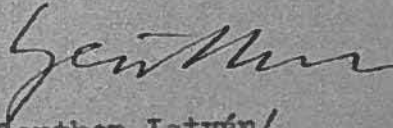
B u d a p e s t .

József Attila ucca 1.

Ezennel felhatalmazom dr. Pataky Dénes muzeumi őrét, hogy a Kereskedelmi Bank letétjében lévő Zurbaran festményt hivatkozással a Gazdasági Rendőrség utasítására, az O.M.Szépművészeti Múzeumban leendő megőrzés végett átvegye és az átvétel tényét melyről külön értesítvényt fogunk adni, a múzeum nevében elismerje.

Kiváló tisztelettel:

Budapest, 1948. évi október hó 28.-án.


/dr. Genthon István/
az O.M. Szépművészeti Múzeum
főigazgatója

41o/1948.

Á t v é t e l i e l i s m e r v é n y .

A Pesti Magyar Kereskedelmi Bank Igazgatóságának,

B u d a p e s t .

Ezennel elismerem, hogy a Gazdasági Rendőrség által lefoglalt és az O.M. Szépművészeti Múzeumba további őrizet végett áttelt, a báró Herzog féle gyűjteményből származó Zurbaran: Szent András című festményt a mai napon átvettem.

Kiváló tisztelettel

Budapest, 1948. évi október hó 29.-én.

/dr. Genthon István/
az O.M. Szépművészeti Múzeum
főigazgatója

Falan rrid utm.
1949. I. 13.
kafo'

Eisler Aladár
nemzetközi szállítmányozási és
raktárház vállalat
Budapest, V. József-ter 3.
TELEFON: 183-362

Távíratism. Eislersped
Postatakarok száma 1160

Budapest, 1948. december hó 29-én.

Dr. G e n t h o n István Urnak,
az O.M. Szépművészeti Múzeum főigazgatójának,
Budapesten.

Tárgy: a Kereskedelmi Bankból átvett
küldemény /Herzog féle képek/.

Szabadjon Főigazgató urral közölnöm, hogy a
fenti ügyvel kapcsolatban a Múzeum felkérésére előzékeny-
ségből, jóllehet az ügghöz voltaképpen semmi kapcsolatom
sem volt, - kifizettem a Kereskedelmi Bank-nak
kb. 350.— forintot.

Sajnos ezt az összeget már hónapok óta nem tudtam kézhez-
kapni és ezért bátorkodom kérni szíves intézkedését, hogy
az általam készpénzben kifizetett díjat az évvégi könyvzár-
latra való tekintettel megkaphassam.-

Amidőn előre is köszönöm szíves intézkedését,
maradok Főigazgató urnak, őszinte nagyrabecsülésem kifejezése
mellett,

igaz tisztelő hiva

Eisler Aladár

el-az

Összes ügykezelésem csakis a „Szállítmányozók általános üzleti feltételei” és az általános szállítmányozási szabványok alapján bonyolítom le.
Az üzleti feltételek megjelentek a Budapesti Közlöny 1934. december 20.-i számában a tradámban bárkinak rendelkezésre állanak.

410/948

Telefon: 183-362

NEMZETKÖZI SZÁLLITMÁNYOK

Telefon: 183-362

EISLER ALADÁRNEMZETKÖZI SZÁLLITMÁNYOZÁSI ES RAKTÁRHÁZ VÁLLALAT
AZ AMERICAN EXPRESS COMPANY SZÁLLITÁSI KÉPVISELETESzállítmányozás, vámkezelés, tengerentúli szállítmányok,
Bútorszállítás, Garde Meuble

BUDAPEST, V., JÓZSEF-TÉR 9.

Szállító-jegy. Budapest, 194 8 okt. 22.

Feladó:

Címzett: Szépművészeti Múzeum

Budapest

Szíveskedjék az alanti küldeményt átvenni.

Összes ügykezelés, az szállítmányok átvételére, ügyleti feljegyzés, és az átvételre vonatkozóan az alábbiak alapján: Budapest, 1934. 10. 22. Az alatti feljegyzések a Budapesti Könyvtár 1034. dec 20-ai számában a továbbiakban bármelyik rendelkezésre állnak.

Jel	Szám	Dát	Név	Tartalom	Súly
Herczog Istvánné tulajdonát képező:					
1	drb.	Courbet:	Fornás		
1	"	Vivarini:	Szentek		
1	"	Ribot:	Üsödölöt		
a helleu					
Patal					

EISLER ALADÁRNemzetközi szállítmányozási
és raktárház vállalat

HUNG015301

410/1948

Átvételi elismervény.

Az O.M. Szépművészeti Múzeum ezennel elismeri, hogy a következő képeket: Vivarini: Szent család, Courbet: Forrás és Ribot: Csordélet az Eisler cégtől/ továbbá Zurbaran: Szent András / a Kereskedelmi Banktól/ a Gazdasági Rendőrség letételeként átvette.

Budapest, 1948. évi máj. 2.

Tisztelettel
Dr. Garas Klára s.k.

HUNGARIAN NATIONAL MUSEUM

HUNGARIAN NATIONAL MUSEUM OF FINE ARTS

File number: 410 1948

Submission {number:
{date:
{Received on: *October 28*

Preceding documents:

Subsequent document: no. *12/949*

Thereby settled:

Subject:

The reception of the Zurbaran painting in the deposit of the H. Mercantile Bank in Pest originating from the Herczog collection.

According to [illegible] acknowledgement we have received [3] pc of painting from the Eisler company and 1 pc of painting from the Mercantile Bank as a deposit of the Financial Police.

Budapest, November 2, 1948

h. [illegible] *ad 515/1950*

Deadline:

Cleaned by:

Cross-checked by:

Sent on:

Checked out from the register by: *November 9.*

[Illegible]

The authorization of Dr. Dénes Pataky museum curator and the reception of the Zurbaran painting in order to be safeguarded by the Museum of Fine Arts.

Budapest, October 28, 1948

Signed: István Genthon

[signature: *Genthon*]

HUNG015303

410/948

To the Directorate of Pesti Magyar Kereskedelmi Bank,

B u d a p e s t.

József Attila utca 1.

I hereby authorize museum curator Dr. Dénes Pataky to take receipt of the Zurbaran painting in Kereskedelmi Bank's deposit under the instruction of the Financial Police to be placed into the custody of the N. H. Museum of Fine Arts for safeguarding, and to acknowledge the takeover, of which we shall issue a separate acknowledgement of receipt, in the name of the museum

Yours respectfully,

Budapest, October 28, 1948

[signature: *Genthon*]
/Dr. István Genthon/
Director General
of the N. H. Museum
of Fine Arts

HUNG015304

410/1948

A c k n o w l e d g e m e n t o f R e c e i p t .

To the Directorate of Pesti Magyar Kereskedelmi Bank,

B u d a p e s t .

I hereby acknowledge that on this day I have received the painting Zurbaran: Saint Andrew, seized by the Financial Police and assigned to the N. H. Museum of Fine Arts for further safeguarding, which is originating from Baron Herczog's collection.

Yours respectfully

Budapest, October 29, 1948

/Dr. István Genthon/
Director General
of the N. H. Museum of Fine Arts

HUNG015305

Prompt reply.
January 13, 1949.
[illegible]

Aladár Eisler
international shipping and
storing company
Budapest, V., József tér 9.
PHONE. 183-362
Telegram address: Eislersped
Post office savings invoice 11.460

Budapest. December 29, 1948

To Dr. István G e n t h o n ,
Director General of the N. H. Museum of Fine Arts,
In Budapest.

Subject: the consignment /paintings from the Herzog
collection/ received from Kereskedelmi Bank.

Allow me to inform you that in connection with the aforementioned case and out of
courtesy at the request of the museum – as in fact I had nothing to do with the case – I paid to
Kereskedelmi Bank

approx. HUF 350_____.

Unfortunately I have not been able to recover this amount for months now, and therefore I am asking
that you kindly take measures to ensure that I receive back the fee paid by me in cash in the course of
the year-end closing of the books.

Thank you in advance for your kind assistance, and I remain most faithfully and
respectfully yours,

with the greatest respect
[signature: Aladár István Eisler]

ei-SZ

I solely conduct all my business in accordance with the "Freighters standard business terms and conditions" and the standard freight
conventions.
The terms and conditions were published in the Budapest Gazette on December 20, 1934 and they are available to anyone in my office.

410/948

Telephone: 183-362

INTERNATIONAL SHIPMENTS

Telephone: 183-362

ALADÁR EISLER

INTERNATIONAL FORWARDING AND WAREHOUSING COMPANY

TRANSPORT AGENCY OF AMERICAN EXPRESS COMPANY

Forwarding, customs clearance, overseas shipments

Furniture removal, Garde Meuble

BUDAPEST, V. JÓZSEF TÉR 9.

Consignment note:

Budapest, October 22, 1948

Sender:

Addressee: Museum of Fine Arts

Budapest

Please take delivery of the following shipment.

I carry out all of my transactions in accordance with the "general business conditions of forwarding agents" and the general forwarding usages. The business terms and conditions were published in the Budapest Gazette issue	Sign	Number	Pcs	Gender	Contents	Weight
	Constituting the property of Mrs. István Herzog:					
	1 pcs Courbet: The Spring					
	1 pcs Vivarini: Saints					
	1 pcs Ribot: Still Life					
	I received		[illegible signature]			

ALADÁR EISLER

International forwarding
and warehousing company

HUNG015307

NATIONAL HUNGARIAN MUSEUM OF FINE ARTS

BUDAPEST, XIV. DÓZSA GYÖRGY ÚT 41.

410/1948

Acknowledgement of Receipt

The N.H. Museum of Fine Arts hereby acknowledges that it received the following paintings as a deposit of the Financial Police: Vivarini: The Holy Family, Courbet: The Spring and Ribot: Still Life /from the company Eisler/, and furthermore, Zurbaran: Saint Andrew /from Kereskedelmi Bank/.

Budapest, November 2, 1948

Yours faithfully,

Signed Dr. Klára Garas

HUNG015308



CERTIFICATE

The attached translation has been prepared by Impact Language Solutions Kft.
The translation reflects the text, where legible, of the appended source
Hungarian document in all respects.

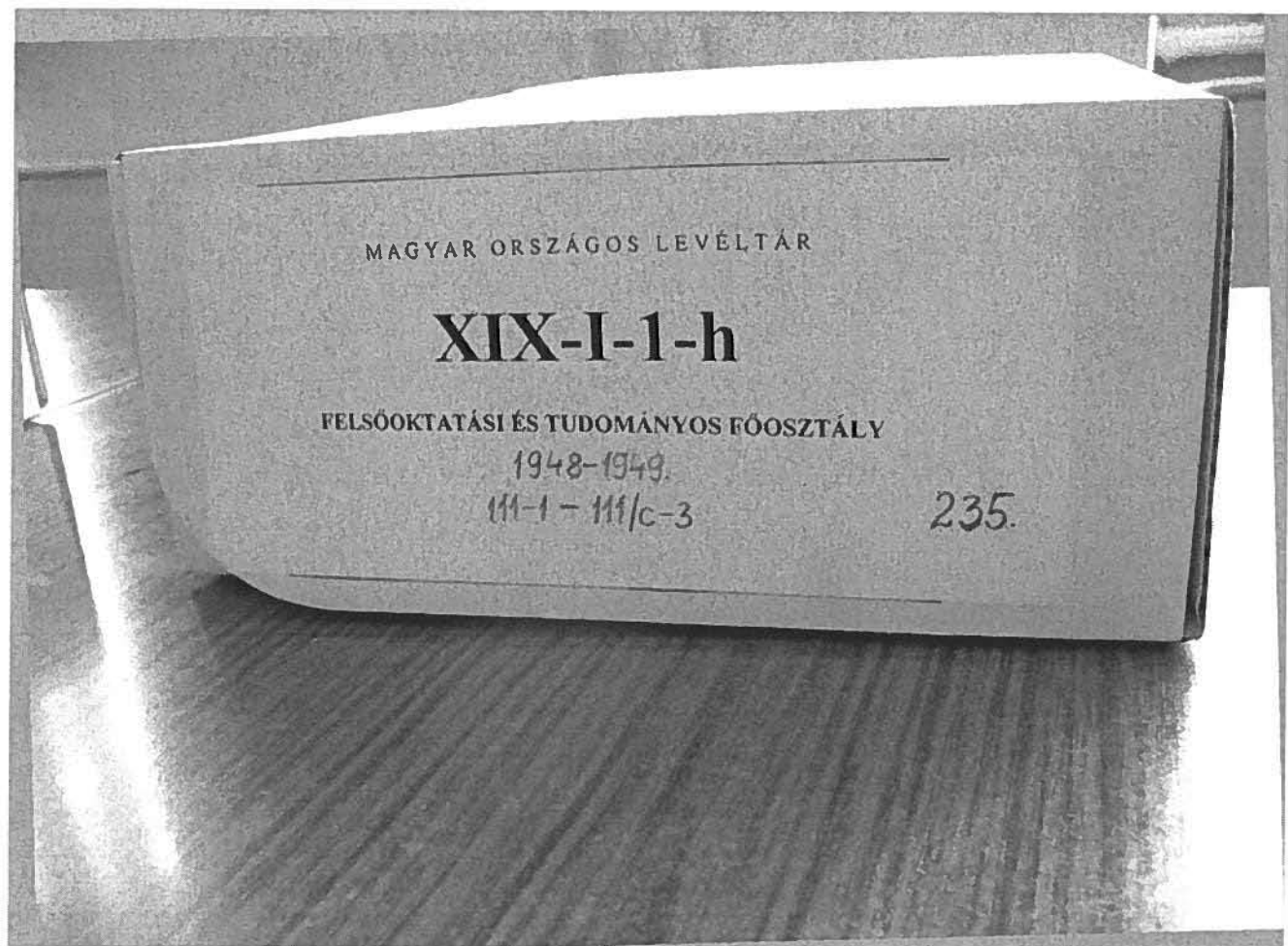
February 27, 2014



.....
Adiel Stephenson
Managing Director

HUNG015309

EXHIBIT 4



HUNG012420


111/C-2 / 1949

HUNG012422

a szárazföldön letesszende HAKOCZI

Es a dokumentum a Magyar Országos Levéltár gyűjteményébe tartozik.
This document belongs to the collection of the National Archives of Hungary.

MAGYAR ORSZÁGOS LEVÉLTÁR



Reiz

Másolat.

P.H.

A Magyar államrendőrség nagybuda pesti I. ker. rendőrfőkap. áágának b. Üz osztálya. 22/1-1949. Fk. III. biz. Jegyzőkönyv. Készült Budapesten 1949. év március. hó 26-án déli órákor a Kész- és Magángyűjtemén. ekből Elhurcolt Művészeti Alkotások Ügyei- nek Min. Biztosságánál XIV. ker. Dózsa György ut utca sz. alatti lakásában; a számú rendőrhatalósági határozat alapján fogatanosított lefoglalás alkalmával; mely lefoglalás során Herkzeg Istvánné gyűjteményéből származó műtárgyak zárol- tattak. Jelen voltak: A hatóság részéről: Hídvégi György rny. hdgy. B. Horváth Lás- 16 rny. hdgy. szakértő, Ügyfelek, tanúk: Dr. Jeszenszky Sándor min. oszt. f., Dr. Lőrinczy Szabolcs min. tanácsos, Dr. Rudnay Gyula, Dr. Berozeli A. Károlyné, ellenőrző szakértő. A házkutatást elrendelő határozat kihirdetése után figyelmeztetem a jelenlévőket, hogy a házkutatás alkalmával szerzett észleleteik hivatalos titkot képeznek és azok csak az eljárás céljaira használhatók fel. Felhívom a gyanúsí- tottat, hogy a keresett tárgyakat önként adja át. Ezután fogatanosítottam a ház- kutatást, melynek során az egyes helyiségekben a következő tárgyakat találtam:

- 1./ Greco: Olajfák hegyén, olajfestmény, 2./ Greco: Szent András, olajfestmény,
- 3./ Pordenone: Női arckép, olajfestmény, 4./ Eugen Lucas: Forradalmi jelenet, olajfestmény, 5./ Ch. Palmier: Folyó hiddal, olajfestmény, 6./ Thomas: Régi ma- lom, olajfestmény, 7./ Zichy Mihály: Fekvő akt, ceruzarajz, 8./ Ligeti Antal: Via Appia, rajz, 9./ Olasz szobrász: Jézus születése, márvány dombormű, 10./ Schwarzwaldi mester: Szent Agnes, faszobor, 11./ Német mester: Szent Katalin, faszobor, 12./ Gótikus faszobor: Szent Borbála, 13./ Dél-német mester: Próféta, faszobor, 14./ Greco: Espolio, olajfestmény, 15./ Giovanni Santi: Legyes Krisz- tus, olajfestmény, 16./ Jacopo della Quercia: Női fej, stucco szobor, 17./ Zur-

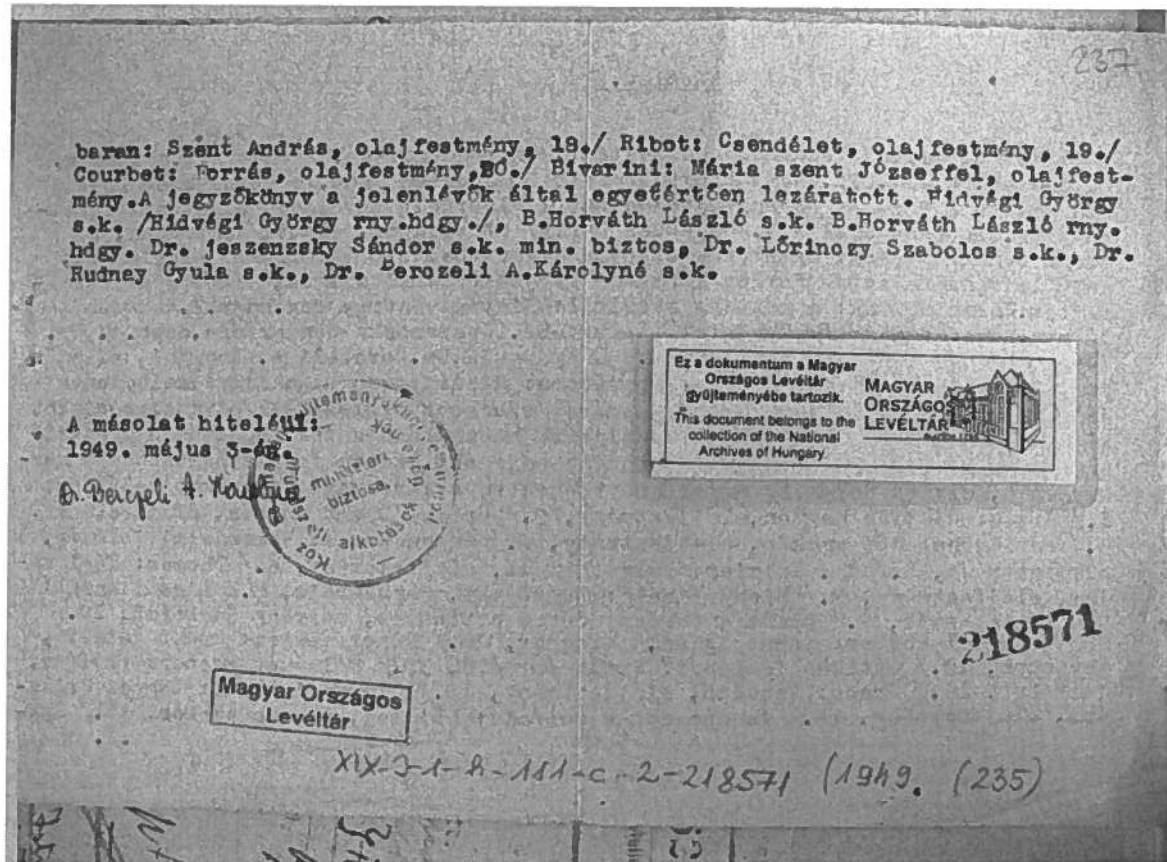
//.

XIX-J-A-h-111-C-2-218571/1949

ÚJ MAGYAR ORSZÁGOS LEVÉLTÁR

(2354)

HUNG012423



HUNG012424

HUNG012425

Elkaldit: *[Signature]*

Nagybuda pesti I. ker. Rendőr-főkapitányság Bűnügyi Igazgatóság
 VI. Gazdaságrendészeti Főcsoport
 V. Végrehajtó F. n. 8. tel.: 123-456 - 13-33 m. á.

Előadó: Nemes Béla r. szds. Tárgy: Herczog Istvánné vissza-
 Sz.: 4448/2/1948.Fk.III/VI-1. hagyott műkincsei.

Vallás- és Közoktatásügyi
 Minisztérium, Tolnai Gábor min. o. főnök urnak,
 B u d a p e s t, V.,
 Hold utca 16.

Értesitem Címet, hogy Herczog Istvánné visszahagyott műkincsei ügyében
 lefolytatott nyomozással kapcsolatban a Kéz- és Magángyűjteményekből
 Elhurcolt Művészeti Alkotások Ugyeinek Miniszteri Biztossága vezetője,
 dr. Jászszentzy Sándor és Címme egyetértve, a 22/1-1949.Fk.III.biz.sz.
 határozattal a Miniszteri Biztosság őrizetében lévő 20 db műkincset
 lefoglaltam. A lefoglalási jegyzőkönyv egy példánya a Miniszteri Biz-
 tosságnál maradt.

Tekintettel arra, hogy a lefoglalt műkincsek - mint az a vizsgálat so-
 rán megállapítást nyert - az 1947. június 6-án Svájcba menekült Herczog
 Istvánné sz. Kiss Ilona tulajdonát képezik, azok disszidált sze-
 mely vagyonának tekinthetők, és így elkobásuknak akadálya nincs. A vizs-
 gálat fenti megállapításaitól egyidejűleg a Belügyminisztérium Bűnügyi
 Rendészeti Alosztályát is értesítettem, ahová megküldöttem a nyomozás
 során keletkezett iratokat.

Budapest, 1949. április 1.

Garamvölgyi Vilmos r. ezredes
 a Bűnügyi Igazgatóság vezetője.

L. K. 1 átirat.

Magyar Országos
 Levéltár

MAGYAR
 ORSZÁGOS
 LEVÉLTÁR
 Ez a dokumentum a Magyar
 Országos Levéltár
 gyűjteményébe tartozik.
 The document belongs to the
 collection of the National
 Archives of Hungary.

XIV-2-1-A-111-2-2-28571/1949-15-X

Munkaügyi Osztály

Munkaügyi Osztály

HUNG012426

Magyar Országos Levéltár
Budapest, VI., Dózsa György - út 41
(Újpesti Múzeum)
428-571.
158/1949

Magyar Országos Levéltár
Ez a dokumentum a Magyar Országos Levéltár gyűjteményébe tartozik.
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Tárgy: Herzog Istvánná visszahagyott műkincese.
Hiv.szám: 217.162/1949.VI.2.u.o.szám.
Melléklet: ldrb.

Miniszter Ur!
A fenti tárgyban és szám alatt küldött leiratára a 22/1-1949.Fk.III.biz számú határozattal történt lefoglalásról felvett jegyzőkönyv egy másolati példányát mellékelten tisztelettel felterjesztem.
Budapest, 1949.május 4-én.

Magyar Országos Levéltár

Dr. Tószenszky Sándor
miniszteri osztályfőnök,
miniszteri biztos.

XIX-3-1-h - 111-c-2-218571 / 1949
V.K.M.VI/2. Ügyosztályának,
BUDAPEST

HUNG012428

Hungarian National Archives
XIX-I-1-h
Higher Education and Arts and Sciences Department
1948-1949
111-1 – 111/c-3 235.

XIX-I-1h-111-c-2-218571/1949 (235.d)

HUNG012429

111/c-2/1949

XIX-I-1h-111-c-2-218571/1949 (235.d)

HUNG012430

217162 1949
218571 1949 cs V/6

Item No: 111/c Subitem No: 2

Keyword: *Mrs. István Herczog artworks*

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XIX-I-Ih-111-c-2-218571/1949 (235.d)

HUNG012431

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Copy

L.S.

Hungarian State Police, Greater Budapest District I Headquarters, Crime Department. Minutes 22/1-1949.Fk.III.biz. Drawn up in Budapest, on March 26, 1949, at noon, in the Office of the Ministerial Commissioner for Artworks Taken from Public and Private Collections, about the seizure carried out by virtue of police decision No. [] in the apartment at Distr. XIV. Dózsa György út No. [], objects impounded: artworks from the collection of Mrs. István Herzog. Persons present. From the police authority: detective lieutenant György Hidvégi, detective lieutenant László B. Horváth, expert, Clients, witnesses: head of ministry department Dr. Sándor Jeszenszky, ministry adviser Dr. Szabolcs Lőrinczy, Dr. Gyula Rudnay, expert supervisor Mrs. Károly A. Berczeli. I read out the house search warrant and warn the persons present that any and all information they may obtain in the course of the house search is confidential and may only be used for the purposes of the procedure. I summon the suspect to voluntarily hand over the objects being looked for. Then the house search is effected, in the course of which I find the following objects in the various rooms of the apartment:

1./ Greco: Christ on the Mount of Olives, oil painting, 2./ Greco: Saint Andrew, oil painting, 3./ Pordenone: Portrait of a Woman, oil painting, 4./ Eugen Lucas: Revolutionary Scene, oil painting, 5./ Ch Palmié: River with Bridge, oil painting, 6./ Thomas: Old Mill, oil painting, 7./ Mihály Zichy: Reclining Nude, pencil drawing, 8./ Antal Ligeti: Via Appia, drawing, 9./ Italian sculptor: The Nativity, marble relief, 10./ Schwarzwald master: Saint Agnes, wooden sculpture, 11./ German master: Saint Catherine, wooden sculpture, 12./ Gothic wooden sculpture: Saint Barbara, 13./ South German master: Prophet, wooden sculpture, 14./ Greco: Espolio, oil painting, 15./ Giovanni Santi: Christ with a Fly, oil painting, 16./ Jacopo della Quercia: Female Head, stucco, 17./ Zurbaran: Saint Andrew, oil painting,

18./ Ribot: Still Life, oil painting, 19./ Courbet: The Spring, oil painting, 20./ Vivarini: Virgin Mary and St. Joseph, oil painting. The minutes was closed in agreement with the attendees. Signed: detective lieutenant György Hidvégi, detective lieutenant László B. Horváth, ministry adviser Dr. Sándor Jeszenszky, Dr. Szabolcs Lőrinczy, Dr. Gyula Rudnay, Mrs Károly A. Berczeli.

Authentic copy. In witness whereof:

May 3, 1949

Mrs. Károly A. Berczeli

218571

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*Dr. Sándor Jeszenszky,
Ministerial Commissioner for Artworks Taken from
Public and Private Collections*

*Budapest
Dózsa György út 41
Museum of Fine Arts*

*Dear Ministry Commissioner, please forward a copy of
the minutes of the seizure, effected by virtue of decision
No. 22/1-1949 I-K III biz., of the 20 artworks owned by
Mrs. István Herzog and now in the custody of the
Commission headed by you.
Budapest, April 19*

[illegible] April 23.

Received: Min. f. Rel.&Pup.Ed.
Aff. April 15
217162

Department: NI/ 2
Annexes: None

April 25, 1949
received:
[illegible]
April 27. [illegible]
April 27. [illegible]

111/c [illegible]
Mrs. István Herczog artworks

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Hungary

NATIONAL
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HUNGARY

Greater Budapest District I Police Headquarters Crime Department
Economy Policing General Unit VI
V. Vigyázó F. u. 8. Phone: 123-456/13-33

Rapporteur: police captain Béla Nemes
No.: 4448/2/1949.Fk.III/VI-1

Subject: Artworks left by Mrs. István
Herczog

Ministry for Religious and Public Education Affairs
For the attention of head of ministry unit Gábor Tolnai
Budapest, V.
Hold utca 16.

Please be informed that, in connection with the investigation concerning the artworks left by Mrs. István Herczog, I have, in agreement with the head of the Ministerial Commission for Artworks Taken from Public and Private Collections Dr. Sándor Jeszenszky and you, seized the 20 artworks now held in the Ministerial Commission's custody by virtue of decision No. 22/1-1949 Fk.III.biz. One copy of the minutes of seizure will be kept by the Ministerial Commission.

Considering the fact that the art treasures seized are owned by Mrs. István Herczog, née Ilona Kiss, who has not returned from Switzerland since June, 1947, and whose property is thus qualifies as illegal emigrant property, this property is open for confiscation. I have also informed the Ministry of Interior's Criminal Administration Subunit about the above findings and sent them the documents produced in the course of the investigation.

Budapest, April 1, 1949

police colonel Vilmos Garamvölgyi
head of Crime Department

L.K. 1 communication

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*The Ministerial Commission for Artworks Taken
was disbanded on the 1st day of this month. Its
functions and the custody of the pictures were
transferred to the Ministerial Commission for
Endangered Collections.
[illegible]*

218571

Received: Min. f. Rel.&Pup.Ed. Aff.

May 6, 1949

Department: V/2

Annexes: 1

CS: 217162/49

Bp. June 7, 1949

[illegible]

June 8

111/c - 2

[illegible] June 9

Keyword: István Herzog

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Ministerial Commissioner for Artworks
Taken from Public and Private Collections
Budapest, Dózsa György út 41
(Museum of Fine Arts)
428-571
138/1949

Subject: Art treasures left by Mrs. István
Herzog
Ref. No.: 217.162/1949.VI.2.ü o.
Annexes: 1

Dear Minister,

In response to your communication about the above subject and under the above
number I hereby attach and forward to you a copy of the minutes of the seizure effected by
virtue of decision No. 22/1-1949.FK.III.biz.

Budapest, May 4, 1949

(Stamp: Ministerial Commissioner for Artworks Taken from Public and Private Collections)

Dr. Sándor Jeszenszky
head of ministry unit, ret.
ministerial commissioner

To Min. f. Rel. & Pub. Ed. Aff. Unit VI/2,
Budapest



CERTIFICATE

The attached translation has been prepared by Impact Language Solutions Kft.
The translation reflects the text, where legible, of the appended source
Hungarian document in all respects.

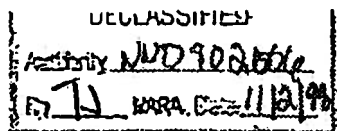
February 27, 2014

A handwritten signature in dark ink, appearing to read "Adiel Stephenson", is written over a faint circular stamp. The signature is positioned above a horizontal dotted line.

Adiel Stephenson
Managing Director

HUNG012438

EXHIBIT 5



M e m o r a n d u m

My father , Baron Maurice Herzog possessed the famous and most valuable private art collection of Budapest , Hungary , which included among other well known paintings Van der Goes and other old flemish masters , Renoir and other french impressionists and the unique Greco serie.

Most of the pictures were often exhibited abroad , so shortly before the war in London. Sir Kenneth Clark of the National Gallery knows all about them.

In 1940 myself and two brothers inherited each one third of the collection. My brother André Herzog disappeared and probably perished in a forced labour division during the war. I became also responsible for his part..

When the Germans in 1944 spring took control of Hungary , most of the paintings were taken over by the National Museum of Fine Arts of Budapest and so probably shared the fate of the state collection.

According to the Times article of the 18th december 1945 , the occupation forces start to collect art property which was held by the Nazis , in view of restoring it to the rightful owners.

I present the included list of the pictures which I claim , and will be most grateful to receive any information

My adress is: Baronne Elisabeth Weiss
Hotel Miramar
Monte Estoril / Portugal /

The list includes 2/3 of the Herzog - collection ; I may be able to send you the list of the 3^d part , belonging to my younger brother

-2-

Steven Herzog soon. He is staying in Budapest and I can not contact with him for the moment. May be that he or anybody else has already given notice to you about the whole collection. +

I also beg to mention that I have equally informed the American Legation in Bern about the subject and believe that it is useful, that I should give notice to any other authority which may take an interest in this affair.

It is probable that our pictures have shared the fate of the collection belonging to the Hungarian State, as Mr. Csánky, director of the Museum of arts in Budapest has personally directed the action of removing all these pictures and other objects of art to places where they should have been protected from bombing. Very likely the collection has been evacuated to Germany / eventually to Austria / before the Russian troops entered Hungary and fell perhaps into the hands of the Nazis, but all this I do not know for certain. At the end of March 1944 all the pictures were still in Hungary.

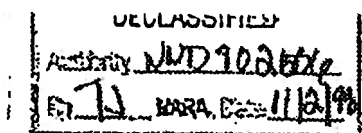
The Herzog collection of art included besides pictures, very valuable old furniture, gobelins, rugs, carpets and objects of silver, which all disappeared.

Unfortunately our home, where these objects were placed is utterly destroyed, so I do not believe, that our property should be sent to Hungary for the time being.

Baronne Elisabeth Weiss

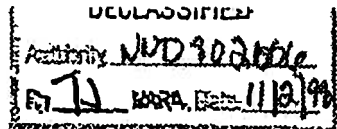
th
Monte Estoril the 24 december 1945.
The list of the 3^d part is now available too and enclosed here.

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List of the pictures belonging to Baron André Herzog

Longington :	Landscape	
orot :	Femme Marguerite	/ dark haired woman in blue 150 x 100 ,
uyp :	Cows	/ landscape 250 x 150 /
hardin :	Still - life , fowl , fruit etc	200 x 150
louet :	A man	/ black dressed , young , on wood 80 x 50 /
antin :	Roses	/ in glass 70 x 50 /
an der Goes:	Madonna	/ on wood , was in velvet and glass case 40 x 30 /
auguin :	Still- life	/ green apples and a half profile 50 x 35 /
ianpetrino :	Christ	
reco :	St Andreas	/ blue tone, part of the cross 100 x 70 /
"	Mount of Olives	/ well known in reproductions 200 x 150 /
oya :	Carnaval	/ night scene , house walls small fi- gures 80 x 120 /
ucas :	War scene	/ very dark 40 x 70 /
"	Magdalenes legend	/ on wood , was in velvet and case , angels singing and playing /
avia :	?	
ubens :	Herodes meal	/ many figures, rather scatchy 30 x 50 ,
iepolo :	Portrait	/ white haired jovial man in blue with cap 100 x 70 /
erssprong :	A woman	/ black dress white cap 120 x 70 /
ilkie :	The rabbit on the wall	/ children playing at shadow pictures 70 x 50 /
encz :	Portrait	/ very fat man in fur and velvet 200 x 150 /
ordenone :	Adultrass	/ many large figures 150 x 200 /
aite :	Wind mill landscape	
rosvenor :	River landscape	

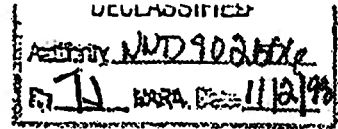


-2-

Van Goyen : River landscape
 Breughel : Still-life
 Pollof de Vries : Landscape

The list of the pictures belonging to Baron Steven Herzog

reco :	" Espolio " Christ tortured	160 x 130
oninck :	Big landscape	170 x 150
erers :	Noble man	120 x 150
libot :	Still life with dark woman	50 x 70
ivarini :	Madonna and saints	84 x 75
urbaran :	Apostle	70 x 160
iovanni Santi :	Pieta	80 x 50
saál László :	Haystacks	70 x 45



① List of the pictures belonging to Baronne Elisabeth Weiss

Opie :	Lady X	/ elderly woman in red velvet 150 x 100 /
Florentine master :	Angels	/ wooden conic gilded altarpiece 100 x 60 /
Goya :	Bull fight	/ landscape with round tower 200 x 300 /
Courbet :	Snow-landscape	/ dark castle in background 80 x 120 /
"	Green landscape	150 x 100
Munkácsy :	In the studio	/ very dark, scratchy figures 50 x 70 /
G. del Biondo :	Madonna with angels	/ on wood conic gilded 150 x 100 /
Bruyn :	A man	/ like Luther, conic gilded, was in velvet and wood case 50 x 30 /
Renoir :	Ladies portrait	/ looking aside, white dress 150 x 100 /
Velasquez :	Don Balthasar	/ small boy in hunting dress 200 x 150 /
Greco :	* Holy family	250 x 180
"	St Jacob	/ very thin long, background of Toledo 100 x 50 /
Van-Dyck :	Ladies portrait	200 x 150
Munkácsy :	Interior with many figures " La visite "	80 x 150
Tizian :	Madonna Child and Joseph	60 x 120
Giorgione :	Adulteress	/ many figures 150 x 250 /

EXHIBIT 6

XIX-1-12/ 364/1947 (1.d.)

XIX-5-12

364/1947.

ÚJ MAGYAR
KÖZPONTI LEVÉLTÁR

K e d v e s A n d r e a !

Köszönöm szíves sorait. Levele vétele után beszéltem Csikszenty min. tanácsos urral, Nyárády helyettesével, és kifejtettem előtte, hogy újabban annyi adat érkezik a németek által kihuroolt nagyértékű műkincsekről, melyek kutatása kötelességünk, hogy feltétlenül szükségünk van Münchenben továbbra is a Magyar munkájára. Ő mit sem tudott arról, hogy felmerült volna a visszahívás gondolata. Sajnos Hahn tanácsnok urral nem beszélhettem, mert Németországba utazott. Ha találkozik vele, legyen szíves üdvözlétem tolmácsolásával megemlíteni neki ez ügyben véleményemet és hozzá fűzni még azt, hogy miután a békeszerződésben a zsidók kártalanítása is ki van kötve, a legnagyobb igyekezettel kell eljárni, hogy lássák gondosságunkat és jóindulatunkat, mert különben könnyen megeshetik, hogy ridegen fogják követelni a kártérítést. Én itt a legnagyobb udvariassággal igyekszem leszerezni az elégedetlenkedőket és biztatni őket, hogy Németországban mindent elkövetünk a hiányzó műkincsek felkutatására.

A szobrokra vonatkozólag idezárom Balogh Jolán jegyzékét és Pigler Andor azt üzeni, hogy a hiányjegyzékét fenn-tarja, mert itthon nem találja a képeket.

Szomorúan állapítom meg, hogy a Herzog gyűjtemény egyik legszebb darabja, Goya Karneválja nincs meg. Ennek felkutatása érdekében mindent el kell követnünk. Nagyon kérem, menjen ki Grassauba Csánkyhoz és hallgassa ki az alábbi kérdésekre. Pontos és részletes felvilágosítást kérjen tőle, amivel elkerülheti azt, hogy a károsultak hazahozatalát kérjék.

1./ A budafoki Labor művek pincéjében volt többek között a Herzog gyűjtemény Goya Karneválja, Rubens: Herodes lakomája, Lotz Fürdőző nők című képe /: 3 akt :/, Fragonard nő alakja, valamint egy nagy Teniers gobelin kb. 40 alakkal. Ezek is a többi képpel együtt felkerültek a Svábhegyre Heim Péterhez. Ott bontották ki a ládákat, de ezek a képek és a gobelin nem kerültek a Szépművé-

ÚJ MAGYAR
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587

112-4
364/1942

szeti Múzeumba és nem szállítottak a többivel együtt Nyugatra. Láttak-e ezeket ott Csánky és mit tud róluk?

2./ A 202/1944. számú átvételi jegyzőkönyv szerint Csánky a Herzog palotából elvitt egy rekeszsománcos Krisztust és evangélistákat ábrázoló táblát. /: 22.5+11 :/. Hol van?

3./ Bárány Herzog István szemlőhegyi villájából elvitt műtárgyak közül hiányzik egy fedales königsbergi 1685.L.H. mesterjegyű kupa. Hol van?

4./ Hiányzik a Herzog Istvánnak Sirokról elvitt műtárgyaitól szóló jegyzőkönyv. Ki volt ott kint? Nem-e Balás Piri László? Kérünk felvilágosítást.

5./ Káldi nővére felmutatott egy Csánky által aláírt jegyzőkönyvet, melyben fel vannak sorolva azok a műtárgyak és ékszerek, melyeket Káldi Ipolyság melletti házából hozott el. Hol vannak ezek a tárgyak?

6./ Littmanné ezüst evőeszköz készletét azzal vitte el Pastinszky, hogy azt valami intézet étkezdéjére fogják felhasználni. Mit tud erről?

7./ Mi van Strauss Pál képeivel, melyekből csak egy rész került meg?

8./ A zsidó kormánybiztoságnak a Hitelbenkben lévő 1323/IV. számú rekeszében, melyet utoljára 1944. július 27-én nyitottak ki, mi volt és mi maradt az után?

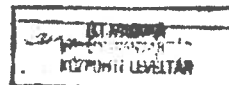
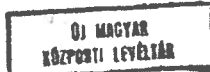
8./ Elveszett a Wolffner gyűjteményből Szinyei Tutsingi sétatája és a Szépművészeti Múzeum tulajdonában lévő Szinyei Vitorlás a starensbergi tavon című kis képe. Mit tud ezekről, mikor és hol látta utoljára?

Ideszárom a Herzog féle Goya és Rubens kép, valamint a Teniers gobelin fotóit a németországi nyomozáshoz.

Továbbá ideszárom a Hatvany család bejelentését, amelyben benne van a híres porcellán gyűjtemény és Hatvany Bertalan keleti gyűjteményének lajstroma. Az elvitel körülményeire is adatokat tartalmaz a bejelentés, ami támpontul szolgálhat a nyomozáshoz.

A Szilárd féle Josephin császárnő aranyozott ezüst készlete ügyében szeretnék valami eredményt elérni. Nem lehet ne-e Granville hadnagyot levélben megkeresni, vagy az utódjától meg tudni valamit?

A Herzog képek visszaadása ügyében megkerestem a Külügyminisztériumot. Közben nálam járt a Weiss család ügyvédje és mutatott egy levelet Weiss Alfonstól, melyben azt írja, hogy megkapta a Münchenben lévő Herzog képek jegyzékét megállapította, hogy



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egyik sem a felesége tulajdona. Azt hiszem, ezek után nem fognak nehézséget csinálni a visszaadásnak.

Ha módja lenne utána nézni, idezárom még a Nemzeti Múzeumhoz a kormánybiztosságtól érkezett értesítést egy Kossuth levélről.

Ezek után előre is köszönve szíves munkáját és tolmácsolva a muzeumiak üdvözlését maradok őszinte tisztelő hiva:

Budapest, 1947. március hó 21.


ny. min. osztályfőnök
min. biztos.

Dr. Domán Andrea urhölgynek

M ü n c h e n
Collecting Ars Point
Arcis-strasse 10.

ÚJ MAGYAR
KÖZPONTI LEVÉLTÁR

KÖZPONTI LEVÉLTÁR

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HUNG010773

*XIX-I-121.364/1947 (1.d.)**GG.**XIX-I-12*

364/1947

NEW HUNGARIAN CENTRAL ARCHIVES

Dear Andrea!

Thank you for your kind words. After having received your letter I talked to ministerial counselor Mr. Csikszenty, who is the deputy of Nyárády and I explained to him that we receive so many details about the works of art which were taken away by the Germans, the search for which is our duty, that your further work in Munich is inevitably necessary. He did not know anything about the idea that the thought of a call-back would have occurred. Unfortunately I did not talk to Counselor Hahn since he travelled to Germany. If you meet him, while assuring him of my regards be as kind as to inform him of my opinion concerning this matter and to add that because the peace treaty determines the compensation of the Jews we are to act with the greatest possible eagerness, so that our attention and benevolence becomes perceivable, or if not it might very well happen that they will rigidly demand the compensation. Here, I am trying to calm the rabble-rousers as politely as possible and to bolster them that in Germany we are doing all what we can to detect their missing treasures.

In connection with the sculptures I attach hereafter the listing of Jolán Balogh and Andor Pigler says the inventory of missing ■ items is still valid because he does not find the pictures in the country.

I am sad to announce that one of the most beautiful items of the Herzog collection, the Carnival from Goya is missing. We must do everything that is possible to find it. I would very much like to request you to go out to Csánky at Grassau and ask him the following questions. You are to pursue precise and detailed information with which he could avoid that the aggrieved persons request his forceful return to Hungary.

1. Among others the Carnival from Goya, the Feast of Herodes from Rubens, the Bathing women from Lotz /3 nudes/, the female torso of Fragonard and a grand Teniers tapestry with approximately 40 figures were found in the basement of the Labor Works in Budafok. These just as the other paintings were taken to the Sváb-hill for Péter Heim. There they have opened the crates, but these pictures and the tapestry were not taken to the Museum

NEW HUNGARIAN CENTRAL ARCHIVES

of Fine Arts, nor were they transported with all the others to the West. Did Csánky see these items there and what does he know about them?

2. According to protocol of receipt no. 202/1944 Csánky took away from the Herzog palace a Christ of cloisonne enamel and an easel painting showing Lutherans. /22.5 + 11/. Where are these?

3. A flagon from Königsberg with the master- engraving 1685.L.H. is missing from the treasures which were taken away from the Szemlőhegy mansion of Baron István Herzog. Where is it?

4. The inventory listing of István Herzog's treasures which were taken away from Sirok is missing. Who was out there? Was it not László Balás-Piri? We request clarification.

5. The elder sister of Káldi presented a protocol signed by Csánky on which those artistic items and jewelry are listed which he took away from Káldi's house located by the Ipolyság. Where are these items?

6. Pastinszky took away the silver cutlery set of Mrs. Littman saying that it will be used in the cafeteria of some sort of an institute. What does he know, about these?

7. What happened to the pictures of Pál Strauss in view of the fact that only a part of them were recovered?

8. What was in the cabinet of the Jewish government commissary numbered: 1323/IV. at the Hítelbank, opened on July 27th, 1944 for the last time, and what remained in it after this occasion?

9. The walk of Szinyei at Tutzing and the Sail on the lake at Starenberg by Szinyei possessed by the Museum of Fine Arts got lost from the Wolffner collection. What does he know about these, when and where did he last see them?

For the investigation carried out in Germany I attach the photographs of Herzog's Goya and Rubens paintings and that of the Teniers tapestry.

Furthermore I attach the report of the Hatvány family which deals with the famous collection of porcelains and the catalog of Bertalan Hatvany's oriental collection. The report contains details about the circumstances how these things were took away which may serve as clues to the investigation.

I would like to achieve some result concerning the gold plated silver set of empress Josephine of Szilárd. Wouldn't it be possible to address lieutenant Granville in a letter or to get hold of some news from his successor?

In connection with the return of the Herzog pictures I contacted the Ministry of Foreign Affairs. In the meantime the lawyer of the Weiss family paid me a visit and shown

me a letter from Alfons Weiss in which he expresses that after having received the list of Herzog pictures from Munich he discovered that none are the possessions of his wife. I think that after this they will not be making difficulties with handing them back.

If you had a chance to deal with the matter I attach hereinafter a notice sent by the government commissary to the National Museum concerning a letter of Kossuth.

While thanking your kind assistance in advance and conveying the regards of the people at the museum I assure you of my, sincerest respect.

Budapest, March 21, 1947.

[illegible signature]
retired ministerial chief of dep.
ministerial commissioner

To Dr. A n d r e a D o m á n

M u n i c h
Collecting Ars Point
Arcis-strasse 10.



CERTIFICATE

The attached translation has been prepared by Impact Language Solutions Kft.
The translation reflects the text, where legible, of the appended source
Hungarian document in all respects.

February 27, 2014

A handwritten signature in dark ink, appearing to read "Adiel Stephenson", written over a faint circular stamp or seal.

Adiel Stephenson
Managing Director

HUNG010777

EXHIBIT 7

401/1947 H.i. 6/11/47

Tisztelt Barátom!

Nem rég az itteni lapokban közlemén-
jelent meg, mely arról szól, hogy Silbermann és Elkán magyar
műkerekedők a washingtoni magyar követségnek Szinyei Merse Pál
egyik arcképet ábrázoló festményét ajándékozták. Mi, akik itt
nyilvántartjuk Szinyei összes műveit, e közleményből nem tudjuk
megállapítani, hogy melyik képről van szó. Csak nem az Anya és
Gyermeke című, régen lappangó és csak fényképről ismert fest-
ményről?

Nagyon lekötöznél, ha tájékoztatnál bennün-
ket e képről, megírnád, mit ábrázol, fára, vagy vászonra van-e fe-
festve, milyen a mérete és mi a szignálása. Ha még fényképet is
kapnánk róla, az lenne a legjobb.

Egyben megemlítem a Münchenben lévő br. Herzog
főle képek ügyét, amelyeknek Budapestre való viasszaszállítását
br. Weismann Herzog Erzsé tiltakozására megtagadták. E képek
részben Herzog István és Herzog András kiskorú örökösei tulajdona
és az utóbbiakat a budapesti árvaszék képviseli. Azóta Oppler
ügyvéd ur bemutatott nekem egy levelet, amelyben br Weiss Alfons
ur kijelenti, hogy a Münchenben lévő képek között, úgy értesült,
nincs a feleségének tulajdona. Tehát a zárlat nem indokolt, a-
melynek feloldását hivatalos uton is kértük. Amennyiben módodban
van, felkérlek, hogy a feloldás ügyében lépéseket tenné-méltóz-
tassál.

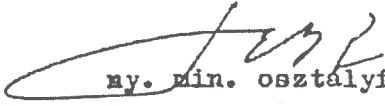
DI MAGYAR
KÖZPONTI LEVÉLTÁR

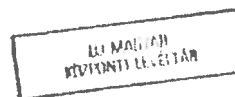
AK-5-12. 101/1317 (61)

675

Ha Weissékkal, Korinékkel, Kornfeldékkal
találkozol kérlek, add át nekik meleg üdvözlőmet és biztosítsd
őket, hogy nagy értékű műkincseik felkutatására mindent el fognak
követni.

Fogadd őszinte nagyrabecsülésem kifejezését:
Budapest, 1947. március 27.


ny. min. osztályfőnök
min. biztos.



Szabó Aladár követ urnak

Washington
Magyar követség.

XIX-3-12 - 1001/1947

(Ad)

401/1947

Subsequent doc.: 611/947

My distinguished Friend,

An announcement has appeared recently in some local papers reporting the donation of a portrait by Pál Szinyei Merse to the Hungarian Embassy in Washington by two Hungarian art traders Silbermann and Elkán. Even though we keep track of all works of Szinyei here, we cannot establish from the communication what painting it is about. Perhaps the one titled Mother and child, the long latent painting that we only know from photographs?

We would feel obliged if you could give us information concerning the painting writing us what exactly it represents, if it is painted on panel or canvas, what its size is, and what signature is on it. If you could also send a photograph, that would be the best.

At the same time let me also mention the case of the paintings of Baron Herzog whose return to Budapest was refused as a result of protest by Erzsi Herzog, Baroness Weiss. These paintings constitute the property partly of István Herzog and the minor aged heirs of András Herzog, the latter being represented by the Board of Guardians of Budapest. Attorney Mr. Oppler has shown me a letter in which Baron Alfonz Weiss states that the paintings in Munich – to his best information – do not include his wife's painting. So the attachment is not justified, and we have requested lifting it through official channels. If you have a chance to do so please be so kind as to take steps to release the paintings from attachment.

XIX-I-12-401/1947 (1d)

NEW HUNGARIAN
CENTRAL ARCHIVES

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HUNG010789

Should you meet the Weiss, the Korins, or the Kornfelds please give them my warm greetings, and assure them that I will do all in my power to find their very valuable artworks.

Please accept the expression of my sincerest appreciation:

Budapest, March 27, 1947

(illegible signature)

Ret. Min. Head of Dept.
Ministerial Commissioner

NEW HUNGARIAN
CENTRAL ARCHIVES

To Mr. Aladár Szegedi Maszák Ambassador

Washington

Hungarian Embassy

XIX--12-401/1947 (1d)

HUNG010790



CERTIFICATE

The attached translation has been prepared by Impact Language Solutions Kft.
The translation reflects the text, where legible, of the appended source
Hungarian document in all respects.

February 27, 2014

A handwritten signature in dark ink, appearing to read "Adiel Stephenson", is written over a horizontal dotted line.

Adiel Stephenson
Managing Director

HUNG010791

EXHIBIT 8

Magyar Nemzeti Múzeum Tanácsa
Budapest, VIII. Múzeum krt. 14.
Telefon: 138-014.

749/1949.sz.: Tárgy: Herzog-András, illet-
ve Herzog-István tu-
lajdonából őrzött
képek jegyzéke
Melléklet sz.: 1

Miniszter Úr

Az O.M. Szépművészeti Múzeum főigaz-
gatójának jelzett tárgyban tett jelen-
tést van szerencsém a Magyar Nemzeti
Múzeum Tanácsa nevében Miniszter Úrhoz
tisztelettel felterjeszteni.

Fogadja Miniszter Úr ózinte tisz-
teletem kifejezését.

Budapest, 1949. évi május hó 4-én.

a Tanács megbízásából:

a Magyar Nemzeti Múzeum
elnöki tanácsosa

Dr. Ortutay Gyula urnak,
vallás- és közoktatásiügyi miniszter

Budapest.

MAGYAR NEMZETI MÚZEUM.

202. 1949. apr. 29. - évi

749/1949. Z.A.M.

2 db. melléklet

Herzog-András, illetve Herzog-István
tulajdonából őrzött képek jegyzéke.

exp. (H. 1949. V. 9.)

Tárgyalva: 1949. V. 9.

Kétes tartózkodási helyen:

- 1/ Hugo van der Goes: Madonna
- 2/ Filippo Lippi/követ./: Madonna
- 3/ Memling kdv.: Madonna
- 4/ Daumier : "
- 5/ Manet: ?
- 6/ Sisley: ?

Egy-két dolog még a Kormánybizottságon van.

Kivé el nélkül muzeális.

273/1949 sz.

ORSZ. MAGY. SZÉPMŰVÉSZETI MUZEUM

BUDAPEST, XIV., DÓZSA GYÖRGY-UT 41.

Tárgy: Herzog András, illetve Herzog István tulajdonából őrzött képek jegyzéke.

A Magyar Nemzeti Múzeum
Nagytekintetű Tanácsának

Budapest

Mellékelten van szerencsém megküldeni Herzog András, illetve Herzog István tulajdonából az O.M. Szépművészeti Múzeum és az Elhurcolt Javak Miniszteri Biztossága által őrzött képek tárgyában a vallás- és közoktatásügyi miniszter urhoz intézett felterjesztésünket. Kérem a Nagytekintetű Tanácsot, hogy átiratunkat jóváhagyólagos tudomásulvétel után illetékes helyre továbbítani szíveskedjék.
Budapest, 1949. évi április hó 28-án.

Kiváló tisztelettel



Genther Zoltán
O.M. Szépművészeti Múzeum
főigazgatója

ORSZAGOS LEVELTAR
K szekció

V/426-1949-749

ORSZ. MAGY. SZÉPMŰVÉSZETI MÚZEUM

BUDAPEST, XIV., DÓZSA GYÖRGY-ÚT 41.

273/1949 sz.

Tárgy: Herzog András, illetve
Herzog István tulajdonából őrzött
képek jegyzéke.

M i n i s z t e r U r l

Herzog András, illetve Herzog István tulajdonából az O.M. Szépművészeti
Múzeum és az Elhurcolt Javak Miniszteri Biztossága által őrzött képek az O.
M. Szépművészeti Múzeumban az alábbiak:

Greco: Krisztus az olajfák hegyén.	Greco egyik legtöbbet reprodukált főmű- ve
Greco: Krisztus elfogatása /Espolio/	A mester egy nyilvántartott jelentős alkotása.
Greco: Szt. András apostol	Greco apostolsorozatának kiemelkedő darabja
Giovanni Santi: Holt Krisztus	A Burlington Magazine-ben publikálva mint a mester egy fontos alkotása/1924,
Vivarini: Madonna	E mestertől a múzeumnak nincsen képe
Pordenone: Női arckép	Reprezentatív renaissance női arckép
Polidoro Lanzani: Házasságtörő nő	A Westminster gyűjt.ből, Tiziannak is tulajdonították
Zurbaran: Szt. András	Zurbaran főműve
Corot: Nő margarétával	Corot ritka figurális képei közül az egyetlen Magyarországon
Ribot: Csendőlet	A hiányos francia képanyagnak fontos kiegészítése
Courbet: A forrás	" " "
Courbet: A neufchateli kastély	"
Palmié: Tájkép	Kevésbé jelentős alkotások, a Múzeum
Thomas: Tájkép	nem tart rájuk igényt.
Lucas: Forradalom	

1947 ápr. 27-én a fenti képeket szakértő bizottság megtekintette. A
szemlén jelen voltak Oltványi Imre, a Nemzeti Múzeum elnöke, Bényi László,
a VKM. kiküldöttje, Jeszenszky Sándor, a Miniszteri Biztosság vezetője,
Genthon István, a Szépművészeti Múzeum főigazgatója és a Múzeum szakértője.
A bizottság egyhanguan a következőket állapította meg: Az egykor világhírű
Nemes Marcell gyűjteményből származó képek, az utolsó három kivételével,
jelentős műtárgyak, a múzeum anyagának s így a nemzeti vagyonnak fontos ki-
egészítői. Az országból való kivételüket a bizottság egyhanguan ellenzi.

Dr. O r t u t a y G y u l a urnak
vallás- és közoktatásügyi miniszter

B u d a p e s t

K 726-1949-749 86. sz.

- 2 -

A Szépművészeti Múzeum tudomása szerint a Herzog gyűjteményből a következő képek vannak még Budapesten:

Az Olasz Kulturintézetben:

Clouet: Férfiarckép

R. de Vries: Tájkép

Dom. Tiepolo: Krisztus és a megszállott.

Wetters-Alfonzóné tulajdonában:

B. Bruyn: Férfiképmás

Olasz festő: Olvasó nő

Greco: Szent Család

F. Lippi követője: Madonna gyermekkel.

Dr. Oppler örökében:

Tiepolo: Aeneas megdicsőülése

V. Crivelli: Madonna

Tiepolo: Pasa

Ismeretlen helyen:

P. Bordone: Női arckép

Rubens: Sirbatétel

Carriere: Gyermekfej

Van Goyen: Folyóparti táj

A fenti képek jelentős műalkotások, a múzeum számára igen nagy fontossággal bírnak. Pillanatnyi elhelyezésük nem nyújt biztosítékot arra, hogy az országban maradjanak, annál is inkább, mert e gyűjtemény néhány felbecsülhetetlen értékű darabját /Goyen: Ivók c. képét, stb/ az utóbbi esztendő folyamán kicsempészték. Ezért javasolható, hogy a még hozzáférhető darabok a Szépművészeti Múzeumnak adassanak át megőrzésre.

Fogadja kérem Miniszter Ur, megkülönböztetett tiszteletem nyilvánítását.

Budapest, 1949. évi Április

CSZ. 1033 LEVÉLTÁR
K. szekelő



az O.M. Szépművészeti Múzeum
főigazgatója

4726-10401-449

86.00.

3

- 1/ Greco: Szent András
- 2/ Greco: Krisztus az Olajfák hegyén
- 3/ Greco: Krisztus elfogatása
- 4/ Greco: Idősebb Szent Jakab
- 5/ Polidori Lanzani: Krisztus és a házasságtörő nő
- 6/ Giovanni Santi: Holt Krisztus
- 7/ Velasquez isk.: Infáns
- 8/ Angol festő/Peter/: Férfiarckép
- 9/ Courbet: A nyoni kastély
- 10/ Courbet: Téjkép
- 11/ Corot: Nő virággal

Muzeumnál, mint letét / a Rendőrségtől átadva/:

- 1/ Vivorini: Szent család
- 2/ Zurbaran: Szent András
- 3/ Ribaud: Csendélet
- 4/ A forrás

Különböző helyeken:

- | | |
|---------------------------------------|----------------------------|
| 1/ Paris Bordone: Női arckép | /Bankban, Rendőrség tudja/ |
| 2/ Tiepolo: Krisztus és a megszállott | Olasz Követség |
| 3/ Clouet: Férfiarckép | " |
| 4/ Vries: Holland táj | " |
| 5/ Bruyer: Férfiarckép | Weisz Alfonzné |
| 6/ Romagnai festő: Női arckép | " |
| 7/ Greco: Szent család | " ? |

Kükereskedésben:

- 1/ Tiepolo: Aeneas megdicsőülése
- 2/ Gauquin: Ünarckép

~~11-726-1999-7-49~~

86. n.

4

Council of the Hungarian National Museum

Budapest, VIII. Múzeum krt. 14.

Telephone: 138-014;

No. 749/1949

Re: List of paintings from the property of András Herzog and
István Herzog being safeguarded.

Annex no. 1

Dear Minister,

I hereby submit to you the report of the Director General of the National Museum of Fine Arts made in the subject referred to hereabove on behalf of the Council of the Hungarian National Museum.

With my greatest respect,

Budapest, May 4, 1949

On behalf of the Council:

Presidential Councilor of the
Hungarian National Museum

To Dr. Gyula Ortutay
Minister of Religion and Public Education

Budapest

HUNGARIAN NATIONAL GALLERY

Received on April 29, 1949.

No. 749/1949

Two annexes

handwriting:

List of paintings from the property of András Herzog and István Herzog.

[illegible] May 7

Discussed on: May 9, 1949.

At doubtful place of residence:

- 1./ Hugo van der Goes: Madonna
- 2./ /Follower of/ Filippo Lippi: Madonna
- 3./ Follower of Memling: Madonna
- 4./ Daumier: Madonna
- 5./ Manet: ?
- 6./ Sisley: ?

A few artworks are still at the Office of the Government Commissioner.

All of them have museum value.

NATIONAL HUNGARIAN MUSEUM OF FINE ARTS

BUDAPEST, XIV., DÓZSA GYÖRGY ÚT 41.

No. 273/1949

Re: List of paintings from the property
of András Herzog and István
Herzog being safeguarded,

To the honorable Council of the Hungarian National Museum

Budapest

Please find enclosed our submission sent to the Minister of Religion and Public Education on the paintings constituting the property of András Herzog and István Herzog, safeguarded by the Hungarian National Museum of Fine Arts and the Office of the Ministerial Commissioner for Artworks Taken from Public and Private Collections. We would like to request the honorable Council to forward our transcript to the competent office after its approval and acknowledgment.

Budapest, May 28, 1949

[tondo format seal: Hungarian National Museum]

With the utmost respect,

Director-General
of the N. H. Museum of Fine Arts

NATIONAL ARCHIVES
Section K

K726-1949-749

HUNG011608

NATIONAL HUNGARIAN MUSEUM OF FINE ARTS

BUDAPEST, XIV., DÓZSA GYÖRGY ÚT 41.

No. 273/1949

Re: List of paintings from the property of
András Herzog and István Herzog
being safeguarded.

Dear Minister,

The paintings constituting the property of András Herzog and István Herzog, safeguarded by the Hungarian National Museum of Fine Arts and the Office of the Ministerial Commissioner for Artworks Taken from Public and Private Collections are the following:

El Greco: Christ on the Mount of Olives.	One of the masterpieces of El Greco reproduced the most often
El Greco: The Arrest of Christ /Espolio/	An important, registered work of the master.
El Greco: Apostle Saint Andrew	An outstanding piece of the apostle series of El Greco
Giovanni Santi: Dead Christ	Published in the Burlington Magazine as an important artwork of the master (1924)
Vivarini: Madonna	The museum has no painting from this master
Pordenone: Portrait of a Woman	Representative renaissance portrait of a woman
Polidoro Lanzani: The Adulteress	From the Westminster Collection, it was also attributed to Titian
Zurbaran: Saint Andrew	The masterpiece of Zurbaran
Corot: Lady with a Marguerite	The only one of Corot's figure paintings in Hungary.
Ribot: Still Life	An important supplement to the incomplete French collection.
Courbet: The Spring	An important supplement to the incomplete French collection.
Courbet: The Castle of Neufchatel	An important supplement to the incomplete French collection.
Palmie: Landscape	Less important artworks, the Museum does not need them.
Thomas: Landscape	
Lucas: Revolution	

On April 27, 1947 an expert committee inspected the above paintings. The persons present at the inspection: Imre Oltványi, Head of the National Museum, László Bényi, delegate of the Ministry of Religion and Public Education, Sándor Jeszenszky, Head of the Office of the Government Commissioner, István Genthon, Director General of the Museum of Fine Arts, and the experts of the Museum. The committee unanimously concluded that the paintings from the formerly world famous collection of Marcell Nemes, with the exception of the last three, are important artworks, and constitute an important supplement to the collection of the Museum, and therefore to national property. The Commission unanimously opposes their export.

To Dr. Gyula Ortutay
Minister of Religion and Public Education

B u d a p e s t

K726-1949-749

86.cs.

HUNG011609

According to the information of the Museum of Fine Arts, the following other paintings from the Herzog Collection are in Budapest:

In the Italian Cultural Institute:

Clouet: Portrait of a Man

R. de Vries: Landscape

Dom. Tiepolo: The Healing of the Possessed.

Under the ownership of Mrs. Alfonz Weiss:

B. Bruyn: Portrait of a Man

Italian painter: Woman reading

El Greco: Holy Family

Follower of F. Lippi: Madonna and Child.

Being safeguarded by Dr. Oppler:

Tiepolo: The Apotheosis of Aeneas.

Vittorio Crivelli: Madonna

Tiepolo: Pasha

At an unknown location:

Paris Bordone: Portrait of a Woman

Rubens: Entombment

Garriere: Portrait of a Child

Jan van Goyen: Landscape at the Riverside

The above paintings are masterpieces, and are of great importance to the Museum. Their current location does not serve as a guarantee for their remaining in Hungary, especially as some of the priceless pieces of this collection /e.g. "Drinkers" by Goya, etc./ have been smuggled out of the country in the last years. Therefore it is recommended that the still available artworks should be handed over to the Museum of Fine Arts for safekeeping.

With my greatest respects,

[ondo format seal: Hungarian National Museum]
Budapest, April 27, 1949

[Signature of István Genthon]
Director-General
of the N. H. Museum of Fine Arts

- 1./ Greco: Saint Andrew
 - 2./ Greco: Christ on the Mount of Olives
 - 3./ Greco: The Arrest of Christ
 - 4./ Greco: Saint James, the Elder
 - 5./ Polidoro Lanzani: Christ and the Adulteress
 - 6./ Giovanni Santi: Dead Christ
 - 7./ School of Velasquez: Infant
 - 8./ English painter /Peter/: Portrait of a Man
 - 9./ Courbet: The Castle of Nyon
 - 10./ Courbet: Landscape
 - 11./ Corot: Woman with flower
-

Deposited in the Museum /handed over by the Police/:

- 1./ Vivarini: Holy Family
 - 2./ Zurbaran: Saint Andrew
 - 3./ Ribaud: Still Life
 - 4./ The Spring
-

At various locations:

- | | |
|---|--|
| 1./ Paris Bordone: Portrait of a Woman | /In the Bank, with the Police aware of such/ |
| 2./ Tiepolo: The Healing of the Possessed | Italian Embassy |
| 3./ Clouet: Portrait of a Man | Italian Embassy |
| 4./ Vries: Dutch landscape | Italian Embassy |
| 5./ Bruyer: Portrait of a Man | Mrs. Alfonz Weiss |
| 6./ Painter from Romagna: Portrait of a Woman | Mrs. Alfonz Weiss |
| 7./ Greco: Holy Family | Mrs. Alfonz Weiss ? |
-

At an art dealer:

- 1./ Tiepolo: The Apotheosis of Aeneas.
- 2./ Gauguin: Self-portrait



CERTIFICATE

The attached translation has been prepared by Impact Language Solutions Kft.
The translation reflects the text, where legible, of the appended source
Hungarian document in all respects.

February 27, 2014

A handwritten signature in dark ink, appearing to read "Adiel Stephenson", written over a horizontal dotted line.

Adiel Stephenson
Managing Director

EXHIBIT 9


KERESKEDELEM- ÉS SZÖVETKEZETÜGYI
MINISZTER
BUDAPEST, V., SZABADSÁG-TÉR 17.
Postafiók: Budapest 5., szám: 150.
Telefon: 128-710.
16232/V/1./1949.sz.

Tárgy: Szépművészeti Múzeumban tárolt
muzeális értéket nem képviselő
műtárgyak felülvizsgálata.
Melléklet: 1 db. jegyzőkönyv.

Előadó: Kapitány János.

M i n i s z t e r U r !

Tudomásomra jutott, hogy a Szépművészeti Múzeumban olyan muzeális értékkel nem bíró műtárgyak tárolnak, amelyekre a Múzeumnak különösebb szüksége nincs. Ezzel kapcsolatban felmerült az a gondolat, hogy ezeket a műtárgyakat - ha azokra valóban nincs szükség - külföldön nemes devizáért értékesítenénk és ezzel is enyhíthetnénk az ország devizahiányát.

Felkértem Miniszter Urat, hogy a Szépművészeti Múzeumot oly irányban utasítani sziveskedjék, hogy vizsgálja felül az ott tárolt és fentiek szerint nélkülözhető, vagy éppen felesleges műtárgy-anyagot, állítson össze ezekről értékmegjelöléssel egy kimutatást és ezt közvetlenül fentnevezett előadóhoz címezve előbb küldje meg.

Bígyben értesítem Miniszter Urat, hogy a Szépművészeti Múzeum épületében őrzött Herczog-féle gyűjtemény tulajdonosa, a gyűjtemény exportjára kért engedélyt. A Festmény-Exportbizottság - minthogy kinagaszló műkincsekről van szó - az export ellen foglalt állást.

A vonatkozó jegyzőkönyvet azzal küldöm meg Miniszter Urnak, hogy a Bizottságnak a 6. pontban foglalt kérését elbírálni és az ügyben dönteni sziveskedjék.

Budapest, 1949. április 16.



Miniszter rendelkezéséből:

Kádár Lajos
Kádár Lajos
főtanácsos

Vallás - és Közoktatásügyi Miniszter Urnak,

B u d a p e s t .

Ez a dokumentum a Magyar
Országos Levéltár
gyűjteményébe tartozik.
This document belongs to the
collection of the National
Archives of Hungary.

MAGYAR
ORSZÁGOS
LEVÉLTÁR



217516


Ez a V.K. M. Szék. 1949 APR. 22.

Ögyszály:	Melléklet:
VII/2	1

Be

Ez a dokumentum a Magyar
Országos Levéltár
gyűjteményébe tartozik.
This document belongs to the
collection of the National
Archives of Hungary.

MAGYAR
ORSZÁGOS
LEVÉLTÁR



Vezérszób:

1.10/d - 3

Műtárgyak

Országos Levéltár
gyűjteményébe tartozik
This document belongs to the
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Archives of Hungary

MAJFAR
ORSZAGOS
LEVÉLTAR

**KERESKEDELEM ÉS SZÖVETKEZETÜGYI
MINISZTERIUM**
Külforgalmi-csoport

Budapest, 1949. április 12.

3 sz. JEGYZŐKÖNYV.

a Festményexportbizottság
1949. április 12-i üléséről.

Jelen vannak:

Kereskedelem és Szövetkezetügyi
Minisztérium részéről:
Gazdasági Főtanács " "
Magyar Nemzeti Bank " "
Magyar Külforgalmi N.V. részéről
Képzőművészek Szabadszervezete " "
Szépművészeti Múzeum " "

Kapitány János

Maris György
Magyar Miklós
Kapos Nándor
Dr. Dávid Katalin
Dr. Berda Ernőné

- 1./ Az OKISZ és az Állami Héziipari N.V. egyes osztályaiból egy új nemzeti vállalat alakul. Héziipari Nemzeti Vállalat elnevezéssel. A Gazdasági Főtanács vonatkozó rendelete értelmében a Festményügyeket ez a nemzeti vállalat fogja intézni. Addig is, míg ez a N.V. munkakörét kialakítja, a festményügyeket a M. Külforgalmi N.V. intézi tovább, hogy a már felvett kapcsolatok ne szakadjanak meg és mindaddig változatlanul viszi ezeket az ügyeket, amíg a Héziipari N.V. abban a helyzetben nem lesz, hogy azokat sükkénésmentesen átvehesse.
- 2./ K.Sz.M. képviselője bejelenti, hogy az 1. számú jkv. első pontjában tárgyalt Hoffer-főle képexporttal - a Bizottság több irányban megindított vizsgálatának befejezte után - lebonyolítható. E szerint a 4 db. kép 36.000.- Ft-nak megfelelő svájci frankért exportálható.
- 3./ A Bizottság felkéri a K.Sz. M. képviselőjét írjon át a Közoktatásügyi Minisztériumnak oly irányban, hogy rendelje el, miszerint a Szépművészeti Múzeum vizsgálja felül a Múzeumban tárolt és műértéket nem képviselő múzeumi műtárgyakat és ezzel a munkával a Szépművészeti Múzeumnak a Festmény-Exportbizottságba delegált tagjait, továbbá az illetékes osztályok vezetőit bízva meg.
- 4./ Pártos Gézné a következő képeket kívánja Svájcba exportálni:

Varga D. József,	"Téli táj" 60 x 80 cm.	= 300.- Ft.
Kostyánfalvi	"Őszi táj" 60 x 80 "	200.- "
Apátfalvi	"Interieur" 60 x 80 "	300.- "
Kompóczy-Balogh	"Virágcsendélet" 60x80	200.- "
Konráth-Katz	"Kártyavetőné" 60x80 cm.	500.- "

Összesen: 1.500.- Ft.

A Bizottság az exportot az 1.500.- Ft-nak megfelelő svájci frank ellenében engedélyezi.

- 2 -

Ez a dokumentum a Magyar
Országos Levéltár
gyűjteményébe tartozik.
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collection of the National
Archives of Hungary



- 5./ A Solymosi Képzalonnak az 1 sz. jkv. II. alatt tárgyalt 25 db. festményének 1.000.- g-értx történő exportjához, a 8 + 8 drb. festménynek pedig összesen 390.- g-ért történő exportjához a Bizottság hozzájárul.
- 6./ Üzv. Róna Miklósné 8 drb. Ronek Árpád és 1 drb. Szántó Mária képet vinne ki Johannesburgba, 3.210.- Ft-nak megfelelő angol fontért.
A Bizottság az experthez hozzájárul *ingylen függőben tartja*
- 7./ Dornándy Géza budapesti lakos 43 drb. antik pisztolyt kíván az U.S.A.-ba exportálni, összesen 300.- g értékben. A Bizottság felkéri a K.Sz.M. képviselőjét, hogy a fegyvereket az Iparművészeti Muzeuumnal műérték és ár szempontjából bíráltassa el, a díszitvényes pisztolyokra vonatkozólag. Negatív válasz esetén a gyűjteményt a Nemzeti Múzeum becsülje meg.
- 8./ A Szépművészeti Múzeum épületében őrizet alatt lévő Herzog gyűjtemény darabpait a gyűjtemény tulajdonosa értékesíteni akarja egy hollandi cég útján.
A Bizottság megállapítja, hogy kimagasló értékű műkincsekről van szó, amelyek pótlásáról nem tudnánk gondoskodni, ezért a műkincsek exportja ellen foglal állást. A Bizottság a KSZM-en keresztül felkéri a Közoktatásügyi Minisztériumot, hogy a műtárgyakat a Szépművészeti Múzeumnál helyeztesse letétbe, illetőleg amennyiben erre lehetőség nyílik, vásárolja meg a Szépművészeti Múzeum részére.

K.m.f.

Károlyi
András, Károlyi
P. Cs. Cs. Cs.
T. Cs.

Károlyi

W. Cs.

17516

VALLÁS- ÉS KÖZOKTATÁSÜGYI MINISZTERIUM

217.516 sz. Ér. 194 9. április 22.

Lássa:

K. előtt:

K. után:

Elk. előtt:

Elk. után:

Beadvány sz. és kelte: 16232/V/1/1949. sz.

Tárgy: Szépművészeti Muzéumban tárolt muzeális értéket nem képviselő műtárgyak felülvizsgálata.

Elintézés: A kereskedelem- és szövetkezetügyi miniszter fenti számú átiratával és a csatoltan megküldött jegyzőkönyvben foglaltakkal kapcsolatosan átirunk;

Magyar Nemzeti Múzeum Tanácsának, Budapest.

A kereskedelem- és szövetkezetügyi miniszter 16232/V/1/1949. szám alatt átiratot intézett hozzám azokkal a Szépművészeti Múzeumban tároló műtárgyakkal kapcsolatosan, amelyek muzeális ér- /.

Irattári kulcs:

110/d 3 Múzeumi

1976. Posner Budapest

Ez a dokumentum a Magyar Országos Levéltár gyűjteményébe tartozik.
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VI. 2. oszt. Selejtezhető évbén

Határidő:

Ei. sz.:

Ui. sz.:

Együttal elint. sz.:

Kapcsolatos sz.:

Letisztázta Kiszáradt. 17. 27. Egyeztetve: Boros-Kisvári

Elküldés n.: 17. 28. Elküldte: Munka

Kivezette: 17. 10. I.: Dúd

Mácolási és csatolási utasítás:

HUNG012508

tékel nem birnak, s amelyekre a múzeumnak nincsen szüksége. Ezzel kapcsolatban az a gondolat merült fel, hogy ezeket a tárgyakat - ha azokra valóban nincs szükség, - külföldön nemes devizáért értékesíthetők.

szükség
 Felhívom a Tanácsot, hogy szólítsa fel a Szépművészeti Múzeum főigazgatóját az ott tárolt és fentiek szerint felesleges tárgyak felülvizsgálatára vonatkozólag. A fentiekért értékmegjelöléssel ~~együtt~~ *együtt* készített kimutatás a vezetésem alatt álló minisztérium VI.2. ügyosztályához mielőbb felterjesztendő.

Budapest, 1949. április 25.

K. Károly 10/26.
Béni



Ez a dokumentum a Magyar Országos Levéltár gyűjteményébe tartozik.

MAGYAR
 ORSZÁGOS
 LEVÉLTÁR

This document belongs to the collection of the National Archives of Hungary

MINISTER FOR TRADE AND COOPERATIVES
BUDAPEST, V., SZABADSÁG TÉR 17.
Post office box: Budapest 5, number: 150
Telephone: 126-710

Re: Review of the artworks stored in the Museum
of Fine Arts not representing historical
value

Annex: 1 transcript

No. 16232/V/1./1949

Rapporteur: János Kapitány

Dear Minister,

I have been informed that the Museum of Fine Arts has been storing artworks that have no museum value and for which the Museum has no particular need. In relation to this, the idea has been raised that we might sell these artworks for valuable currency, provided that they are really not needed, allowing us to thereby mitigate the country's shortage of foreign currency.

You are kindly requested to order the Museum of Fine Arts to review the artworks that are stored by them, but which, for the above reasons, are not necessary or are redundant, to compile a value report on them, and to send it directly to the above named rapporteur as soon as possible.

Also, please be advised that the owner of the Hercog collection safeguarded in the building of the Museum of Fine Arts has applied for a permit to export the collection. In consideration of the fact that these are art treasures of extremely high value, the Commission for the Export of Paintings opposed their export.

I am sending you the relevant transcript and request you to please evaluate the Commission's application included in Section 8 and to make a decision in this matter.

Budapest, April 16, 1949

[tondo format seal: Hungarian Ministry of Trade and Cooperatives]

By order of the Minister:

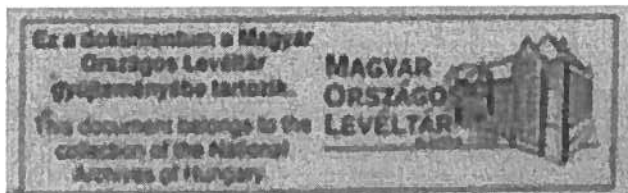
(illegible signature)

Lajos Kádár

Senior Advisor

To the Minister of Religion and Public Education.

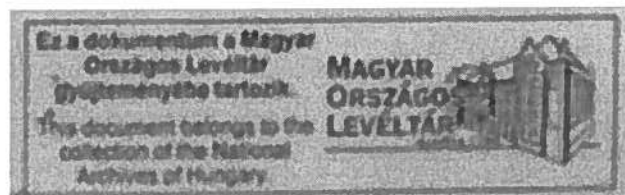
Budapest



HUNG012510

217516	
Received by the Ministry of Religion and Public Education, Budapest, April 22, 1949	
Department:	Annexes
VI/2	1.

Bé

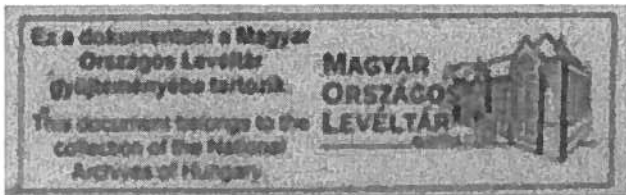


110/d-3

Call word: Artworks

XIX-Y-1-h

HUNG012511



Budapest. April 12, 1949

HUNGARIAN MINISTRY OF TRADE AND COOPERATIVES

Export Team

TRANSCRIPT No. 3.

of the meeting of the Commission for the Export of Paintings
held on April 12, 1949

In attendance:

for the Hungarian Ministry of Trade and Cooperatives	János Kapitány
for the Economic High Council	—
for the National Bank of Hungary	György Haris
for the Hungarian Export N. C.	Miklós Magyar
for the Free Organization of Artists	Nándor Kapos
for the Museum of Fine Arts	Dr. Katalin Dávid
„	Mrs. Ernő Berda

1. Under the name “Kézműipari Nemzeti Vállalat” (National Company of Handicrafts) a new national company is being formed from OKISZ and certain departments of the State N. C. of Handicrafts. Pursuant to the relevant decree of the Economic High Council, matters related to paintings will be administered by the national company. Before the said national company develops its functions, the H. Export N. C. will continue to administer matters related to paintings in order to prevent the interruption of the already established contacts, and they will carry on the administration of these matters until the National Company of Handicrafts becomes suitable for their smooth takeover.
2. The representative of the National Company of Handicrafts reports that the export of the paintings that belong to the Hoffer collection discussed in the first section of Transcript I can be arranged once the Commission has completed its examination started in several directions. According to the latter, the four paintings may be exported for Swiss francs equivalent to HUF 36,000.
3. The Commission requests the representative of the National Company of Handicrafts to write to the Minister of Public Education and request him to order the Museum of Fine Arts to review the museum artworks that are stored in the museum, but which do not represent museum value, and to engage the members delegated by the Museum of Fine Arts to the Commission for the Export of Paintings as well as the heads of the competent departments to do this work.
4. Mrs. Géza Pártos wishes to export the following paintings to Switzerland:

HUNG012512

"Winter Landscape"	by József Varga D., 60x80 cm,	HUF 300
"Autumn Landscape",	by Kostyánfalvi, 60x80 cm,	HUF 200
"Interieur",	by Apátfalvi, 60x80 cm,	HUF 300
"Still Life with Flowers".	by Könpöczy-Balogh, 60x80 cm,	HUF 200
"Card Reading Fortune Teller",	by Komáromi-Katz, 60x80 cm,	HUF <u>500</u>
<u>Total:</u>		<u>HUF 1500</u>

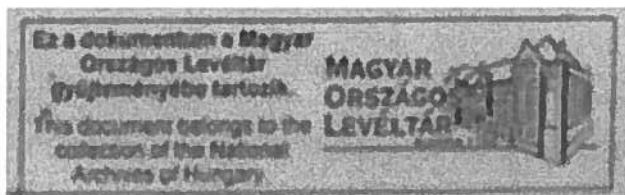
The Commission approves the export for a consideration of an amount of Swiss francs equivalent to HUF 1500.

5. The Commission approves the export of 25 paintings from the Solymosi Gallery, as discussed in Section II of Transcript 1, for USD 1000, and the export of 8 + 8 paintings, for a total off HUF 390.
6. Mrs. Miklós Róna (widowed) wishes to export 8 artworks, and Árpád Ronek and Mária Szántó one artwork each, to Johannesburg, for British pounds equivalent to HUF 3210.
The Commission leaves the matter open.
7. Géza Dormándy, resident of Budapest wishes to export 43 antique pistols to the USA for a total value of USD 300. The Commission requests the representative of the National Company of Handicrafts to have the Museum of Applied Arts judge the weapons for their artistic value and price, concerning the decorated pistols. In the event of a negative response, the collection should be estimated by the National Museum.
8. The owner of the Herzog collection wants to sell, through a Dutch company, those pieces of the collection that are being kept in custody in the building of the Museum of Fine Arts.
The Commission has established that these are art treasures of very high value which could not be replaced, and, for this reason, they are against the export of the art treasures. By way of the National Company of Handicrafts, the Commission requests the Ministry of Public Education to have the artworks deposited with the Museum of Fine Arts, or to the extent the opportunity is given, to buy them for the Museum of Fine Arts.

Date as above

/illegible signatures/

217516



**MINISTRY OF RELIGION AND PUBLIC
EDUCATION**

APRIL 27, 1949

No. 217.516 Received on April 22, 1949

To the attention of:

Before delivery:

After delivery:

Before sending:

After sending: [illegible handwriting]

No. and date of submission:

16232/V/1/1949.sz.

Re: Review of the artworks stored in the
Museum of Fine Arts and not representing
historical value

Department VI. 2 Discardable in the year

...

Deadline:

No. of preceding document: No. of
subsequent document:

No. of case subject to simultaneous
settlement:

Related No.:

Transcribed by: [illegible] Consulted by:
[illegible]

Date of sending: April 28 Sent by:
Németh

Checked out by: May 10. I. Bné

Instructions on copying and enclosures
(illegible)

Settlement: In relation to the official letter written by the Minister for Trade and Cooperatives
and the Transcript sent in attachment, we are applying

to the Council of the Hungarian National Museum, Budapest.

Under reference No. 16232/V/1/1949, the Minister of Trade and Cooperatives
sent me an official letter in relation to the artworks stored in the Museum of Fine
Arts which have no museum value and are not necessary for the museum. In
relation to this, the idea was raised that these artworks, provided that they are
really not needed, could be sold abroad for valuable currency, allowing us to
thereby mitigate the country's shortage of foreign currency.

HUNG012514

I request the Council to order the Director-General of the Museum of Fine Arts to review the artworks that are stored by them but are unnecessary, as per to the above. The statement – indicating the value – compiled on them must be filed to Department VI. 2 of the ministry under my direction as soon as possible.

Budapest, April 25, 1949

[illegible handwriting]

Code to the archives:

110/d 3	Artworks
---------	----------



CERTIFICATE

The attached translation has been prepared by Impact Language Solutions Kft.
The translation reflects the text, where legible, of the appended source
Hungarian document in all respects.

February 27, 2014

A handwritten signature in dark ink, appearing to read "Adiel Stephenson", is written over a circular, faint background stamp. The signature is positioned above a horizontal dotted line.

Adiel Stephenson
Managing Director

HUNG012516

EXHIBIT 10

Budapest

Fine Arts Museum

Elisabeth de Csepel
55 East 86 Street
New York, N.Y.

Esteemed Lady:

To my regret I am unable to give you a positive
reply to your letter in connection with the Opie painting.

The painting is in possession of the Museum, that
is to say in possession of the Hungarian State and according to our
laws it is not allowed to sell objects belonging to the State. Besides,-
even if the said painting would not be in the Museum's possession,-
even then no permit could be given for the export of the painting from
the State's territory.

The purchase of the objects of art from Artex, or
the permit to export any such object which is in private possession
against payment in foreign currency, can be granted only for objects
of unessential art-quality.

Unfortunately, on these grounds we are unable to
accept your proposition.

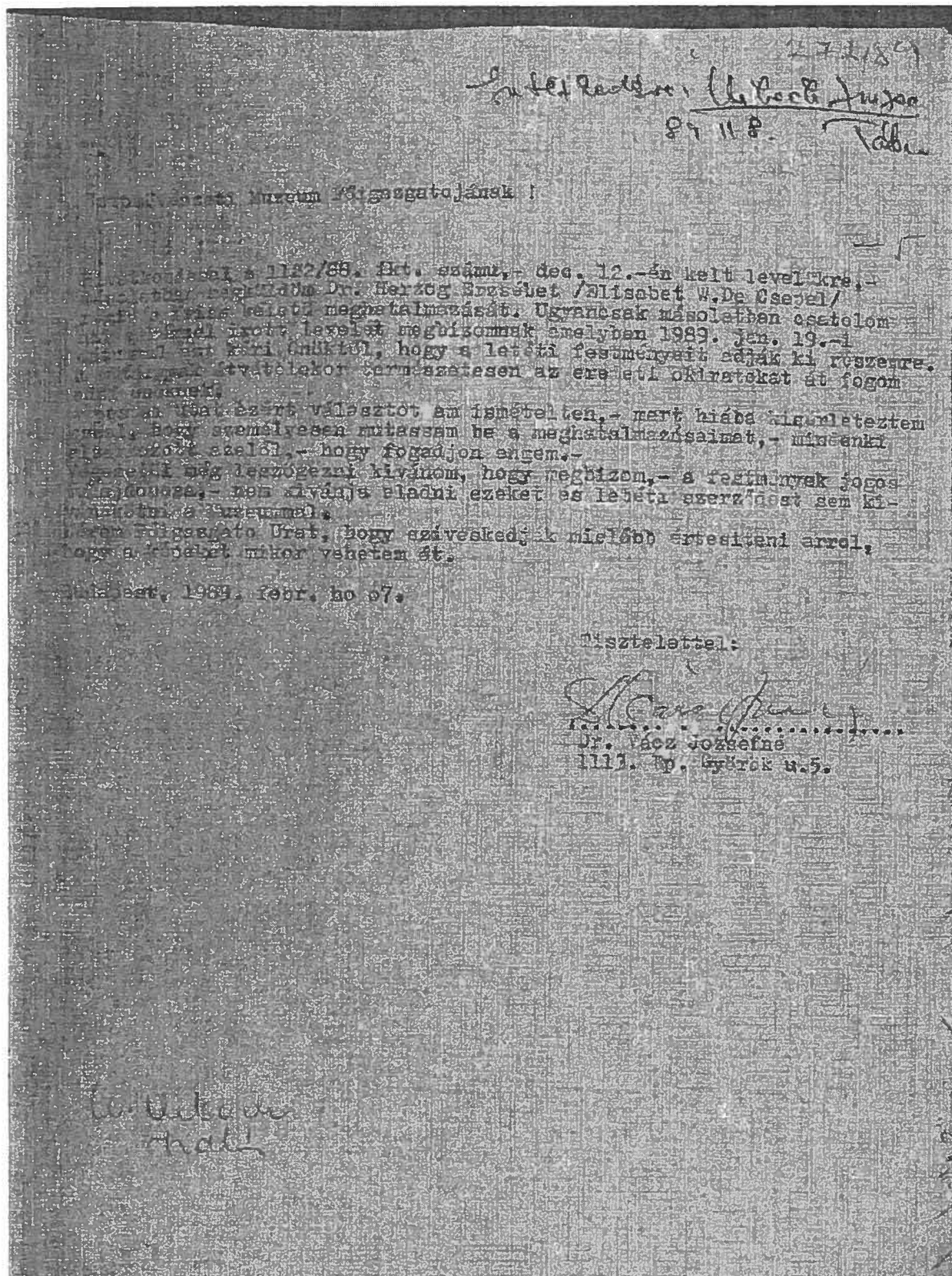
Budapest, July 16, 1968.

Sincerely

Dr. Clara Garas

chief-director

EXHIBIT 11



Jan. 15 1989

Hálásan megköszön-
ném Önöknek, ha
kíadnák a mellék-
letben felsorolt
festményeket Doktor
Váczné Konkoly
Maggdolna ügyvédek-
nek

Dr. Tuzsácsi de Gsepel

A MAGYAR NEMZETISÉGEK EGYETEMÉNEK FŐKONSZULÁTUSA
 CONSULATE GENERALE
 OF THE HUNGARIAN PEOPLE'S REPUBLIC
 170 EAST 71 STREET, NEW YORK, N.Y. 10021
 (212) 679-4155

Hitelesítem **ANDY TOMPO**

Közzegző aláírását és pecsétjét, melynek
 mintája a Főkonzulatus ir. okában van.

Konzuli illeték: **89⁰⁰**

Konzuli alnaplószám: **799/79**

Kelát: New York, **1979. OKT. 17.**



Kádár László

/Dr. Kádár László/

alkonsul

ÜGYVÉDI MEGHATALMAZÁS

17528 Határoz.

dr. Váczi Józsefné ügyvédet
 Meghatalmazom **Budapest** sz. Ügyvédi Munkaközösséget (Budapest

2000. Budaörs, József A. 11.) hogy Dr. Loránt Ilona ik és a múzeumok
 szervezetében volt műtárgyaim, ingóságaim ne emden átvégye és

azok megőrzéséről gondoskodjék a lakásán.

képviselőmre.

Budapest,

Egyetemesi W. de Goezel
 meghíró aláírása

dr. Váczi Józsefné
 fenti ügyvállalását jóváhagyom

Douglas S. Seaman
 DOUGLAS S. SEAMAN
 Notary Public, State of New York
 No. 41-4501788
 Qualified in Queens County
 Commission Expires March 30, 1981

ügyvéd, a munkaközösség vezetője

Helyettesítésre jogosultak a munkaközösség összes tagjai és ügyvédjelöltjei, va-
 lamint

Kfm.

S. W. Seaman
 ügyvéd, ügyintéző

771300-1-1230 014

HUNG020291

SZERMŰVÉSZETI MÚZEUM
MUSEE DES BEAUX-ARTS

1145 Budapest
X/V. Dózsa György út 41.

ÁLTALÁNOS ISMÉNY

272/89

Ad. adn.
874.3. T. adn.

A mai napról a Szerművészeti Múzeumban letétként őrzött, Elisabet
Kaiser de Csepel, született dr. Herzog Erzsébet tulajdonát képező
három vésett festményt a tulajdonos megbízásából kifogástalan álla-
pottal átvettem:

1. Holland festő, XVII. század: Női képmás
olaj, tölgyfa, 70 x 58 cm; keretben
volt leltári száma: I. 3.017, védési száma: 4/89
2. Osztrák vagy olasz festő, XVIII. század: Királyok imádása
(a leltárnyom: G. Dixioni?)
olaj, vászon, 56 x 12,1 cm; aranyozott keretben
volt leltári száma: I. 3.143, védési száma: 9/89
3. Osztrák vagy olasz festő, XVIII. század: A párizsiek imádása
(a leltárnyom: G. Dixioni?)
olaj, vászon, 55,0 x 81,0 cm; keret nélkül
volt leltári száma: I. 3.144, védési száma: 10/89

Dr. Vácz Józsefne
ügyvéd

1113 Budapest, Gyárak u. 5.

A festményeket átadom.

Fabry Eszter

Budapest, 1989. március 9.

A leltárnyomokból kiderült a képmás 1829 március 9.

Fabry Eszter

HUNG020293


Szépművészeti Múzeum

Budapest

272/89

Elisabeth Weiss de Csapel
New York, N.Y. 10028

55 East 86th Street
USA

Igen tisztelt Asszonyom,

kérésének megfelelően budapesti megbízottjának ki-
adjuk a kért festményeket. A képeket a magyar jog-
szabályoknak megfelelően védetté nyilvánítjuk, mely-
nek ért. I. ében nem vihetők ki külföldre, de Magyar-
országon értékesíthetők.

Szeretnénk jelezni, hogy a 18. századi csiztrák vagy
elasz. mester, "Jézus születése" és "Királyok imádá-
sa" képeit a Szépművészeti Múzeum szívesen megvá-
sárolja, amennyiben Ön szeretné ezektől megválni,
mivel e s rozat két másik darabja már hirtokunkban
van.

Kivánunk minden jót Önnek és kedves Családjának

tisztelettel




(Dr. Ferenc)
főigazgató

B. dapest, 1989. II. 28.

*Co. Ltd.
mail*

Museum of Fine Arts • Musée des Beaux-Arts • Museum der Bildenden Künste • Museo delle Belle Arti
B-178 Budapest 12 P.O. 463 • Tel. 26-1142-67-59 • (LIV. Département des Arts)

HUNG020294

Elizabeth Weiss de Chapel
New York, N.Y. 10028
55 East 86th Street

1122/88 és 272/89

Igen tisztelt Assz nyom,

Kérésének megfelelően budapesti megbízottjának
kiadjuk a kért festményeket. A képeket a magyar jogszabá-
lyoknak megfelelően védetté nyilvánítjuk, melynek értelmében
nem vihetők ki külföldre, és Magyarországon értékesíthetők.

ca 18. századi

Szeretnénk jelenni azt, hogy ~~ez~~ ezüstök vagy olasz mester,
~~18. századi~~ Jézus születése és ~~a~~ Királyok imádása képeket
a Szépművészeti Múzeum szívesen megvásárolná, amennyiben Ön
szeretne ezektől megválni, mivel a soró at két másik
darabja már a birtokunkban van.

Kívánunk minden jót Önnek és kedves Csalásjának

tisztelettel

Dr. Merényi Ferenc
főigazgató

Söveglet

87.11.28

T. J.

Feljegyzés

ad 272/89

Dr. Marényi László főigazgató úrnak

Dr. Vác Józsefné ügyvéd a New Yorkban élő dr. Herzog Ernő
zsébet megbízásából és felhatalmazásával kiadni kéri a
csatolt iratokban leírt előzmények alapján a Múzeum birto-
kában lévő magántulajdonu három képet.
Mivel az igény megtagadására jogszervi alapunk nincsen, ja-
vasolom a védetté nyilvánítás után a tulajdonos eredeti
okiratokkal igazolt jogi képviselőjének a műtárgyakat át-
vételi elismervény ellenében átadni.
A Múzeum esetleges vételi szándékát helyesenek tartván
a kiadásról szóló közvetlen értesítésben a védettségre ve-
lő utalással közvetlenül a tulajdonossal közölni.

Bp. 1989.02.24.

Szűcs
Dr. Szűcs Tibor
jogtanácsos

Statisztika után:

Magyar Értéktár

Ministeriummal a tanácsadóval illetően

89. II. 27.

Dr. Szűcs Tibor

Co. Nagy
hal

Eljegyztén

Dr. Maróczy Ferenc főigazgató omak

Felügy. E. H.
Utolsó írás a ...
87. III. 6.

ad 272/89 Tollen

Co. Tollen
hatal

Dr. Vác Józsefné ügyvéd a New Yorkban élő dr. Herzog Erzsébet megbízásából és felhatalmazásával kiadni kéri a csatolt íratokban leírt előzmények alapján a Múzeum birtokában lévő magántulajdonú három képet. Mivel az igény megtagadására jogszervi alapunk nincsen, javasolom a védettség nyilvánítás után a tulajdonos eredeti okiratokkal igazolt jogi képviselőjének a műtárgyakat átvételi elismervény ellenében átadni. A Múzeum esetleges vételi szándékát helyesnek tartanom a kiadásról a fő közvetlen értesítésben a védettségre való utalással közvetlenül a tulajdonossal közölni.

Bp. 1989. 02. 24.

Sós Tibor
 dr. Sós Tibor
 jogtanácsos

Hatalás után:

Sós Tibor r. v.

Hírnyelvi jogszabályok a transzmissziókat illetően.

19. II. 27.

Maróczy Ferenc

A védettség nyilvánítás megtagadása,
 a kiadást a legkésőbbi időpontig
 megtagadja, az ő rendelkezése szerint
 műveit.
 Az utolsó bejelentésben leírtaknak megfelelően
 a legkésőbbi időpontig a műveit megtagadja.

Szépművészeti Múzeum Főigazgatójának:

Bírátkorral a 1122/88. ikt. számú, - dec. 12.-én kelt levelére, -
melyben megírdm Dr. H. szög Erzsébet /Elisabet W. De Caenel/
r. gl. és friss keleti meghatalmazást. Ugyancsak másolatban csatolom
azt a külső írott levelet megbizomnak amelyben 1989. jan. 19.-i
dátumú azt kéri (hőttől, hogy a letéti festményt adják ki rosszerre-
ként ünknek.

Postai utat ezért végzettem ismételtén, - mert hiába kísérleteztem
azzal, hogy ezen írásen mutassam be a meghatalmazásaim t., - mindenki
szerezte azel i. - hogy fogadjon ezem.

Végezt i meg i szögéti kivonam, hogy megbizom, - festmények jog-
tulajdonosa, - n m kívánja eladni ezeket és letéti szerzőt sem ki-
vín kötni a Múzeummal.
Irérem főigaz to Urat, hogy sziveskedjék mielőbb értesíteni arról,
hogy a képet mikor vehetem át.

Budapest, 1989. febr. hó 07.

Tisztelettel:

* Ki került az ügyvédnél?
Mint már írtam, hogy az
írást személyesen adja át?

89. 2. 11.

Erzsébet W. De Caenel

Dr. József József
1113. Sz. Gy. n. k. u. 5.

dr. Horányi Ferenc
főigazgató
H.

272/89
-5

Vajda A.

A Szépművészeti Múzeum szakértőinek /dr. Urbach Zsuzsa -
dr. Nyerges Éva/ véleménye alapján védetté nyilvánításra
javaslom:

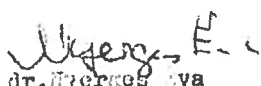
Elizabeth Weis de Csepel /55 East 86th Street New York, N.Y.
10028/ Őrzési hely /Dr. Váczi Józsefné Dr. Konkoly Magdolna
Budapest Győrök u. 3. 1113/ tulajdonában:

Osztárk vagy olasz mester, XVIII. szd.: A királyok imádása;
olaj, vászon; 56 x 82.3 cm

Osztárk vagy olasz mester, XVII. szd.: Jézus születése /A
pásztorok imádása/ olaj, vászon; 55.8 x 81.8 cm

Holland festő, VII. szd.: Női kép; olaj, (olajra; 70x58 cm

Budapest 1989. március 1.


dr. Nyerges Éva
nyilvántartási osztályvezető

L: 19. 7. 3.
László

272/89

Elisabeth Weis de Osepel
55 East 86th Street
New York, N.Y.
10028

Érzési hely:
Dr. Váczi Józsefné
Dr. Konkoly Magdolna
Budapest
Győrök u. 5.
1 1 1 3

9/89

Orszárok vagy család mester. VII. sz.: Jézus születése /A pásztorok imádása/ olaj, vászon: 55.3 x 31.8 cm /új vászonra húzva 1961-ben, de a festékréteg erősen megnövekedett/ Szűz Mária áll a bal középtérben fiatal Mária alsó alakja, vörösruhát és világoskék köpenyt visel, a fején fehér kendő. Mindkét kezével a gyermek Jézust betakaró leplet tárja szét, előtte látszik a bambino a szalmán. József a bal háttérben áll, a gyermek felé mutat, előtte egy pásztor térdel. A bal előtérben egy földre borult pásztor hódol, jobbra egy vörösruhás pásztor térdel, előtte lámpás. A jobb háttérben három alak látszik, a középső fiatal nő kezében kosarat tart.

A Szépművészeti Múzeumban letéti száma: L.3.144 Nincs kerete.

9. március 3.

Amely...

Myers

*W. Amm
Lyn
Hahn*

HUNG020300

242/89

Elisabeth Weis de Csepel
55 East 86th Street
New York, N.Y.
10028

Örzési hely:
Dr. Váczi Józsefné
Dr. Konkoly Magdolna
Budapest
Győrök u. 5.
1113

10/89

Orszákok vagy olasz mester, XVIII. szd.: A királyok imádása; olaj,
vászon; 56 x 32,5 cm

Roma istálló előtt jobboldalt ül Mária, ölében a Gyermekkel. Vörös ruhát és kék köpenyt visel. A Gyermek Jézus előtt az idős király térdel és kezét csókolja. Jobbra a kőnépe király térdel elfordulva, előtte a földön fedelese serleg. A fiatal szerezsen király baloldalt áll háttal a nézőnek, kezében egy szarvaserleget tart. Egyik szolgája napernyőt tart fölé, mögötte szerezsen szolgák látszanak. Jobbra két nő áll a háttérben.

A Szépművészeti Múzeum letéti száma: L.3.143.

A kép hátán cédula: Roma F 128 és Alkalmazotti Rendészet
G.B. Tiepolo Három királyok imádása

9. március 3.

huny

Nyergo

*W. C. M.
Nys
hal*

HUNG020301

272/89

Elisabeth Weiss de Gsepel
55 East 86th Street
New York, N.Y.
10028

Orzási hely:
Dr. Váczi Józsefné
Dr. Konkoly Magdolna
Budapest
Cyőrök u. 5.
1113

8/89

Holland festő, VII. szd.: Női képmás; olaj, tolgva; 70 x 38 cm
/Nem látható csatolással, az illusztrációknál a reprodukció meg-
döntése. A képen látható, a műveiben megfordult a kép kon-
verzálása 1988-ban/

Sötét színi háttér előtt fiatal nő kisé balra forduló félalakja.
Haja vöröseszöke, fején fekete főkötő, fekete ruhája felett fe-
hér vállgallér, alatta aranybrokát székely, ezen a helyen.
Mellkép, a nő keze nem látszik.
A Szórványozási Műveiben letéti száma: L.3.014

9. március 3.



W. G. G.

W. G. G.
W. G. G.
H. G. G.

272/89

Measure: *Ulbach [illegible]*

89 11 8. *[illegible]*

Attn: Director-General of the Hungarian Museum of Fine Arts

With reference to your letter of Dec 12, file no. 1122/88., I am sending copies of Dr. Erzsébet Herzog's (Elisabet W. de Csepel's) old and recently dated powers of attorney. I am also attaching a copy of my client's handwritten letter, in which she requests, on the date of January 19, 1989, that you release her deposited paintings to me. At the time of taking receipt of the artworks, I will naturally provide you with the original documents.

The reason I have again chosen to contact you by post is because it was to no avail that I attempted to present my powers of attorney in person – no one was willing to receive me.

In closing, I wish to state that my client, the rightful owner of the paintings, wishes neither to sell them nor to conclude a deposit contract with the Museum.

I ask you, sir, to please notify me as soon as possible regarding when I can take possession of the pictures.

Budapest, February 7, 1989

Yours faithfully,

(illegible signature)

Dr. (Mrs.) József Vác

1131. Bp. Győrök u. 5.

Co: *Ulbach [illegible]*

HUNG020303

January 15, 1989

*I would be most grateful if you released the paintings listed in the attached annex to my attorney,
Doctor Mrs Magdolna Vác né Konkoly.*

Dr. Elizabeth de Csepel

HUNG020304

A MAGYAR NÉPKÖZTÁRSASÁG
FŐKONZULÁTUSA
CONSULATE-GENERALE
OF THE HUNGARIAN PEOPLE'S REPUBLIC
8 EAST 75TH STREET, NEW YORK, N.Y. 10021
(212) 879-4126

I hereby certify the signature and seal of ANDY TOMPOS,
a sample of which is in the possession of the Consulate-
General.

Consulate duty: \$9⁰⁰

Consulate sub-log No.: 799/79

Dated: New York, October 17, 1979

[ondo format seal: A MAGYAR NÉPKÖZTÁRSASÁG
FŐKONZULÁTUSA
CONSULATE-GENERALE OF THE HUNGARIAN
PEOPLE'S REPUBLIC
NEW YORK]

[illegible signature]
/Dr. László Kádár/
Vice-Consul

File No. 17528

POWER-OF-ATTORNEY

I hereby authorize attorney Dr. Mrs. József Vác, Law Office No. (Budapest, 2060 Bicske, 11 József
A. Str.) to take possession of my artworks and movables previously being safeguarded by Dr. Henrik
Lóránt and the museums and to arrange for their safeguarding in her home. For my representation.

Budapest,

[illegible signature]

Signature of principal

I approve the assumption of the case by Dr. Mrs.
József Vác.

[illegible signature]

[seal: DOUGLAS S. SEAMAN
Notary Public, State of New York
No. 41-4651788

Attorney, Head of the Law Office

Qualified in Queens County
Commission Expires March 30, 1981]]

[seal: the first line is illegible

2061 Bicske, József A. u. 11

Telephone: 06-21-10-061

Dr. Mrs. Magdolna Vác Dr. née Konkoly
attorney]

All partners of the office and all of its trainee attorneys are authorized for substitution:

Dated as above

[illegible signature]

Attorney, Assigned to:

HUNG020305

Museum of Fine Arts
Musée des Beaux-Arts

1146 Budapest
XIV. Dózsa György út 41

ACKNOWLEDGEMENT OF RECEIPT

272/89

File closed: March 9, 1989

Based on the owner's power of attorney, I have today taken over in unobjectionable condition three paintings under preservation order comprising the property of Elisabet Weiss de Csepel, née Dr. Erszébet Herzog, which had been safeguarded as deposits in the Museum of Fine Arts:

1. Dutch painter, 17th century: Portrait of a Woman
Oil on oak wood panel, 70x58 cm, framed
Former inventory number: L 3.014, preservation order number: 8/89
2. Austrian or Italian painter, 18th century: Adoration of the Magi
(in the inventory: G. Diziani ?)
Oil on canvas, 56x82.3 cm, in a gilded frame
Former inventory number: L 3.143, preservation order number: 9/89
3. Austrian or Italian painter, 18th century: Adoration of the Shepherds
(in the inventory: G. Diziani ?)
Oil on canvas, 55.8x81.8 cm, without a frame
Former inventory number: L. 3.144, preservation order number: 10/89

Dr. (Mrs.) József Váczi
Attorney
1113 Budapest Győrök u 5.

I have handed over the paintings.

Eszter Fábry

March 9, 1989, Budapest

*The paintings have been deleted from the inventory.
Eszter Fábry March 9, 1989.*

HUNG020306

I, the undersigned notary public, hereby officially certify that the declaration on the opposite page was signed by ELIZABETH W. O. CSEPEL personally in front of me, on today's date, and to certify this I have personally signed and officially stamped this document.

*New York City
Oct 16, 1979*

[illegible signature]

[stamp: ANDY TOMPOS

Notary Public, State of New York

No. 31-3998360

Qualified in New York County

Commission Expires March 30, 1981]

[ondo format seal: A MAGYAR NÉPKÖZTÁRSASÁG FŐKONZULÁTUSA
CONSULATE-GENERAL OF THE HUNGARIAN PEOPLE'S REPUBLIC
NEW YORK]

HUNG020307

*Museum of Fine Arts
Budapest*

272/89

Elisabeth Weiss de Csepel
New York, N.Y. 10028
55 East 86th Street
USA

Dear Esteemed Madam,

In accordance with your request, we release the requested paintings to your proxy in Budapest. In accordance with Hungarian law, we declare the paintings to be protected, pursuant to which they may not be taken abroad, although they can be sold in Hungary.

We would like to indicate that the Museum of Fine Arts would be happy to purchase the paintings titled "The Nativity" and "The Adoration of the Magi" painted by an Austrian or Italian master from the 18th century if you would like to dispose of them, since two other pieces of this series are already in our possession.

Wishing you and your dear family all the best.

Yours sincerely,
[illegible signature]
(Dr. Ferenc Merényi)
Director

[tondo format seal: Museum of Fine Arts]

Budapest, February 28, 1989

[illegible]

HUNG020308

draft letter

Elisabeth Weiss de Csepel
New York, N.Y. 10028
55 East 86th Street

1122/88 and 272/89

Dear Esteemed Madam,

In accordance with your request, we release the requested paintings to your proxy in Budapest. In accordance with Hungarian law, we declare the paintings to be protected, pursuant to which they may not be taken abroad, although they can be sold in Hungary.

We would like to indicate that the Museum of Fine Arts would be happy to purchase the paintings titled "The Nativity" and "The Adoration of the Magi" painted by an Austrian or Italian master from the 18th century if you would like to dispose of them, since two other pieces of this series are already in our possession.

Wishing you and your dear family all the best.

Yours sincerely,
Dr. Ferenc Merényi
Director

Typeable
February 28, 1989
[illegible signature]

[illegible]

HUNG020309

Memorandum

ad 272/89

To the attention of Director Dr. Ferenc Merényi

Based on the power of attorney and authorization of Dr. Erzsébet Herzog, who lives in New York, attorney Dr. Mrs. József Váczi has requested the release of the three privately owned paintings which are in the possession of the Museum, based on the antecedents described in the attached documents. Since we do not have any legal basis to reject the request, after declaring the protection, I propose to transfer the artworks to the legal counsel of the owner, as verified with original documents, in exchange for an acknowledgement of receipt. I would consider it appropriate for the Museum to disclose any potential interest in purchasing the items directly to the owner, together with a reference to their protected status, in the direct notice regarding the release.

Budapest, February 24, 1989

[illegible signature]
Dr. Tibor Soós
Legal Counsel

After filing:
Eva Nyerges Dept. Head
Please give your recommendations as to what to do.
February 27, 1989
[illegible signature]

[illegible]

HUNG020310

Eszter Fábry

According to the information received from [illegible] you will issue the letter in question to Mrs.

József Vác.

March 6, 1989

[illegible signature]

Memorandum

ad 272/89

[illegible]

-5

To the attention of Director Dr. Ferenc Merényi

Based on the power of attorney and authorization of Dr. Erzsébet Herzog, who lives in New York, attorney Dr. Mrs. József Vác has requested the release of the three privately owned paintings which are in the possession of the Museum, based on the antecedents described in the attached documents. Since we do not have any legal basis to reject the request, after declaring the protection, I propose to transfer the artworks to the legal counsel of the owner, as verified with original documents, in exchange for an acknowledgement of receipt. I would consider it appropriate for the Museum to disclose any potential interest in purchasing the items directly to the owner, together with a reference to their protected status, in the direct notice regarding the release.

Budapest, February 24, 1989

[illegible signature]

Dr. Tibor Soós

Legal Counsel

After filing:

Eva Nyerges Dept. Head

Please give your recommendations as to what to do.

February 27, 1989

[illegible signature]

It has been declared protected; the release is to be arranged by the Old Gallery, the artworks are in their storage facility.

The steps described in the last paragraph should also be taken by the Old Gallery.

[illegible signature]

HUNG020311

Received: February 1989

[illegible]

To the Director of the Museum of Fine Arts

With reference to your letter of Dec 12, file no. 1122/88., I am sending copies of Dr. Erzsébet Herzog's (Elisabet W. de Csepel's) old and recently dated powers of attorney. I am also attaching a copy of my client's handwritten letter, in which she requests, on the date of January 19, 1989, that you release her deposited paintings to me. At the time of taking receipt of the artworks, I will naturally provide you with the original documents.

The reason I have again chosen to contact you by post is because it was to no avail that I attempted to present my powers of attorney in person – no one was willing to receive me ?!

In closing, I wish to state that my client, the rightful owner of the paintings, wishes neither to sell them nor to conclude a deposit contract with the Museum.

I ask you, sir, to please notify me as soon as possible regarding when I can take possession of the pictures.

Budapest, February 7, 1989

Yours sincerely,
[illegible signature]
Dr. Mrs. József Vác
1113 Budapest, Győrök u. 5

* Who talked to the attorney?

Why didn't they let her present her case personally?!

February 27, 1989
[illegible signature]

HUNG020312

272/89
-5

Dr. Ferenc Merényi
Director
H.

A. Vajda

Based on the opinion of the experts of the Museum of Fine Arts (Dr. Zsuzsa Urbach, Dr. Éva Nyerges), I propose that the following be declared to be protected:

Elisabeth Weis de Csepel (55 East 86th Street New York, N.Y. 10028) Place of safeguarding (Dr. Magdolna Mrs. Dr. József Vác néé Konkoly, Budapest, Győrök u. 5. 1113), who owns:

Austrian or Italian master. 18th century: The Adoration of the Magi; oil, canvas; 56 x 82.3 cm

Austrian or Italian master. 17th century: The Nativity (The Adoration of the Shepherds), oil, canvas; 55.8 x 81.8 cm

Dutch painter. 17th century: Portrait of a Woman, oil, oak, 70x58 cm

Budapest, March 1, 1989

[illegible signature]
Dr. Éva Nyerges
Head of the Records Department

SEEN: March 3, 1989
[illegible signature]

HUNG020313

272/89

Elisabeth Weis de Csepel
55 East 86th Street
New York, N.Y.
10028

Place of safeguarding:
Dr. Mrs. József Váczi
Dr. Magdolna Konkoly
Budapest
Budapest, Győrök u. 5.
1113

9/89

Austrian or Italian master. 7th century: The Nativity (The Adoration of the Shepherds). oil, canvas; 55.8 x 81.8 cm (stretched onto a new canvas in 1961, but the paint layer darkened intensely). The seated figure of the young Mary in the middle on the left side, in front of a dark stable, wearing red clothes and a blue cloak, and a white scarf on her head. She is spreading out the sheet that covers the child Jesus with both hands, the infant is lying before her on the straw. Joseph is standing in the background on the left, pointing towards the child, before whom a shepherd kneeling. In the foreground on the left, a shepherd is bowing down to the ground, another shepherd in red clothes is kneeling on the right, with a lamp in front of him. Three figures are visible in the background on the right, the young boy in the middle is holding a basket.
Deposit No. at the Museum of Fine Arts: L.3.144. No frame.

March 9

[illegible]

HUNG020314

272/89

Elisabeth Weis de Csepel
55 East 86th Street
New York, N.Y.
10028

Place of custody:
Dr. Mrs. József Vác
Dr. Magdolna Konkoly
Budapest
Győrök u. 5.
1113

10/89

Austrian or Italian master, 18th century: The Adoration of the Magi; oil, canvas; 56 x 82.3 cm
Mary is sitting on the right in front of a dilapidated stable with the Child in her lap. She is wearing red clothes and a blue cloak. The old king is kneeling before the child Jesus and kissing his hands. The king in the middle is kneeling to the right, turned, with a cup with a cover before him. The young black king is standing on the left, with his back towards the viewer, holding a horn cup in his hand. One of his servants is holding a parasol above him, black servants can be seen behind him. Two boys are standing in the background to the right.
Deposit No. at the Museum of Fine Arts: L.3.143.
Tags on the back of the painting: Nemes F 128 and State Security Police
G.B. Tiepolo Adoration of the Magi

March 3, 1989
[illegible signature]
[illegible]

HUNG020315

272/89

Elisabeth Weiss de Csepel
55 East 86th Street
New York, N.Y.
10028

Place of custody:
Dr. Mrs. József Váczi
Dr. Magdolna Konkoly
Budapest
Győrök str. 5.
1113

8/89

Dutch painter, 17th century: Portrait of a Woman; oil, oak, 70 x 58 cm (Put together from three sheets, on the places of fitting the adhesive is loose. There are deficiencies in the painting, the picture was restored at the museum in 1988.

Half figure of a young woman, slightly turned to the left, in front of a dark background. Her hair is reddish-blonde, she has a black scarf on her head, with a white shoulder collar over her black clothes, gold brocade hem below, and a decorative ribbon on it.

It is a half-length portrait; the woman's hands are not seen.

Deposit No. at the Museum of Fine Arts: L.3.014.

March 3, 1989

[illegible signature]

[tondo format seal: MUSEUM OF FINE ARTS]

[illegible]

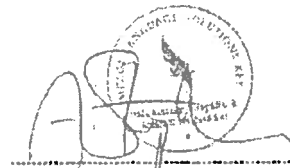
HUNG020316



CERTIFICATE

The attached translation has been prepared by Impact Language Solutions Kft.
The translation reflects the text, where legible, of the appended source
Hungarian document in all respects.

February 27, 2014



Adiel Stephenson
Managing Director

A circular stamp is visible behind the signature. The text within the stamp is partially legible and appears to read "IMPACT LANGUAGE SOLUTIONS KFT." around the perimeter. The signature itself is a stylized, handwritten "AS" with a horizontal line extending to the right.

HUNG020317

EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID L. De CSEPEL, et al.,)
)
 Plaintiffs,)
)
 vs.) No.
) 1:10-CV-01261 (ESH)
)
REPUBLIC OF HUNGARY, et al.,)
)
 Defendants.)

)

Rule 30(b)(6) Deposition of Mária Mihály
taken on
Thursday, April 16, 2015
Budapest, Hungary

Reported by: Shelle Higgins

CSR NO. 10455, CLVS

1 director as a single person. Of course the director
2 general assigns certain tasks to other staff members,
3 so I'm dealing with the inventory books. I supervise
4 the entries in them.

5 Q. So you're generally familiar with the
6 inventory systems used by the museum?

7 A. In general, I do.

8 Q. Okay. The museum maintains an inventory
9 known as the core inventory; right?

10 A. Yes, it does.

11 Q. It also maintains a deposit inventory;
12 right?

13 A. Yes.

14 Q. What is the difference between the core
15 inventory and the deposit inventory?

16 A. Items in the collection of the museum are
17 recorded in the core inventory. In this case, these
18 items are owned by the State of Hungary.

19 On the other hand, the deposit inventory
20 includes items that are kept safeguarded by the
21 Museum of Fine Arts as deposits or for some other
22 reason.

23 Q. What other reason would an artwork be on the
24 deposit inventory?

25 A. It can be deposited by someone like the

1 owner. Or in previous times, especially due to
2 historical circumstances, someone like an authority
3 can be the depositor. Other authorities, for
4 example, customs authorities or police, also place
5 its items into the deposit with us.

6 The point of this practice is these are
7 items that are captured by the state border and are
8 confiscated or seized because they were being
9 smuggled out or in the country.

10 Q. If an artwork comes into the museum today,
11 who decides which inventory it is placed on?

12 A. If it becomes part of the collection of the
13 museum, and it can become part of it in various ways,
14 then it's the manager of the particular collection
15 that deals with that area of items, of course with
16 the knowledge of the Director General.

17 Q. And has that always been the practice at the
18 museum going back in the past?

19 MR. STAUBER: Objection. Can you put that
20 in some sort of time frame? The past, do you mean
21 for the past 50 years, past 10 years?

22 MS. BENENATI: I'll rephrase the question.

23 MR. STAUBER: Thanks.

24 BY MS. BENENATI:

25 Q. For how long has that been the practice in

EXHIBIT 13

Dr. BERZSÉNYI ÖDÖN
OGYVÉD
Budapest, XI. Bartók Béla-út 23. II/22.
Telefon 438-744.

Budapest, 1948. június hó 28.

Nagyságos

Dr. Jeszenszky Sándor ny. osztályfőnök,
miniszteri biztos urnak,

B u d a p e s t.

Magyar Országos
Levélár

XIX-3-12-241/1948 (2d.)

Igen tisztelt Miniszteri Biztos Ur!

Folyó évi június hó 21-i kelettel 215/1948. szám
alatti Herczogh István tulajdonát képező néhány festmény irán-
ti nb. érdeklődésére közlöm Miniszteri Biztos urral, hogy Her-
czogh István gondnokságának átvétele időpontjában 1947. június
hó 6.-án az árvaszékekkel és a volt gondnok, Herczogh Istvánné
által az árvaszékekkel és velem közölt leltárban a Miniszteri
Biztos ur nb. soraiban megjelölt festmények nem szerepeltek, azo-
kat én a volt gondnoktól sem leltárilag, még kevésbé ténylegesen
át nem vettem. Magán-értesülésem azonban az, hogy Zurbarán:
Szent András című képe a Pesti Magyar Kereskedelmi Banknál van
fedezeti leltárként elhelyezve.-

Gregó: Angyali üdvözlétéről, Göya: Ivó és Kon-
ninck: Tájkép című festmények hol létéről pontos tudomásom
nincs.-

Érdeklődésemre Antal Zoltán művészet-történész
/II. ker. Szász Károly utca 4./ közölt három kép sorsa felől-
ellenőrizhetetlen híreket, amelyeket esetleg Antal urnak a
Miniszteri Biztos ur előtt is módjában állna megismételni.-

Végül jelezni vagyok kénytelen, hogy magánjogi
szempontból nem vagyok tökéletesen meggyőződve afelől, hogy
a Miniszteri Biztos ur érdeklődésének tárgyát képező képek
gondnokoltam tulajdonát képezik, mert azokat gondnokoltam 1944.
folyamán feleségére ruházta át közjegyzői okirattal. Igaz,
hogy ez az átruházás valószínűleg az ugynevezett zsidótörvény
hatása alatt, de tény az, ^{Törvény} az a jogi ^{ügy} állapot még a mai napig
sincs megtámadva.-

Elintézte 249/1948. n. 4.

a. a.

Op. 448. III. 7.

Jeszenszky Sándor

Kiváló tisztelettel:

fizetési ügyész, mint Herczogh
István gondnoka.

Magyar Országos
Levélár

DR. ÖDÖN BERZSENYI

ATTORNEY

Budapest, XI., Bartók Béla út. 23.II.22

Budapest, June 28, 1948

241/948

To Dr. Sándor Jeszenszky
ret. Ministry Department Head
Ministerial Commissioner

Budapest

National Archives of Hungary XIX-I-12-241/1948 (2. d)

Dear Ministerial Commissioner,

In response to your inquiry (date: June 21 of this year; number: 215/1948) about some of the paintings owned by István Herzog, let me inform you that the paintings identified by yourself were not listed in the inventory handed over to me and the Orphans' Court by the former guardian Mrs. István Herzog on June 6, 1947 (when I took over the guardian's role). I have not received any inventory of them, let alone the paintings themselves, from the former guardian. However, I am privately informed that Zurbaran's painting titled "Saint Andrew" is in security deposit with the financial institution Pesti Magyar Kereskedelmi Bank.

I have no accurate knowledge of the whereabouts of the other three paintings (Greco: Annunciation; Goya: Drinker; and Konnack: Landscape).

Upon my inquiry, art historian Zoltán Antal (District 2, Szász Károly utca 4) gave me unverifiable rumors about the three pictures. He could probably furnish you with the same information.

Finally, I must add that, from the perspective of private law, I am not entirely convinced that the paintings you inquire about are owned by my client as they were transferred to his wife via a notarial deed in 1944. While this transfer was effected under the so-called Jew Act, it has not yet been legally contested so far.

Yours sincerely,

Dr. Ödön Berzsenyi

official prosecutor, as the guardian of István Herzog

Settled: under no. 349/948

a.a

Bp, June 7, 1948

(illegible handwriting)

NEW HUNGARIAN
CENTRAL ARCHIVES

777

HUNG011311



CERTIFICATE

The attached translation has been prepared by Impact Language Solutions Kft.
The translation reflects the text, where legible, of the appended source
Hungarian document in all respects.

February 27, 2014

A handwritten signature in dark ink, appearing to read "Adiel Stephenson", written over a faint circular stamp or seal.

Adiel Stephenson
Managing Director

HUNG011312

EXHIBIT 14

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID L. de CSFPEL, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 1:10-CV-01261(ESH)
)	
REPUBLIC OF HUNGARY, et al.,)	
)	
Defendants.)	
<hr/>		

RULE 30(b)(6) DEPOSITION OF DR. ZOLTÁN MOLNAR

Tuesday, February 3, 2015

Budapest, Hungary

Reported by:

Josslyn Gordon
CSR No. 10284

**CERTIFIED
COPY**

1 BY MS. BENENATI:

2 Q We'll try the question again.

3 At the time of the lawsuit in Hungary in 1999,
4 the Treasury Assets Agency was the owner of property
5 belonging to the Hungarian state; correct?

6 A No.

7 Q Okay.

8 A Can I explain it?

9 Q Yes, please.

10 A Well, the owner is the Hungarian state. The
11 National Asset Agency, by virtue of the law, represented
12 the Hungarian state in civil proceedings. The National
13 Asset Agency didn't have any possessions -- was not
14 owning anything -- did not own anything.

15 Q Okay.

16 A Didn't possess anything.

17 Q Okay. Now, the museums did not own artworks on
18 behalf of Hungary; correct?

19 Let's go off the record.

20 (Discussion held off the record.)

21 MS. BENENATI: Let's repeat the question, and
22 see if we've resolved the issue.

23 (The record was read as follows:

24 "QUESTION: At the time of the
25 lawsuit in Hungary in 1999, the Treasury

16

1 Assets Agency was the owner of property
2 belonging to the Hungarian state;
3 correct?

4 "ANSWER: No.

5 "QUESTION: Okay.

6 "ANSWER: Can I explain it?

7 "QUESTION: Yes, please.")

8 THE WITNESS: So the National Asset Agency
9 represented the Hungarian state in civil proceedings.

10 (Discussion held off the record.)

11 BY MS. BENENATI:

12 Q I'm going to start with a new question. I
13 think we'll just -- okay.

14 You have said that -- strike that.

15 The Museum of Fine Arts is not the owner of
16 artworks in its collections that are considered to
17 belong to Hungary; correct?

18 A These artworks that belong to Hungary, those --
19 that the owner is Hungary, they are exhibited in the
20 Museum of Fine Arts.

21 Q Okay. Now, the Museum of Fine Arts also
22 exhibits artworks that are not owned by Hungary;
23 correct?

24 A Yes.

25 Q Before the Nierenberg lawsuit began, had you

1 museums that are state museums.

2 Q Okay.

3 A But the museums that are owned by the state,
4 they did not have the right of ownership. So they
5 either exhibited the pictures which were owned by the
6 state or they exhibited pictures which were owned by
7 others.

8 Q So if a painting was a deposit, it was owned by
9 others?

10 MR. STAUBER: Objection. It's a hypothetical
11 question. He can answer facts. He's here as a fact
12 witness. But not as an expert witness or to give his
13 opinion on hypotheticals without any -- especially
14 without a parameters.

15 MS. BENENATI: I'm just trying to establish the
16 extent of his knowledge. So -- if he knows.

17 Are you instructing him not to answer?

18 MR. STAUBER: If he knows.

19 THE WITNESS: As I said earlier, a state --
20 state-owned museums did not have an ownership of these
21 artworks. So no matter what kind of legal title they
22 had in terms of those artworks that they exhibited; so
23 from the perspective of ownership, it is not having any
24 relevance.

25 ///

EXHIBIT 15

1 Q. Do you have any involvement in art
2 restitution issues?

3 A. Could you specify what you understand under
4 involved in any way?

5 Q. Have you been involved at all in any art
6 restitution claims or proceedings during your time at
7 the museum?

8 A. So I have to say before we go into the
9 details on ownership issues that the artworks located
10 in the museum are owned by the state, and the rights
11 of -- the ownership rights are exercised by the
12 Hungarian National Asset Management --

13 No, State Holding Company. (The Witness in
14 English.)

15 -- State Holding Company, Hungarian State
16 Holding Company.

17 So if ownership issues are raised, I must
18 say that the museum is the asset manager of these --
19 or the holder of these artworks. So if any question
20 of ownership is raised, it is the State Holding
21 Company that can render a decision or take any
22 position on the question of ownership.

23 The museum has the task of -- so the museum
24 has the task of making available all information and
25 documents to the holder of the ownership rights, that

1 is the State Holding Company, in order to -- that
2 this holder can render a correct decision.

3 So my answer to your question is, yes, I
4 have participated in such issues. We have collected
5 with my colleagues documents, evidence and all the
6 relevant facts to inform the decision maker. We have
7 done this, we are doing this now and we shall
8 continue to do this in the future.

9 Q. Is there a particular person at the
10 Hungarian State Holding Company who is assigned to
11 deal with restitution issues for art?

12 A. I have no knowledge of any special assigned
13 person who is assigned to this issue, but we are in
14 contact with the general director for the affairs.

15 Q. Who is that?

16 A. Right now this position is held by Tamás
17 Berencsi.

18 Q. You testified that you've been involved in
19 the process of providing information documents
20 concerning restitution claims. Approximately how
21 many separate restitution claims have you worked on?

22 A. Since 2008, there couldn't have been much
23 more than 5 to 10 such claims.

24 Q. I'm going to show you a document which --
25 let's go off the record for a minute.

1 **BY MS. BENENATI:**

2 **Q.** In order for the Hungarian State Holding
3 Company to form an opinion concerning ownership, what
4 information does the museum provide to the Hungarian
5 State Holding Company concerning an artwork?

6 **A.** Any information available.

7 **Q.** Such as?

8 **A.** Documents, registration data or registered
9 data, archived documents, anything that is available
10 of what we know. It could be contracts or an
11 agreement. Nothing is excluded from this.

12 **Q.** Are some records given more weight than
13 others in terms of being considered authoritative?

14 **A.** So there's no predefined strength of
15 documents or authoritativeness. The National State
16 Holding Company shall take all circumstances into
17 account when deciding on this.

18 **Q.** My last question before the break would be
19 is there a way to tell from the inventory number
20 assigned to an artwork whether that artwork is in a
21 public collection funded by the state or not?

22 **A.** Of course, registrations, inventory numbers
23 assigned by the museums are very important, but this
24 is not the exclusive information that shall be taken
25 into account when deciding upon this. All

1 circumstances must be taken into account.

2 Q. Okay. My question is, is there a way to
3 tell from the inventory number whether an artwork is
4 in a public collection funded by the state?

5 A. Not necessarily from the inventory number,
6 not necessarily.

7 Q. Okay.

8 MS. BENENATI: We can take a break.

9 MR. STAUBER: Great.

10 (Brief recess.)

11 MR. STAUBER: During the break the Witness
12 asked if he could make a clarification to one
13 particular question at this time.

14 MS. BENENATI: (No audible response.)

15 THE WITNESS: So just one thing I don't
16 recall precisely as regards the answer written on
17 occasion of the letter sent to the heirs.

18 So five years have passed since, so I'm not
19 sure. It's possible that it originates from the
20 heirs directly and not from Agnès. But in case it
21 originates from the heirs, there was a reference made
22 to Agnès. Anyway, there was no substantial
23 communication between the heirs and the museum after
24 that. That's all.

25 MS. BENENATI: Okay. Thank you for that.

1 **BY MS. BENENATI:**

2 **Q.** Does the museum maintain an inventory that
3 it refers to as the core inventory?

4 **A.** Yes. So yes, the registration system of the
5 museum is governed by a ministerial decree of 2002.
6 This does not only apply to the Museum of Fine Arts
7 but all museums. So this decree goes into the
8 sophisticated details of the different methods of
9 registration, the documents and the way these
10 documents must be filled out, the filing. However,
11 this system is a fundamentally professional system of
12 registration, so it is important from the perspective
13 of museology. Any entries made into such registries
14 have certain legal significance. So yes, there is
15 some certain legal relevance to this, but the entries
16 themselves are professional entries. They do not
17 give rise to any rights or claims. These are
18 professional entries. They actually constitute a
19 kind of management of the artwork and define the
20 status of the artwork.

21 **Q.** So are artworks that are included on the
22 core inventory considered to be owned by the
23 Hungarian State Holding Company?

24 **A.** In case the ownership status of items
25 pertaining to the core inventory is contested, then

1 it is absolutely necessary to request the position of
2 the Hungarian State Holding Company on this issue.

3 Q. Okay. But the fact that an artwork is
4 listed in the core inventory does not necessarily
5 mean that it is owned by the Hungarian State Holding
6 Company then?

7 A. So the ownership of the state is meant
8 under -- so you mean the ownership of the state?

9 Q. (No audible response.)

10 A. You must take all -- so we must take all
11 circumstances into consideration and not only
12 exclusively the entries.

13 Q. The Museum of Fine Arts also maintains a
14 deposit inventory that is separate from the core
15 inventory; right?

16 A. Yes, according to the decree this is the
17 case and this is actually the task of all museums.

18 Q. The other museums also maintain deposited
19 inventories in addition to a core inventory?

20 A. Yes, in case they have a deposit.

21 Q. Just going back for a second, is there a
22 single core inventory for the museums or are there
23 separate inventories for the different divisions and
24 departments?

25 A. So the Museum of Fine Arts is divided into

1 Q. And were you involved in that process?

2 A. No. This was not my responsibility. What I
3 did was I offered legal assistance to the attorney.

4 Q. Okay. Was the Hungarian State Holding
5 Company involved in the process of compiling
6 materials?

7 A. So the State Holding Company did not take
8 part in the collection of the documents, but it does
9 participate in the proceedings because it is party to
10 the proceedings.

11 Q. Has the State Holding Company or another
12 entity concluded that each of the artworks listed in
13 the complaint are state owned?

14 A. It is only the Hungarian State Holding
15 Company that has the competence to make such a
16 decision. Nobody else can arrive at such a
17 conclusion.

18 Q. Has the Hungarian State Holding Company
19 issued an opinion that each of the artworks listed in
20 the complaint are state owned?

21 A. No, it has not.

22 Q. Okay.

23 A. But it didn't have to.

24 Q. Why not?

25 A. This is because the State Holding Company

1 shall only issue a negative ownership statement in
2 case it considers the articles -- the artworks to be
3 -- not to be in the Hungarian State's ownership. If
4 it considers them to be in the ownership of Hungary,
5 then it shall be the attorney who shall elaborate on
6 this during the proceedings.

7 **MR. STAUBER:** That's me. I think for the
8 record it's very clear that we have denied all the
9 claims and asserted the Hungarian State's ownership
10 to each and every one of the 44 artworks claimed.

11 **BY MS. BENENATI:**

12 **Q.** How did the Hungarian State Holding Company
13 arrive at the conclusion there was no dispute as to
14 the ownership of the artworks at issue in this case?

15 **A.** We must ask this question from the Hungarian
16 State Holding Company. But there's no other way as
17 to arriving to this conclusion but to look at the
18 documents and on the basis of the effective Hungarian
19 judgements which cover about 10 to 11 pieces of
20 artwork covered by the claim. And based on this, I
21 did not have any other choice but to arrive at this
22 conclusion.

23 **Q.** Has the museum undertaken any investigation
24 to determine whether it holds artworks that were at
25 one time owned by the Herzog family beyond those

EXHIBIT 16

E-FILED 8/12/2011

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CLAUDE CASSIRER,

Plaintiff,

vs.

KINGDOM OF SPAIN, a foreign
state, and THYSSEN-
BORNEMISZA COLLECTION
FOUNDATION, an agency or
instrumentality of the Kingdom of
Spain,

Defendants.

Case No. CV05-3459 GAF (CTx)

~~PROPOSED~~ ORDER
GRANTING DISMISSAL OF
DEFENDANT, KINGDOM OF
SPAIN

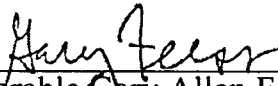
[Filed concurrently with Stipulation
for Dismissal]

ORDER GRANTING DISMISSAL

Upon stipulation of the parties, this Court hereby orders Defendant Kingdom
of Spain dismissed without prejudice from the above-referenced action.

It is so ordered.

Dated: August 12, 2011


Honorable Gary Allen Feess
United States District Court Judge

~~PROPOSED~~ ORDER GRANTING
DISMISSAL

EXHIBIT 17

PRIVATE PROPERTY, RIGHTS, AND INTERESTS IN THE PARIS PEACE TREATIES

By ANDREW MARTIN, PH.D., DR.JUR.

I. *Introductory*

IN order to place in their proper perspective those clauses in the five Peace Treaties¹ which deal with private property, rights, and interests it is necessary, in the first instance, to define their connexion with reparations. The claims of the victorious belligerents and those of their nationals for loss or damage due to acts of war (including the occupation of territory) are disposed of in these Treaties in two principal ways: (1) *collectively*, by imposing upon the defeated states an obligation to *pay* reparations and by reserving for the victorious states the right² to *seize and retain*, by way of reparations, enemy property found within their respective territories on the coming into force³ of the Peace Treaties; (2) *individually*, by providing for the *restitution* of identifiable property removed by force or duress from United Nations territory, and for the *restoration* of, or payment of compensation for, United Nations property, rights, and interests which existed in enemy territory before the war.

In addition to these positive dispositions there are sets of rules whereby, *on the Allied side*, all claims—including private claims—for loss or damage due to acts of war (with the exception of claims to the restitution or restoration of identifiable property) are waived⁴ in consideration of reparations; and, *on the enemy side*, all private claims against the Allied and Associated Powers arising out of the war or out of action taken because of the existence of a state of war are waived absolutely.⁵

At the same time, enemy Governments are placed under an obligation to pay their own nationals compensation:

- (a) for property taken for reparation purposes in enemy territory⁶ or seized and retained for the same purpose in United Nations territory;⁷

¹ The following abbreviations will be used: I.T., Peace Treaty with Italy; R.T., Peace Treaty with Roumania; B.T., Peace Treaty with Bulgaria; H.T., Peace Treaty with Hungary; F.T., Peace Treaty with Finland; all of 10 February 1947. T.V., Treaty of Versailles, 1919.

² Except in the case of Finland.

³ 15 September 1947.

⁴ Art. 80, I.T.; there is no express declaration to this effect in the four other treaties, but it is submitted that the legal position is not affected by the absence of such declarations.

⁵ Art. 76, I.T.; Art. 30, R.T.; Art. 28, B.T.; Art. 32, H.T.; Art. 29, F.T.

⁶ Art. 74 (E), I.T. No corresponding provision appears in the four other treaties.

⁷ Art. 79 (3), I.T.; Art. 27 (3), R.T.; Art. 25 (3), B.T.; Art. 29 (3), H.T. The question of

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- (b) for supplies and services requisitioned by Allied forces in enemy territory;¹
- (c) for non-combat damage suffered as a result of the presence of Allied forces in enemy territory.¹

The organic connexion between reparations, restitution, restoration, retention, and compensation has to some extent been obscured by the drafting technique of both the 1919 and the 1947 Treaties. The grouping of the reparation and restitution clauses in seemingly self-contained parts and sections has led to the erroneous view that private property, rights, and interests (other than looted property) are not directly involved in reparations.² It should be evident from the general survey given in the two preceding paragraphs that this is not the case. Reparations are but one way (the collective way) of making good the loss or damage inflicted on (*inter alia*) private property; restitution, restoration, and compensation are other roads in the same network. Conversely, payments and deliveries by enemy Governments are not the only way in which reparations are paid; they are also paid in the form of *private* property, rights, and interests which are seizable and retainable by the victors without the intervention of enemy Governments. Finally, reparations for the Allies are not the only reparations stipulated by the Treaties: the compensation payable by enemy Governments to their own nationals for property and services requisitioned, and for non-combat damage caused by Allied forces is a remarkable case in point.

Writing in the 1920-1 volume of this *Year Book* on the treatment of private property in the Treaty of Versailles, the late Dr. Schuster remarked with some diffidence:

'... it remains to be seen whether the particular measures affecting private property provided for by the Peace Treaty ought to form precedents establishing definite rules of International Law on these matters.'³

It is just as difficult to answer that question to-day as it must have been immediately after the First World War. In regard to the inviolability of private property in war, the time-honoured controversy of lawyers has not been settled by the literature either of the inter-war period or of the 1939-

compensation does not arise in relation to Finland, in whose case the Allies have not reserved the right to seize and retain enemy property found within their respective territories.

¹ Art. 76 (2), I.T.; Art. 30 (2), R.T.; Art. 28 (2), B.T.; Art. 32 (2), H.T. There are no corresponding provisions in the Finnish Treaty.

² In the Italian Treaty, reparations and restitution, together with the renunciation of claims by Italy, are covered in Part VI, which is headed 'Claims Arising out of the War'; restoration, retention, and debts are grouped together in Part VII, under the heading 'Property, Rights and Interests'. In the four other treaties, however, the renunciation of enemy claims has parted company with reparations and restitution and is found together with restoration, retention, debts, and a number of other subjects under the omnibus heading 'Economic Clauses'.

³ At p. 168.

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45 war.¹ Admittedly, we now have before us the precedents of two major and multilateral peace settlements, linked by a striking similarity of general pattern, but as far as the treatment of private property and interests is concerned, closer examination reveals many divergences not only in detail but also in principle. In some respects these divergences are so fundamental² that it is difficult to escape the conclusion that the technique of dealing with private property after a total war is still in a state of flux.

2. *Restitution*

By a Declaration dated 5 January 1943³ the United Nations issued a formal warning to all concerned and, in particular, to persons in neutral countries that they intended to do their utmost to defeat the methods of dispossession practised by the Axis and that accordingly they reserved the right to declare invalid any transfers of or dealings with private property, rights, and interests in territories which had come under the occupation or the direct or indirect control of the enemy; transactions 'apparently legal in form' or purporting to be voluntarily effected were singled out for specific mention. That Declaration has now become an integral part of the peace settlement through the device of a clause inserted into the Peace Treaties (except the one with Finland) in which the enemy states signify their formal acceptance of the principles of the Declaration and enter into an obligation⁴ (directly resulting from those principles) to return 'property removed from the territory of any⁵ of the United Nations'.

The obligation to make restitution applies to all identifiable property which was removed by force or duress by *any* of the Axis Powers from the territory of *any* of the United Nations irrespective of any subsequent transactions by which the present holder of any such property has secured possession. This obligation applies, in the first place, to United Nations property which, on the coming into force of the Peace Treaty, was still held in the territory of the enemy state concerned. It also applies, however,

¹ See Oppenheim, *International Law*, vol. ii (6th ed. by Lauterpacht, 1940), p. 168: '... nowadays the life and liberty of such private subjects of belligerents as do not directly or indirectly belong to their armed forces and, with certain exceptions, their private property ought to be safe. That is generally, although in regard to private property not universally admitted.' See also Fischer Williams, *Chapters on Current International Law and the League of Nations* (1929), pp. 188-208; Rabel, *Situs Problems in Enemy Property Measures* (1945); Sommerich, *A Brief against Confiscation* (1945); Rubin, *'Inviolability' of Enemy Private Property* (1945).

² E.g., the nullification of 'exceptional war measures' in contrast with their express validation in 1919; the pursuit of looted property into the hands of bona fide purchasers in both enemy and neutral countries; the considerable widening of the category of persons entitled to the protection due to Allied nationals; the extension of the benefits of the Peace Treaties to countries which had not been at war with the enemy state.

³ Misc. No. 1 (1943), Cmd. 6418.

⁴ Art. 75, I.T.; Art. 23, R.T.; Art. 22, B.T.; Art. 24, H.T.

⁵ In the case of Finland it was sufficient to make provision for the return of property removed from Soviet territory.

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to United Nations property held in any third country by persons subject to the jurisdiction of that particular enemy state; accordingly, the Government of the latter is placed under an obligation to take such measures as may be necessary to effect the return of such property.¹

The field of application of the general rule which has just been stated, and the supplementary rules to which brief references will be made here below, is in part wider, in part narrower, than the application of the corresponding provisions of 1919. First, while the 1919 Treaties did not purport to pursue looted property beyond the territory of the enemy state and its allies,² the present settlement lays claim to the restitution of all identifiable property³ *wherever* it may be found. The obligation imposed on enemy Governments to compel all persons under their jurisdiction to surrender property held by them in third countries has no parallel in the previous settlement; nor did the Allies of the First World War make any attempt comparable to the Declaration of 5 January 1943, and the arrangements made pursuant to it, to enlist the co-operation of neutral states in the search for, and recovery of, Allied property. On the other hand, the principle that where restitution of the original loot is impossible there should be restitution in kind is now restricted to a much more limited field than it was in the previous settlement.⁴ In fact it only appears in the form of two specific rules.

The first of these is written into the Italian, Bulgarian, and Hungarian Treaties.⁵ It provides that where it is found impossible to return individual

¹ The combined effect of these provisions may be illustrated as follows: assuming that French property looted by German forces has ultimately passed into the ownership of a person resident in Roumania, and on 15 September 1947 was still held in Roumanian territory, the responsibility for restitution rests clearly with the Roumanian Government. Should, however, the Roumanian owner have, at any time before 15 September 1947, transferred the property to Italian territory without changing residence, both the Roumanian and the Italian Government will be responsible for restitution. The former will have to take measures designed to compel the Roumanian owner to surrender both title and possession in Italy; the latter will have to take measures *in rem*, operating directly on the property. Should the Roumanian owner have taken up residence in Italy under conditions which remove his person from Roumanian jurisdiction, the responsibility of the Roumanian Government will have come to an end and passed entirely to the Italian Government. Should both the property and the residence of the owner have been transferred to neutral territory, the legal position will depend on the existence or absence of special arrangements between the neutral state and the Allied and Associated Powers. For the gist of such arrangements, notably with Switzerland, see *infra*, p. 279.

² Art. 238, T.V.; Art. 184, Treaty of St. Germain; Art. 168, Treaty of Trianon.

³ The use of the general term 'all identifiable property' is new in itself; the T.V. enumerated certain categories of properties which had to be restituted. As, however, the list given in Art. 238, T.V., included, in addition to cash, securities, and animals, also the omnibus term 'objects of every nature', the difference between the terms used in 1919 and 1947 is one of phraseology rather than of substance.

⁴ Under Art. 2, Annex IV of Part VIII (Section I), T.V., the Allied Governments were entitled to have animals, machinery, equipment, tools, and like articles of a commercial character which had been *seized*, consumed, or destroyed by Germany, or destroyed in direct consequence of military operations, replaced by animals and articles of the same nature—at any rate to the extent necessary for meeting immediate and urgent needs.

⁵ Art. 75 (9), I.T.; Art. 22 (3), B.T.; Art. 24 (3), H.T.

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objects of artistic, historical, or archaeological value, objects of the same kind and of approximately equal value are to be transferred, in so far as such objects are obtainable in the enemy state concerned.¹ The second rule—confined to the case of Italy²—refers to monetary gold looted from United Nations territory. The Italian Government is made responsible not only for gold looted *by* Italy, but also for all monetary gold wrongfully removed *to* Italy, no matter by which Axis Power the removal was effected, regardless of whether any part of the gold was, in effect, used by Italy and irrespective of any transfers or removals of gold from Italy to any other Axis Power or any neutral country. In so far as the original loot no longer exists in Italy, the latter has to transfer an amount of gold equal in weight and fineness to that looted or wrongfully removed. The second part of the rule is particularly interesting, inasmuch as it establishes responsibility on a purely territorial, as distinct from a delictual, basis. In essence, these provisions of the Treaty amount to the proposition that a belligerent may be held fully accountable for property looted by its allies, even if it should have done no more than harbour the loot for some time during the war. The proposition is a bold one, but it fits well into that general trend of modern peace-making technique which seeks to widen the joint responsibility of co-belligerents.

The third and, from the practical angle, most important departure from precedent is the unequivocal formulation of the rule that the obligation to make restitution is irrespective 'of any subsequent transactions by which the present holder of property has secured possession'. The Treaties of 1919 ordered the restitution of identifiable property without any reference to 'subsequent transactions'; and they used terms wide enough³ to be so construed that no exception in favour of private owners was intended. In actual practice, however, the obligation was not so construed by either the Allies or the enemy, and no attempt was made to suspend the operation of municipal rules protecting bona fide holders.⁴ The legal position created by the Paris Treaties is fundamentally different. Such protection as bona fide holders of property are normally entitled to under the laws of Italy,

¹ Within its own limited field the present rule is a noteworthy extension of the principle underlying Art. 247, T.V., which required Germany to furnish to the University of Louvain manuscripts, incunabula, printed books, maps, and objects of collection corresponding in number and value to those destroyed in the burning by Germany of the Library of Louvain.

² Art. 75 (8), I.T.

³ E.g., Art. 238, T.V.: '... Germany shall effect . . . restitution in cash of cash taken away, seized or sequestrated and also restitution of animals, objects of every nature and securities taken away, seized or sequestrated, in the cases in which it proves possible to identify them in territory belonging to Germany or her allies.'

⁴ Art. 241, T.V., Art. 187, Treaty of St. Germain, and Art. 171, Treaty of Trianon, required the enemy states to pass, issue, and maintain in force any legislation, orders, and decrees that may have been necessary to give complete effect to the reparation and restitution clauses; but none of the Central Powers passed, or was invited to pass, legislation invalidating the title of bona fide purchasers.

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Roumania, Bulgaria, and Hungary is suspended by the operation of the Treaties themselves,¹ at any rate for the purpose of Allied claims presented within six months from the coming into force of the Treaties; and a similar suspension of municipal rules has taken place in those neutral states which have chosen to pass special legislation in accordance with the United Nations Declaration of 5 January 1943. These new methods of pursuing looted property into the hands of third parties raise several points of principle and practice which will now be considered.

The United Nations Declaration paid due attention to the fact that in many cases the Axis Powers had abandoned the cruder forms of looting in favour of transactions which were apparently legal in form and, indeed, purported to be normal and voluntary transfers of property. It was to be expected, therefore, that in conjunction with the invalidation of such transactions, the Peace Treaties would make some arrangements in regard to the purchase price or other consideration the Allied owner may have received in exchange for his property. Surprisingly enough, none of the Treaties takes any notice of the problem: the claim to the restitution of identifiable property is absolute, and there is no provision whatsoever requiring the claimant to surrender or account for the consideration received. Unless a remedy is found by Allied municipal legislation (for example, by making the return of property recovered by Government action conditional on such repayment as may be equitable in the circumstances of the case²) there may arise many cases of unjustified enrichment—a result which it would be difficult to uphold on any established principle of private international law. With the bias shown by the Treaties in favour of the dispossessed United Nations owner there must be contrasted their apparent lack of concern for the legitimate interests of enemy nationals who will be expropriated as a result of the general invalidation of 'subsequent transactions'.

It has already been noted³ that as a matter of principle the Treaties do not leave it to the discretion of ex-enemy Governments whether or not these will compensate their own nationals for losses directly attributable to the war: there are imperative provisions for the payment of compensation in respect of private property taken for reparation purposes in enemy or United Nations territory, of supplies and services requisitioned by

¹ Through the ratification of the Treaties by the ex-enemy states the rule suspending the protection of 'subsequent transactions' is deemed to have become part of their municipal law; the 1919 technique (see p. 277, n. 4, *supra*) of requiring the ex-enemy states to pass special legislation in order to give effect to the reparation and restitution clauses has been dropped.

² It is clear that a simple rule requiring every claimant to surrender the full consideration received by him at the time of dispossession would be too rigid. Due account of this difficulty has been taken in Art. 5 of the Swiss Decree of 10 December 1945 (see p. 279, *infra*), which stipulates that 'if the expropriated owner . . . has received any consideration whatsoever, restitution may be made dependent on the repayment of a sum of money which is not in excess of the consideration received by him'.

³ See pp. 273-4, *supra*.

THE PARIS PEACE TREATIES

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Allied forces and of non-combat damage suffered in consequence of the presence of Allied forces in enemy territory. Yet the Treaties provide no protection at all for enemy or, indeed, neutral nationals who may have acted in perfectly good faith when they acquired property which now turns out to have been wrongfully removed from United Nations territory.

Admittedly, each of the ex-enemy states is free to provide by municipal legislation for the compensation of bona fide owners and creditors. It is equally clear, however, that if they were to deny such compensation, they would still remain within the established rules of international law; for 'international law treats a State as being invested for international purposes with complete power to affect by treaty the private rights of its nationals, whether by disposing of their property, surrendering their claims . . . or otherwise' and 'undoubtedly, a State can compulsorily acquire the property of its nationals *with or without compensation*'.¹ That being so, are the Peace Treaties morally right in not only tolerating, but positively demanding certain confiscatory measures against private property without ensuring that no such measures shall be taken without equitable compensation? The question is a delicate one, in view of the marked disapproval that British and American courts had so often expressed between the two wars when confronted with the confiscatory legislation of certain foreign countries and, more particularly, with that of the Soviet Union.

Concerning the restitution of United Nations property eventually transferred to neutral territory, the Treaties contain a rule of limited application only: the enemy Governments are required to ensure (as far as it lies within their power) the return of looted property held in third countries by persons subject to their jurisdiction. For a fuller and more effective regulation of the problem the Allies have looked to the neutral states themselves. It is impossible, within the limited space of this article, to attempt a comparative analysis of all the municipal rules that have been brought into force in the various neutral states. It appears to be useful, however, to insert here a short summary of at least the Swiss regulations; they are particularly important in view of the widespread (and apparently well-founded) belief that most of the Axis loot that ever found its way to neutral territory had been directed to Switzerland. Under a Decree of the Swiss Federal Council issued on 10 December 1945, all United Nations Governments and nationals can claim before the Swiss courts the restitution of movables and securities that were wrongfully removed from Axis-occupied territory between 1 September 1939 and 8 May 1945, the effective date of Germany's capitulation.² If the holder of the property in Switzerland is a bona fide

¹ McNair, *Legal Effects of War* (2nd ed., 1944), pp. 391-3.

² Claims presented before 31 December 1947 went direct to the Supreme Federal Court;

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purchaser for value, he is entitled to claim from his immediate predecessor in title the refund of the purchase price paid; the immediate predecessor in title (provided he himself was a bona fide purchaser) has a similar claim against his own predecessor. This chain of claims comes to an end when, eventually, a mala fide holder is reached; if he is insolvent or outside the jurisdiction, the Court has power to award, at the expense of the Swiss Treasury, equitable compensation to the last bona fide purchaser in the chain. The same rules apply, *mutatis mutandis*, to bona fide third parties (including creditors) who may have acquired rights *in rem* in respect of the property concerned. The onus of proving that the property had been taken away by force or duress is on the claimant. If the claimant received any compensation at the time of dispossession, restitution can be made dependent on the payment of a sum which is not in excess of such compensation.

From the point of view of international law, the most remarkable feature of these rules is the acceptance by the Swiss Government of subsidiary responsibility for a financial loss that would otherwise be suffered by the bona fide purchaser whose immediate predecessor in title is insolvent or outside the jurisdiction. In that this responsibility is purely 'territorial' and not delictual, it is closely akin to the provisions of the Italian Peace Treaty relating to monetary gold looted from United Nations territory.¹ But, clearly, the Swiss precedent goes much further than the Italian. In the case of a belligerent it is comparatively easy to argue that a responsibility of this kind, purely 'territorial' though it may be in appearance, is not essentially different from joint responsibility for the delicts of a co-belligerent. In the case of a neutral the argument does not apply; and, indeed, it is difficult to find a legal (as distinct from a political) explanation for the Swiss precedent without resort to a new principle of international law—'a more comprehensive inter-state idea of law and justice' as it has been called by a distinguished Swiss jurist.²

Another noteworthy point concerning the Swiss regulation is its confiscatory effect notwithstanding the ultimate financial responsibility accepted by the Swiss Treasury. In the first place, not even a bona fide purchaser for value can claim more than the refund of the purchase price paid by him; if that be less than the actual value of the property at the time of restitution, he will have been 'expropriated' to the extent of the difference. Secondly, not even a bona fide purchaser for value has an absolute claim against the Swiss Treasury; whether or not he is entitled to compensation

claims presented after that date go to courts having jurisdiction in accordance with the ordinary rules of civil procedure.

¹ See p. 277, *supra*.

² Weiss, 'Beutegüter aus besetzten Ländern und die privatrechtliche Stellung des schweizerischen Erwerbers', in *Schweizerische Juristenzeitung*, 15 September 1946.

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is a matter of judicial discretion. Thirdly, the claim against the Treasury is for equitable compensation only; the amount to be awarded may be less than the full value of the consideration given by the claimant.¹

The obligation of the enemy states to make restitution embraces both private and public property. No exception is made in respect of such public property as can be lawfully seized and, indeed, appropriated by an army of occupation under the Hague Convention of 1907.² On the other hand, the obligation only covers property that was removed 'by force or duress'. It is clear from the general context of the Treaties that this term also covers cases where property was taken away, ostensibly, with the consent of the lawful owner or holder; and, indeed, cases where, to all appearances, due consideration was given. It must, however, be patent from the circumstances of the case that the consent of the owner or holder had been obtained by misrepresentation or threats.³ By express provision of the Treaties, the burden of proving that the property was not removed by force or duress rests on the enemy Governments; in other words, the presence of United Nations property in enemy territory raises a (rebuttable) presumption that it had been wrongfully removed. The only burden of proof to be discharged on behalf of the United Nations claimant is that of identifying the property and proving original ownership. It follows from the general rules of private international law⁴ that, in disputed cases, the question whether the property was removed by force or duress must be determined according to the law of the country from which the property had been taken away.

The Treaties provide that claims for the restitution of property shall be presented to the enemy Government concerned by the *Government* of the

¹ The situation is different in Sweden. Under the Swedish law of 29 June 1945 a bona fide purchaser compelled to surrender property of United Nations origin has an immediate and absolute claim for compensation against the Swedish Treasury; he need not first try to enforce a claim against his immediate predecessor in title.

² Under Art. 53 of the *Regulations Respecting the Laws and Customs of War on Land* (Annex to Hague Convention No. IV of 1907) an army of occupation can lawfully take possession of cash, funds, and realizable securities which are strictly the property of the state, depots of arms, means of transport, stores and supplies and, generally, all movable property belonging to the state which may be used for the operations of the war. Cf. Oppenheim, *op. cit.*, p. 309: 'Movable public enemy property may certainly be appropriated by a belligerent provided that it can directly or indirectly be useful for military operations.'

³ Art. 1 of the Swiss Decree of 10 December 1945 draws a distinction between (i) property looted in occupied territory contrary to international law; (ii) property or possession lost through force, sequestration, requisition, and similar acts of the Occupying Power; and (iii) voluntary surrender of assets under the influence of misrepresentation or reasonable fear induced by the Occupying Power or its military or civilian organs. The distinction is largely one of terminology; the same substantive law (i.e. the recognition of a claim to restitution) is applied to all three categories. It is submitted that categories (ii) and (iii) do not import fresh elements into the existing rules of international law, but only exemplify particular ways in which the Hague Regulations have, in fact, been violated.

⁴ Westlake, *Private International Law* (1925), pp. 202 ff.; Schnitzer, *Handbuch des Internationalen Privatrechts*, vol. ii (1944), p. 472.

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country from whose territory the property was removed; and further, that the period during which such claims may be presented shall be six months from the date of the coming into force of the Treaties. It is not clear from either the Treaty texts or the *travaux préparatoires* whether action through their respective Governments is the only way in which dispossessed owners can enforce their claims to restitution, or if they have an option to proceed direct against the present holders of their property in enemy territory. It is submitted that, in the absence of any express waiver in the Treaties, there is no reason why private individuals or corporations should not pursue their claims direct; this view is strongly supported by the municipal legislation of the neutral states which clearly recognizes the original owner's independent right of action.¹

— It is noteworthy that a United Nations Government claiming restitution need not prove that the property in question was owned by one of its nationals; it is sufficient to show that the property had been removed from its territory. In other words, restitution claims are based exclusively on the territorial and not on the personal jurisdiction of governments. In the case of rolling-stock, a claimant Government need not even prove removal from its own territory. The Treaties operate on the presumption—and in this case it is a presumption *juris et de jure*—that rolling-stock was removed from the territory to which it originally belonged.

It has already been noted that the joint responsibility of Axis co-belligerents is one of the guiding principles of the restitution clauses. A remarkable corollary to that principle is found in a rule, common to all five Treaties,² whereby such identifiable property of the enemy states and their nationals as had been removed by force or duress to Germany by German forces or authorities *after* the Armistice with the enemy state concerned, shall also be eligible for restitution. The Treaties do not contain detailed regulations concerning the time and procedure of such restitution, but leave these to be determined by the Powers in occupation of Germany.

3. *Allied property in enemy territory*

The main rule of the Treaties governing this subject draws a distinction between 'legal rights and interests' on the one hand and 'property'³ on the other. The former have to be restored as they existed at certain specific dates; the latter has to be returned as it existed at the time of the coming

¹ See p. 279, *supra*.

² Art. 77, I.T.; Art. 28, R.T.; Art. 26, B.T.; Art. 30, H.T.; Art. 28, F.T.

³ Property, in the context of the main rule, means 'all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property as well as all rights or interests of any kind in property'. 'Legal rights and interests' are not specifically defined, but it follows from the exhaustive definition of 'property' that they do not include rights and interests in property.

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into force¹ of the Treaties. The distinction has considerable practical importance. It means, in effect, that the protection afforded to 'legal rights and interests' is stronger than that afforded to 'property'; for while only partial compensation is due for property that cannot physically be returned, legal rights and interests must, in any circumstances, be restored in full. This is a somewhat paradoxical position, as it is not customary for rights *in rem* to enjoy a lesser degree of protection than rights *in personam*.

In the case of Italy, Bulgaria, and Finland, 'legal rights and interests' are to be restored as they existed on the outbreak of hostilities between these countries and at least one of the United Nations.² In the cases of Roumania and Hungary, the operative date is 1 September 1939. Considering that Roumania did not enter the war until 22 June 1941, and Hungary until 10 April 1941, the date chosen is not by any means self-explanatory.³ In so far as the choice of a date prior to the outbreak of hostilities was intended to protect United Nations interests against discriminatory regulations brought into force during the pseudo-neutrality of Roumania and Hungary, the remedy may yet prove to be more harmful than the disease, inasmuch as it reduces the degree of protection afforded to such rights and interests as may have increased in content and value between 1 September 1939 and the effective date of Roumanian and Hungarian belligerency. In addition, somewhat unnecessary complications are likely to arise with regard to rights and interests which did not exist on 1 September 1939, but were acquired between that date and the commencement of hostilities. From the point of view of international law, the precedent is interesting in that it provides yet another example of a belligerent's responsibility being made retroactive.

The subsidiary rules designed to give effect to the main rule stated above fall into a pattern that differs considerably from the 1919 precedent. In the first instance, where property could not be returned *in specie*, the Treaty of Versailles left it to Mixed Arbitral Tribunals to determine the

¹ The language of the Treaties is somewhat ambiguous; it speaks of the return of property 'as it now exists'. That would make it, at first sight, arguable that property must be returned as it existed on 10 February 1947—the day when the Treaties were signed. Such an interpretation would, however, be irreconcilable with a subsidiary rule, common to all five Treaties, whereby enemy Governments have to nullify all measures taken by them against United Nations property between the commencement of hostilities and the coming into force of the Treaties. The reference to the latter date would be meaningless if the main rule had been intended to petrify the status of United Nations property as it existed on 10 February 1947.

² 10 June 1940 in the case of Italy; 24 April 1941 in the case of Bulgaria; 22 June 1941 in the case of Finland.

³ The draft Peace Treaties submitted to the Peace Conference by the Council of Foreign Ministers referred to the correct dates, i.e. 22 June 1941, in the case of Roumania, and 10 April 1941, in the case of Hungary. These dates were changed by the Economic Commission for the Balkans and Finland at the request of the Polish delegation. Although the reasons for the request and its acceptance are not stated in the Report of that Commission, it is fairly safe to assume that they were concerned with the protection of Polish interests in Hungary and Roumania as they existed on the day of the German invasion of Poland.

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compensation payable to the dispossessed owner. In the present Treaties the rate of compensation is fixed; it amounts to two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. From the point of view of international law, the acceptance of less than full compensation creates no precedent. The delegates of the Great Powers at the Peace Conference all insisted most emphatically¹ that, as a matter of legal principle, full compensation ought to be paid and that their departure from that principle was due to political and economic considerations only.

In the second place, in the Treaty of Versailles the Allies reserved the right to compensate their own nationals in Allied currencies and to debit Germany with the payments so effected. Under the present settlement (save for any special arrangements between dispossessed owners and the enemy Governments concerned) compensation is payable exclusively in the currency of the enemy state; it is freely usable there, but its transferability depends on the foreign exchange-control regulations of the enemy state concerned.

Thirdly, under the Treaty of Versailles compensation was payable only in respect of damage or injury suffered through the application either of exceptional war measures or of measures of transfer. Under the present settlement, compensation is payable for *any* injury or damage resulting from the war, including damage suffered through the military operations of the Allies themselves. The principle that a belligerent is not estopped from claiming compensation for injury suffered through its own warlike actions is thus firmly reasserted.

In view of the fact that the terms on which United Nations owners are entitled to compensation are somewhat unattractive, it is not surprising that, in contrast with the Treaty of Versailles, the bias of the present Treaties is definitely for the return of property *in specie*. Accordingly, where the Treaty of Versailles expressly validated all the exceptional war measures taken by Germany against Allied property,² the present Treaties decree the nullification of all measures (including seizures, sequestration, or control) taken against United Nations property in enemy territory; they even provide that, notwithstanding the return of property *in specie*, any loss or damage (other than a loss of profit) resulting from the application of special measures must be made good in the form of an indemnity payable in local currency. Again, where Allied property had been subjected to a measure of transfer, the Treaty of Versailles accepted the transfer as final and binding,² subject to an option for the original owner to claim restitution in lieu of compensation. The present Treaties

¹ *Report of the Economic Commission for Italy*; *Report of the Economic Commission for the Balkans and Finland*.

² Art. 297, T.V.

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insist that the enemy Governments shall invalidate all transfers involving property, rights, and interests belonging to United Nations nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war. In one case they even provide for the invalidation of transfers effected before the war. Under the Peace Treaty with Hungary,¹ where the property of Czechoslovak nationals was transferred after 2 November 1938 (the date of the first 'Vienna Award') as a result of force, duress, or measures taken under discriminatory internal legislation by the Hungarian Government or its agencies in annexed Czechoslovak territory, such transfers must now be annulled.²

United Nations property, rights, and interests must be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war; nor are the enemy Governments allowed to impose any charges in connexion with their return. In so far as any exceptional taxes, levies, or imposts had been imposed on capital assets, between the Armistice and the coming into force of the Treaties, for the specific purpose of meeting charges arising out of the war or the costs of occupying forces or of reparations, United Nations nationals and their property must be exempted therefrom, and any sums that may have been paid must be refunded. Apart from this provision, the Treaties do not stipulate any discrimination in favour of United Nations property, rights, and interests. More particularly, they do not seek to protect them against measures of nationalization or against the expropriation of land within the framework of a general land reform. On the other hand, it is obvious that there must be no discrimination against United Nations property. Admittedly, there is no express prohibition comparable with the rules³ of 1919 under which enemy Governments were precluded from subjecting Allied property, rights, or interests to any measures 'in derogation of property rights' which were not applied equally to the property, rights, and interests of ex-enemy nationals. It follows, however, clearly enough from the general context of the present Treaties that in no event must United Nations nationals receive less favourable treatment than ex-enemy nationals with respect to compensation or otherwise.⁴ Where measures of nationalization or expropriation were applied to United Nations property

¹ Art. 26 (3), H.T.

² The Hungarian Treaty has no corresponding provision for the case of Roumanian nationals who may have suffered measures of transfer in Roumanian territory (Northern Transylvania) occupied by Hungary under the second 'Vienna Award' of 30 August 1940; under Art. 26 (5) of the Treaty the Hungarian Government is, however, responsible for all damage to United Nations property that occurred, as a result of the war, while Northern Transylvania was subject to Hungarian authority.

³ Art. 298, T.V., and corresponding provisions in the other Peace Treaties.

⁴ Under Art. 78 (4) (a), I.T., United Nations nationals shall in no event receive less favourable treatment than Italian nationals with respect to the compensation payable in all cases where property cannot be returned or where injury or damage was suffered as a result of the war; under

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before the Treaties came into force and the compensation paid or payable is less than two-thirds of the sum necessary, at the date of payment, to purchase similar property, the dispossessed owner has, it is submitted, a good claim to the difference.

The categories of persons entitled to the special protection due to United Nations nationals are considerably wider than they were under the 1919 settlement. According to the definition written into the Treaties, the term 'United Nations nationals' means (a) individuals who were nationals of any of the United Nations and (b) corporations or associations which were organized under the laws of any of the United Nations at the coming into force of the Treaties provided that they also had this status on the date of the Armistice. From the point of view of international law this definition has a twofold interest.

In the first place, it provides a notable exception to the general rule that the nationality of a claim must be continuous from the date of damage to the date of the award.¹ It is clear that where the owner of property which suffered damage during the war was an enemy or neutral national at the outbreak of hostilities, but became a naturalized subject of one of the United Nations before the Armistice, he will be entitled to compensation on the same terms as if he had been a United Nations national when war broke out; in other words, a precedent has been created for the retroactive effect of naturalization on international claims. Apart from this exception, however, the Treaties uphold the doctrine of the continuous nationality of claims; they provide in particular that the successor in title of a United Nations owner can only claim the protection of the Treaties if he himself is a United Nations national within the terms of the definition.²

In the second place, it is noteworthy that a purely external test (organization under the laws of any of the United Nations) has been chosen to determine the nationality of corporations and associations, and that no reference is made to the subsidiary criteria of *siège social* and 'control'.³ At first sight the results seem to be anomalous: a company organized under the laws of one of the United Nations becomes eligible for the special

Art. 78 (4) (d), a special indemnity is due for loss or damage suffered by United Nations nationals under 'special measures' which were not applicable to Italian property; under Art. 82 (1) (c), United Nations nationals are entitled to national and most-favoured-nation treatment in all matters pertaining to commerce, industry, shipping, and other forms of business activity (other than commercial aviation) in Italy. There are parallel provisions in the four other Treaties.

¹ Oppenheim, *op. cit.*, vol. i, pp. 314-15.

² Art. 78 (9) (b), I.T.; there are identical provisions in the four other Treaties.

³ Although no room has been found for these subsidiary criteria in the definition of corporate nationality, they have not been abandoned altogether. Under Art. 79 (6) (g), I.T., the property of corporations or associations having their *siège social* in ceded territories or in the Free Territory of Trieste is exempted from seizure and retention by the Allies provided that such corporations or associations are not owned or controlled by persons in Italy. For the relevance of *siège social* and 'control' to the determination of 'enemy property' see p. 294, *infra*.

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protection of the Treaties even though all, or the majority of, its shares may be owned by enemies; conversely, the special protection of the Treaties is denied to a company organized under the laws of an enemy state even though all, or the majority of, its shares are owned by United Nations nationals. However, the anomaly is only apparent. A closer examination of the legal position reveals that, in the first example, the interested Allied or Associated Power is entitled to seize and retain, by way of reparations, the enemy interest in the company. In the second example, the United Nations interest in the company is adequately protected by a rule, common to all five Treaties, whereby United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not themselves United Nations nationals, but have suffered a loss by reason of injury or damage to their property in enemy territory, are entitled to compensation to the extent of two-thirds of the sum necessary to make good the loss suffered. This compensation is calculated on the basis of the total loss or damage suffered by the corporation or association and bears the same proportion to such loss or damage as the beneficial interests of United Nations nationals in the corporation or association bear to the total capital.¹

This rule (which was not included in the Foreign Ministers' draft of the Treaties, but was added to it by the Peace Conference) was subjected to a great deal of criticism in the course of its passage through the Economic Commissions, notably on the ground that it 'grants special protection and privileges to United Nations nationals who, during the war made upon their country by Fascism, took part in the operations of companies or associations which were solely and openly in the service of Fascism' and for that reason could not stand up to the test of international morality.² This criticism was countered on behalf of the United States delegation (which fathered the proposal) by the argument that

'since the bulk of modern business enterprise is organised in the corporate form and since in the majority of cases foreign investments are made through corporations or associations organised under the laws of the country in which the physical property is located . . . it is imperative to "pierce the corporate veil" and to ensure that compensation for loss or damage shall accrue to those ultimate United Nations owners upon whom the burden of loss or damage, if uncompensated, would ultimately devolve. The United States Delegation opposes the contention that United Nations nationals who hold interests in property through the corporate form, should be deprived of the benefits of these provisions because of the use of corporate property by enemy States, at a time when they were not under the control of the owners.'³

In view of the violent controversy which accompanied the birth of this rule,

¹ Art. 78 (4) (b), I.T.; Art. 24 (4) (b), R.T.; Art. 23 (4) (b), B.T.; Art. 26 (4) (b), H.T.; Art. 25 (4) (b), F.T.

² Statement of the Yugoslav delegation, quoted in the *Report of the Economic Commission for Italy*.

³ Annex 13 to the *Report of the Economic Commission for Italy*.

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it may perhaps be pointed out that the principle on which it relies is not altogether new. It was clearly stated in the 1919 Treaties that where Allied nationals were entitled to compensation for damage suffered in enemy territory, the property eligible for such compensation also included any company or association in which Allied nationals were interested.¹

Under a rule of interpretation written into all five Treaties, the term 'United Nations nationals' also includes all individuals, corporations, or associations which, under the laws in force in the five enemy states during the war, 'have been treated as enemy'. The text does not say what is meant by treatment 'as enemy' and its silence on this point is likely to give rise to a great deal of controversy in practice. It is submitted that the language of the Treaties supports the following two rules of interpretation:

- (a) that all individuals, corporations, or associations with which intercourse was prohibited by the Trading with the Enemy legislation of the enemy states must be treated in the same way as United Nations nationals;
- (b) that in the case of all other individuals, corporations, or associations it is a question of fact whether they 'have been treated as enemy'; the test being the treatment of their property, rights, and interests in enemy territory in a manner *substantially similar* to that applied to United Nations property, rights, and interests.

Under these rules of interpretation it will be found that enemy nationals who were permitted to reside in United Nations territory during the war will, in most cases, be eligible for the protection due to United Nations nationals. On the other hand, it would appear that persons convicted in enemy territory during the war on charges of sympathy with, or of having afforded aid and comfort to, the United Nations are not eligible for such protection; for normally convictions of this kind were founded on the law of treason and like offences, and not on the laws of war applicable to enemies.

It has been suggested² that enemy nationals of the Jewish race who had been subjected to measures of expropriation on account of their racial origin are, in principle, entitled to the privileges granted to United Nations nationals, all the more so as, in several enemy states, the discriminatory and confiscatory rules directed against them were founded—expressly or by implication—on the sympathy of the Jewish community with the Allied cause. This argument is contradicted by the very fact that the Roumanian and Hungarian Treaties contain special provisions for the protection of Jewish interests.³ This protection is very similar to, though

¹ Art. 297 (e), T.V.; there were corresponding provisions in the other Treaties.

² Doroghi, *The Property Rights of Foreign Nationals Protected by the Paris Peace Treaty* (1947).

³ Under Art. 25, R.T., and Art. 27, H.T., Roumania and Hungary have undertaken that in

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not quite identical with that accorded to United Nations nationals. It is clear, however, that it is the only special protection to which members of the Jewish community are entitled in Roumania and Hungary; and it is equally clear from the absence of similar regulations in the three other Treaties that in the case of Italy, Bulgaria, and Finland the restoration of expropriated Jewish property is a matter for domestic legislation.

The rule that in cases of injury or damage to property, United Nations nationals shall be entitled to compensation at the rate of two-thirds of the sum necessary to make good the loss suffered, applies only to injury or damage directly attributable to the war. Where the loss is attributable to other causes, as, for example, the wrongful action of private individuals or corporate bodies, the injured United Nations owner is free to claim full compensation from the party or parties responsible for the damage. There is nothing in the Treaties that would bar such claims, and the latter are not subject to the short periods of limitation¹ which apply to claims against enemy Governments.

Within the sphere of restoration, United Nations property is not the only concern of the Treaties. They also provide that, after 15 September 1947, the property in Germany of the five ex-enemy states and of their nationals shall no longer be treated as enemy property and that all restrictions based on such treatment shall be removed. The making of detailed regulations for the restoration of Italian, Roumanian, Bulgarian, Hungarian, and Finnish property in Germany is reserved for the Powers in occupation of Germany. Each of the five enemy states has been made to waive, on its own behalf and on behalf of its nationals, all claims against Germany and German nationals outstanding on 8 May 1945, except claims arising out of contracts and other obligations entered into, and rights acquired, before 1 September 1939. The waiver includes debts, all inter-governmental claims in respect of arrangements entered into in the course of the war, and all claims for loss or damage arising during the war. The Treaties do not provide for any compensation to be paid to enemy nationals

all cases where property, legal rights, or interests have since 1 September 1939 been the subject of measures of sequestration, confiscation, or control on account of the racial origin or religion of the owners, the said property, rights, and interests shall be restored together with their accessories or, if restoration is impossible, that fair compensation shall be made therefor. The main difference between this rule and those for the protection of United Nations property lies in the absence of a fixed rate of compensation. Under the same Articles all property, rights, and interests of persons, organizations, or communities which, individually, or as members of groups, were the object of racial, religious, or other Fascist measures of persecution, and remain heirless or unclaimed for six months after 15 September 1947, shall be transferred to organizations in Roumania and, respectively, in Hungary which are representative of such persons, organizations, or communities. The property transferred shall be used for purposes of relief and rehabilitation of surviving members of the persecuted groups, organizations, and communities.

¹ Where United Nations property has not been returned within six months from the coming into force of the Treaties, the owners must make application to the authorities of the enemy state concerned not later than 15 September 1948.

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in respect of the loss suffered as a result of this waiver; likewise, no compensation is provided for enemy nationals who may suffer injury on account of the invalidation of transfers involving United Nations property in enemy territory.¹

4. *Enemy property in United Nations territory*

Each of the Allied and Associated Powers is entitled to seize, retain, liquidate, or take any other action with respect to Italian, Roumanian, Bulgarian, and Hungarian property, rights, and interests which on the coming into force of the Treaties were within their respective territories.² On the other hand, the Allied and Associated Powers have undertaken to restore all Finnish property and assets in so far as these were restricted on account of Finland's participation in the war.³

The general rule just stated follows closely the text of the 1919 Treaties, but its place in the general structure of the settlement is different. Whereas after the First World War the liquidation of enemy property in Allied territory was considered to be additional to, and not part of, reparations,⁴ the present Treaties say the opposite: the retention of enemy property in Allied territory is the only form of general reparations demanded by the Allied and Associated Powers other than the Soviet Union and the neighbours of the enemy states.⁵ It follows logically that the range of claims in satisfaction of which enemy property may be retained and liquidated is wider under the present than it was under the previous settlement. Whereas in 1919 these claims were confined, in the first place, to compensation for damage or injury to Allied property, rights, and interests in enemy territory, debts owing to Allied nationals from enemy nationals, and compensation for acts committed by enemy authorities between 31 July 1914 and the effective opening of hostilities,⁶ under the present settlement enemy

¹ For a general criticism of the confiscatory effect of the Treaties see p. 279, *supra*.

² Art. 79, I.T.; Art. 27, R.T.; Art. 25, B.T.; Art. 29, H.T.

³ Art. 27, F.T.

⁴ Art. 242, T.V., declared that the provisions of Part VIII (Reparation) of the Treaty did not apply to property, rights, and interests subject to retention in Allied territory, nor to the product of their liquidation, except in so far as the Allies were to credit Germany's reparation account with the surplus remaining after the satisfaction of all specific claims chargeable to those sets.

⁵ This category includes in the case of Italy: Albania, Ethiopia, Greece, and Yugoslavia; in the case of Hungary: Czechoslovakia and Yugoslavia; in the case of Bulgaria: Yugoslavia and Greece.

⁶ Under Art. 4 of the Annex to Arts. 297-8 of the Treaty of Versailles, German assets in Allied territory could be charged, in the second place, with such claims concerning Allied property, rights, and interests as arose from interference with them in the territory of Germany's allies, in so far as such claims were not satisfied otherwise. That precedent for the proposition that enemy private property may be seized in satisfaction not only of claims against the owners' state, but also of claims against an enemy state allied to the owner's state, has not been followed in the present settlement.

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property or its proceeds may be applied by each Allied or Associated Power generally 'to such purposes as it may desire within the limits of its claims and those of its nationals'.¹

Enemy assets (or the proceeds thereof) which are in excess of the amount of claims chargeable to them must be returned. This rule amounts to a noteworthy departure from the 1919 Treaties which provided that the excess value of enemy assets should be credited to the reparations account of the enemy state concerned. The departure is, of course, a logical one; for under the present Treaties the only purpose of the retention and liquidation of enemy property is the satisfaction of claims in the nature of reparations proper. But to whom shall excess assets, or the proceeds thereof, be returned? Direct to the enemy owners, and, if so, with or without notice to their respective Governments? Or shall return be made in all cases through the intermediary of enemy Governments? The problem has considerable importance in practice as, under the foreign exchange-control regulations obtaining in the various enemy countries, the return of private enemy property to the Governments concerned (or, indeed, any notice to them of a return made or about to be made, direct to the owner) is likely to prevent the owner from recovering his assets *in specie*. He will be entitled to a sum of money in local currency; but the assets themselves will have to be surrendered.²

The language of the Treaties³ seems to support the view that return is to be made direct to the enemy owner; that still leaves open the question whether enemy Governments are entitled to notice and particu-

¹ In the Treaty of Versailles the Allied claims for compensation were listed exhaustively in Annex I to Part VIII (Section I) of the Treaty. No such specification is attached to the Paris Treaties; accordingly, *all* Allied claims 'for loss or damage due to acts of war, including measures due to the occupation of territory' may be charged to seized enemy property or the proceeds thereof, provided that the loss or damage was attributable to the enemy state concerned; that it occurred outside the territory of the enemy state; and that the claim in question is not fully satisfied under any other Article of the Peace Treaty. The (British) Treaty of Peace Orders, 1948 (No. 114: Bulgaria; No. 116: Hungary; No. 117: Italy; No. 118: Roumania), have charged the property, rights, and interests of the enemy states and their nationals, found anywhere in 'His Majesty's dominions and Protected Territories except the Dominions', with the amounts due on 15 September 1947, 'in respect of claims by His Majesty (otherwise than in the right of His Government in the Dominions) and by British nationals (other than British nationals ordinarily resident in any of the Dominions)' against the enemy Governments or their nationals excepting claims fully satisfied under any Articles of the Treaty concerned (other than the Article providing for the seizure, retention, and liquidation of enemy assets in the territory of the Allied and Associated Powers).

In relation to Italy, the provisions of the Peace Treaty Order are subject to the Anglo-Italian Financial Agreement of 17 April 1947; see p. 292, n. 1, *infra*.

² This would lead to particularly grievous results in relation to liquid funds (gold, jewellery, and securities) transferred to Allied territory in the years immediately before the war, in contemplation of impending confiscatory measures directed against the Jewish communities of Roumania and Hungary.

³ Art. 79 (3), I.T.: 'The Italian Government undertakes to compensate Italian nationals whose property is taken under this Article and not returned *to them*.' There are identical provisions in the Roumanian, Bulgarian, and Hungarian Treaties.

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lars. It is arguable, of course, that the Allies, having imposed on enemy Governments the liability to compensate their own nationals for property seized and not returned, are in duty bound—as a matter of international morality rather than law—to supply those Governments with specifications showing not only the amount of enemy private property retained but also the amount of returnable assets. This argument seems to be open to three objections:

- (i) In relation to private property, the 'seizure and retention' clauses of the Treaties do not create inter-state relationships proper, but direct relationships between Allied Governments and individual enemy owners; enemy Governments only enter into that relationship contingently, i.e. in the event of private assets not being returned to the owners.
- (ii) There is no customary rule requiring one state to supply another state with information concerning the assets of foreign nationals; an obligation of this kind can only be created by express treaty provision, but no such provision is found in the present Treaties.
- (iii) Even if the present Treaties could be so interpreted as to require enemy Governments to supply particulars of the assets held by their nationals in Allied territory, that obligation would not necessarily be reciprocal.¹

To the general rule that enemy property which is in excess of the Allied claims chargeable to it must be returned, there is an important exception: the Treaties stipulate that there shall be no obligation on any Allied or Associated Power to return industrial property or, indeed, to include such

¹ Cf. Art. 10 of the Annex to Arts. 297-8, T.V., requiring Germany 'at any time on demand of any Allied or Associated Power to furnish such information as may be required with regard to the property, rights and interests of German nationals within the territory of such Allied or Associated Power . . .'; no corresponding undertaking was given by the Allied and Associated Powers.

In the 'Agreement relating to Italian property held by the Custodian of the United Kingdom and to the Payment of Debts due from Italy to Persons in the United Kingdom' of 17 April 1947 (*Treaty Series*, No. 31 (1947)—Cmd. 7118) the Government of the United Kingdom undertook to transfer to the Italian Government all the *liquid* assets held by the Custodian as Italian property and to release all *other* Italian property to the original owners. At the same time it undertook to supply the Italian Government with lists of *all* the Italian properties held by the Custodians, including all the particulars available of former ownership, and of the nature and value of each property. Within three months from the dispatch of the last list the Italian Government must specify under which of the following three categories it desires that such non-liquid property should be treated, viz.: (a) properties to be realized in order to increase the sterling amount available for the payment of debts; (b) properties to be released to the former owners or to their legal representatives; (c) properties the disposal of which under (a) or (b) is to be deferred for further consideration. The United Kingdom Government undertook to realize *any* Italian property at the request of the Italian Government and to pay the proceeds into a Special Account from which will be met debts due from Italy and Italian nationals. The Italian Government undertook to grant compensation to the owners for all property transferred to it in liquid form, but the determination of the conditions of payment has been reserved for the Italian Government.

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property in determining the amount of enemy property that may be retained. At first sight, this exceptional rule appears to be a somewhat striking departure from precedent; for under the 1919 settlement rights of industrial property were to be re-established or restored, reciprocally by all belligerents, in favour of the persons entitled to the benefit of them at the moment when the state of war commenced.¹ On closer examination, however, there seems to be little difference in the practical results. Even the 1919 rule was subject to the right reserved by the Allies to impose such limitations, conditions, or restrictions on industrial property as they considered necessary for national defence or in the public interest; and it is evident from the present Treaties that the general reservation made in regard to the return of industrial property only serves the purpose of widening the authority of the Allied and Associated Powers to impose limitations, conditions, and restrictions.²

The enemy character of property, rights, and interests³ depends in the first place on the nationality of the owner at the date of the coming into force of the Treaties.⁴ To this simple rule there is one important addition: all property which has been subject to control in Allied territory by reason of a state of war existing between an enemy state and the Allied or Associated Power having jurisdiction over the property is deemed to be enemy property.⁵ To that extent the Trading with the Enemy legislation of the Allied and Associated Powers may be said to have become an integral part of the Peace Treaties.

In the United Kingdom, enemy property thus includes not only the property of enemy nationals but also of any individual who was resident in enemy territory during the war and, with respect to a business carried on in enemy territory, of any individual who carried on that

¹ Art. 306, T.V.

² Under the (British) Treaty of Peace Orders, 1948 (see p. 291, n. 1, *supra*), the United Kingdom Government has taken power (i) to impose on industrial property acquired by enemies before 15 September 1947 such limitations, conditions, and restrictions as may be deemed necessary in the national interest, and to invalidate such transfers or other dealings effected since the outbreak of war as may be inconsistent with such limitations; (ii) to continue in force, as far as may be necessary, the Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939, in relation to the ex-enemy Governments and their nationals; (iii) to refuse any application for the grant of a patent for any invention relating to war materials as specified in the Annexes attached to the Treaties, or to revoke a patent already granted for any such invention.

³ For the purpose of the (British) Peace Treaty Orders, 1948, 'property, rights or interests include real and personal property, and any estate or interest in real or personal property, any negotiable instrument, any debt or other chose in action, and any other right or interest, whether in possession or not.

⁴ United Nations nationality depends on the existence of national status at two different dates: the date of the Armistice and the date on which the Treaties came into force; see p. 286, *supra*.

⁵ Whether property 'has been subject to control' is, it is submitted, a question of fact and not of law; property which was eligible for control under the Trading with the Enemy legislation of an Allied or Associated Power, but was not, in effect, so controlled cannot be seized under the Peace Treaties, except in cases where exemption from control during the war had been brought about by misrepresentation or fraud.

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business. Similarly, in the case of corporate owners, the definition embraces not only the property of corporations or associations constituted in, or under the laws of, an enemy state, but (regardless of the place of business) also the property of any corporate or unincorporate body of persons which was controlled by an enemy; and, with regard to a business carried on in enemy territory, the property of any body of persons who carried on that business.¹ In other words, in the United Kingdom the enemy status of corporations is determined by the joint application of the tests of (i) the law under which they are organized, (ii) the place where the business is carried on, (iii) the *siège social*, and (iv) control. In contrast, it has already been noted² that the United Nations nationality of corporations depends solely on the external test of their being organized under the laws of one of the United Nations.

By express provision of the Treaties, certain categories of enemy property are exempt from seizure and retention. No claim is laid, in the first place, to the property of natural persons who are enemy nationals but have permission to reside within the territory of the country in which the property is located, or to reside elsewhere in United Nations territory. This rule affords adequate protection to pre-war or war-time immigrants and refugees of enemy nationality. No protection is given, on the other hand, to post-Armistice immigrants and refugees; for enemy property which, at any time during the war, was subjected to measures not generally applicable to the property of persons of the same nationality then resident in United Nations territory, is outside the exempted category. Further, the Allied and Associated Powers have waived the right to seize the property of enemy Governments used for consular or diplomatic purposes; property belonging to religious bodies or private charitable institutions, if it is used exclusively for such purposes; literary and artistic property rights; and property rights arising since the resumption of trade and financial relations between the Allied and Associated Powers and the enemy states.

In relation to ceded territories, exemptions are granted in two directions:

- (a) enemy property situated *in* the ceded territory is exempt, regardless of the residence of the owner;
- (b) the property, wherever situated, of owners resident or having their *siège social* in the ceded territory is also exempt, but only on condition that the owner, being a natural person, has not opted for the nationality of a former enemy state or, being a corporation or association, is not owned or controlled by persons resident in former enemy territory.

¹ Art. 2 (1) of the Trading with the Enemy Act, 1939.

² See p. 286, *supra*.

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5. *Contracts*

The principal rule¹ common to all five Treaties declares that any contract which required for its execution² intercourse between parties who had become enemies³ is dissolved as from the time when any of the parties thereto became enemies.

The rule quoted in the preceding paragraph differs substantially from the corresponding rule of the 1919 settlement⁴ in that it maintains in force all contracts which did not for their execution require intercourse between the parties. Under the Peace Treaties with the Central Powers, contracts were dissolved without regard to the element of intercourse as long as trading between the parties had been prohibited or had otherwise become unlawful.

The prominence given to the test of intercourse has changed the position in two directions. In the first instance, under the 1919 Treaties it was highly controversial⁵ whether a pre-war contract was to be deemed dissolved merely because trading had in general become unlawful between the parties; or if dissolution was dependent on trading having become unlawful with respect to that particular contract. No such difficulty should arise under the present Treaties; they make it quite clear that the decisive factor is not the general prohibition of trading but its effects (if any) on a given contract.

In the second instance, the new settlement maintains in force a much wider range of contracts. This applies, in the first place, to contracts which provide for the suspension of performance in case of war. Under the 1919 rules, contracts were dissolved notwithstanding the suspensory clause;⁶ under the new rules they will be saved by it. Whether this encouragement given to contractual arrangements which look ahead to the resumption of performance immediately upon the termination of war is a healthy development in peace-making technique is perhaps open to question. The argument in favour of it seems to rest on the thesis that the less

¹ By a strange trick of drafting the principal rule is not in the main body of the Treaties but in an Annex, whereas an exception to the main rule (the maintenance of pecuniary debts) is regulated in the main Treaty texts.

² It is not clear from the language of the Treaties whether a contract is vitiated merely because its execution would have required intercourse in normal circumstances, or if it is only vitiated where intercourse was in fact required during the war. The second interpretation is easier to reconcile with the general principle of *pacta sunt servanda*.

³ For the purposes of this rule, 'natural or juridical persons shall be regarded as enemies from the date when trading between them shall have become unlawful under laws, orders or regulations to which such persons or the contracts were subject'. Art. 1, Section D, Annex XVI, I.T. In adopting a specific definition of enemy status for the purposes of pre-war contracts, the 1947 settlement follows the 1919 precedent. The definition just quoted is modelled on Art. 1 of the Annex to Arts. 299-303, T.V.

⁴ Art. 299, T.V., and identical rules in the other Peace Treaties.

⁵ Wolff, *Problems of Pre-War Contracts in Peace Treaties* (1946), pp. 34 ff.

⁶ McNair, *op. cit.*, p. 94. For the practice of the Mixed Arbitral Tribunals see *Braunstein v. Oelwerke Germania* (*Recueil des Décisions des Tribunaux Arbitraux Mixtes*, vol. ix, pp. 443 ff.).

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a state of war between Governments is allowed to interfere with private business, the nearer we draw to the old and not unattractive conception that private rights should be immune from the dislocations of war. On the other hand, there is the no less weighty argument that neither international peace nor national security is necessarily well served if powerful combinations, particularly in the armaments industries, can safely engage in long-term cartel and similar arrangements under the shelter of suspensory clauses.

The second important category of cases affected by the test of intercourse includes a wide variety of restrictive covenants. After the First World War the English courts considered that restrictive covenants in favour of enemies were discharged, even where no intercourse between enemies was involved.¹ Under the 1947 rule, such covenants would have to be upheld, notwithstanding the principle of English common law² that contracts the continued existence of which would confer an immediate or future benefit on an enemy, must be deemed to be dissolved.

In granting exemptions from the main rule of dissolution, the present Treaties do not follow the technique of 1919. The Treaty of Versailles established exceptions in two ways. First, it provided generally for the maintenance of contracts required to be carried out in the public interest by an Allied or Associated Government of which one of the parties was a national.³ Secondly, certain classes of contracts, exhaustively listed in an Annex to the Treaty, were declared to remain in force, subject only to the terms of the contracts and to the application of domestic laws made during the war by the Allied and Associated Powers.⁴ In the Paris Treaties both of these methods have been abandoned in favour of a system of exceptions based on four distinct principles accompanied by a somewhat vague rule of interpretation. These are as follows:

(i) All transactions lawfully carried out in accordance with a contract between enemies are valid, provided that they have been carried out with the authorization of the Government of one of the Allied and Associated Powers. Under the 1919 Treaties the authority of *any* belligerent Power was sufficient to validate such transactions;⁵ this mutuality has now been abolished.

(ii) There will remain in force such parts of any contract as are severable

¹ McNair, *op. cit.*, pp. 96 and 293-4.

² *Ertel Biebr & Co. v. Rio Tinto Co.*, [1918] A.C. 260, and *In re Badische Co.*, [1921] 2 Ch. 331.

³ Art. 299 (b), T.V.

⁴ The principal exempted classes were: contracts for the transfer of real or personal property; leases of real property; contracts of mortgage, pledge, or lien; mining concessions; and contracts with, and concessions granted by, public authorities.

⁵ Art. 299 (e), T.V.

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and have not required for their execution intercourse between enemies. This rule is, however, subject to the terms of the contract and to the municipal law of the Allied and Associated Powers having jurisdiction over the contract. It would thus appear that where part of a contract is severable, according to the municipal law of a contracting party of Allied nationality, it will be upheld, even if the laws of the enemy state concerned do not operate with the doctrine of severability. These rules are substantially identical with those of the 1919 settlement.¹

(iii) Pecuniary debts are not affected² by the existence of the state of war in itself, provided that they arise out of obligations and contracts which existed, and rights which were acquired, before the existence of a state of war, and that they became payable prior to the coming into force of the Peace Treaties. The first condition is self-explanatory. The second condition, it is submitted, must be taken to mean that debts maturing *after* the coming into force of the Treaties are enforceable as a matter of course.³ The rule is altogether a considerable improvement on the 1919 precedent, which only provided for the saving of debts or other pecuniary obligations arising out of 'any act done or money paid' under a pre-war contract.⁴

(iv) If, under a contract dissolved by the operation of the general rule,⁵ a party received a sum of money by way of advances or payments on account and has not rendered performance in return, such party is not, by the dissolution of the contract, relieved from the obligation to repay the money received. There was no corresponding rule in the 1919 Treaties.⁶

(v) The Treaties (excepting the one with Finland) contain a somewhat cryptic proviso to the effect that, apart from express provisions, nothing in the Treaties shall be construed as impairing debtor-creditor relationships arising out of pre-war contracts. The *travaux préparatoires* shed no light on the intended operation of this clause, and its language is far too vague

¹ Art. 3 of Annex to Art. 299, T.V.

² Except in the case of Finland. As a result of an objection taken by the U.S.S.R. delegation at the Peace Conference, the rule saving pecuniary debts has been left out of the Finnish Treaty, with the highly inequitable result that in Allied-Finnish relations pecuniary debts arising from pre-war contracts are wiped out altogether.

³ A similar view is taken by Wolff, *Treatment of Pre-War Contracts in the Peace Treaties of Paris* (1947).

⁴ Art. 299 (a), T.V. For a criticism of this provision see Wolff, *Problems of Pre-War Contracts in Peace Treaties* (1946), p. 77.

⁵ See p. 295, *supra*.

⁶ It is not clear whether the Treaties create a claim for the repayment of advances or only reserve it in cases where such claims are allowed by municipal law. Wolff (in *Treatment of Pre-War Contracts in the Peace Treaties of Paris*) favours the second interpretation, mainly on the ground that by referring to 'the obligation to repay' the Treaties seem to presuppose an obligation existing under municipal law and that more details should have been added if it had been the intention to create an obligation. In the view of the present writer, if an obligation existing at municipal law had been presupposed, it would have been more logical to refer to 'an obligation to repay'; furthermore, the reference to 'amounts received as advances or as payments on account' is specific enough to be consistent with an intention to establish a fresh obligation. This view

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to justify the assumption that what is really meant is the saving of claims to specific performance in a manner similar to the saving of pecuniary debts. In all probability, nothing more was intended than a rule of interpretation which, in border-line cases, can be invoked in favour of maintaining rather than wiping out contractual relationships.

6. *Settlement of disputes*

Under the Treaties of 1919, disputes concerning restitution, restoration, contracts, and enemy property were all referred to the same set of authorities, i.e. the Mixed Arbitral Tribunals. The present Treaties have adopted a different method. Disputes relating to enemy property will be settled by the machinery set up for the interpretation and execution of the Treaties in general, i.e. in the first place, the Heads of the Diplomatic Missions of the Principal Allied Powers in the ex-enemy capitals, and, in the second place, a set of commissions of a semi-administrative, semi-judicial character.¹ On the other hand, disputes concerning, *inter alia*,² the restitution and restoration of United Nations property and relationships arising from pre-war contracts are referred to so-called Conciliation Commissions.

The settlement of disputes referred to Conciliation Commissions will be in two phases. The first phase, limited to a period of three months from the date when the Commission is seized of the matter, is conciliation in the customary sense of the term. In this phase of the procedure the Commission is composed of an equal number of representatives of the United Nations Government and the enemy Government concerned in the dispute; in the case of Italy, the representation of each Government is confined to one member. If the conciliation is not successful (i.e. if no agreement is reached within three months) either Government may ask for the addition to the Commission of a 'third member'³ selected by mutual agreement of the two Governments from nationals of a third country. Should the two Governments fail to agree on the selection⁴ of the 'third

seems to be reinforced by the silence of the Treaties on obligations which, at municipal law, undoubtedly arise on the termination of contracts by dissolution or otherwise, e.g. the obligation to carry out the formal winding up of a dissolved partnership. Thus the correct interpretation seems to be that, in respect of unrequited advances or 'on account' payments, there is an *absolute* obligation to refund, whereas other obligations normally arising on the termination of a contract follow the rules of the municipal law applicable to the case.

¹ A more detailed description of this machinery will be found in the present author's note on 'Human Rights in the Paris Peace Treaties', pp. 392-8, *infra*.

² The jurisdiction of the Conciliation Commissions covers, in addition to restitution, restoration, and contracts, all disputes concerning industrial, literary, and artistic property, insurance, negotiable instruments, periods of prescription, the war-time judgments of courts in the enemy states, and, in the case of Italy, the economic and financial provisions relating to ceded territories.

³ The term 'third member' makes sense in the case of Italy, but not in the case of the other Treaties, where the representation of the contending Governments is not restricted to one member for each.

⁴ In the case of Italy, a time-limit of two months is prescribed for negotiations on the selection of the 'third member'; there is no corresponding provision in the other Treaties.

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member', the appointment will be made, ultimately, by the Secretary-General of the United Nations.¹ With the selection (or appointment, as the case may be) of the 'third member' there begins the second phase of the procedure: henceforth the Commission will act as a mixed arbitral tribunal² and will decide the dispute by the majority vote of its members. By an express provision of the Treaties, such decision 'shall be accepted by the parties as definitive and binding'.

The text of the Treaties does not make it clear whether the competence of the Conciliation Commissions is exclusive. The reciprocal undertaking of the High Contracting Parties that the decisions of Conciliation Commissions will be accepted as definitive and binding is not, in itself, conclusive proof of exclusive competence; a similar undertaking was given in the Treaties of 1919,³ even though the Mixed Arbitral Tribunals had no exclusive competence. Nevertheless, it seems improbable that the present Treaties were intended to preserve the concurrent jurisdiction of municipal courts. In the settlement of 1919 the jurisdiction of the national courts of the Allied, Associated, and Neutral Powers was expressly reserved in certain questions relating to contracts.⁴ More important still, the Mixed Arbitral Tribunals were invested with power to review the decision of any competent municipal court given in a case covered by the jurisdiction of the Mixed Arbitral Tribunals and to give redress where such a decision was inconsistent with the provisions of the Peace Treaties.

Both of these rules have been jettisoned by the Paris Treaties, and the absence of the second rule, in particular, lends strong support to the view that the idea of maintaining the parallel jurisdiction of municipal courts must have been abandoned. If there is no machinery for reviewing municipal judgments, there can be no guarantee that divergent decisions will not be given by two equally competent tribunals; such a result could not have been intended.

The Treaties do not lay down expressly that private litigants shall have direct access to the Conciliation Commissions. It is, however, difficult to see how such access could be denied. In the first instance, in all but in name these Commissions are mixed arbitral tribunals of much the same kind as those to which private litigants were readily given access after the

¹ In the case of Italy, if the two interested Governments fail to agree on the selection of a third member, application for his appointment must first be made to the Ambassadors in Rome of the Soviet Union, the United Kingdom, the United States of America, and France; only if the Ambassadors are unable to agree within a month can either of the interested Governments apply to the Secretary-General of the United Nations. The recommendation of the Peace Conference was for the appointment of the third member by the President of the International Court of Justice, but this recommendation was not accepted by the Council of Foreign Ministers.

² The recommendation of the Peace Conference did in fact include the designation 'Mixed Arbitral Tribunals', but this was not accepted by the Council of Foreign Ministers.

³ Art. 304 (g), T.V.

⁴ Art. 304 (b), T.V.

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First World War. Secondly, if the view be correct that the concurrent jurisdiction of municipal courts is now abolished, a denial of direct access to the Conciliation Commissions would debar private claimants from the only judicial remedy that is still available. It would make the enforcement of their claims entirely dependent on the purely administrative decision of their own Governments as to whether or not these claims should be espoused; that, again, is a result that cannot have been intended. Finally, the independent status of the private claimant is recognized in several Treaty provisions, notably in the rule that the United Nations owner of property in enemy territory may agree with the enemy Government concerned upon specific arrangements in lieu of the Treaty provisions for restoration and compensation; and in the procedural rule that, where property has not been returned within six months from the date of the coming into force of the Treaties, application for its return must be made by the claimant direct to the enemy authorities. The position is different in the case of disputes arising from the seizure and retention of enemy property. Contrary to the 1919 precedent, these are not covered by the jurisdiction of the Conciliation Commissions, but have been referred to a procedure designed, primarily, for the settlement of inter-state controversies relating to political and economic questions. This procedure, which, at any rate in its initial stages, is purely diplomatic, is not easily adaptable to the settlement of individual claims and, accordingly, it is unlikely that any right of access will be granted to private claimants. In any case, the interests of the latter are adequately protected by the access they undoubtedly have to the municipal courts of the Allied and Associated Powers.¹

¹ Cf. Art. 7 of the British-Italian Agreement relating to Italian Property held by the Custodians of the United Kingdom of 17 April 1947, which provides that 'the Italian Government will indemnify the Government of the United Kingdom against *claims by former owners* where it is established that the property was wrongly vested in the Custodians . . . '.