

**Metropolitan Court
15.P.27.693/1999/44**

In the Name of the Republic of Hungary

In the lawsuit initiated for the return of assets by US resident **Martha Nierenberg** (15 Middle Patent Road, Armonk, New York 10504 U.S.A.) as the plaintiff, represented by dr. Tamás Varga (Budapest VI, Szív u. 33.)

- in whose interest the Italian residents Angela Maria Herzog (Rome, Lungorevere Flaminio 16) and Julia Alice Herzog (Rome, via Torre Spizzichina Casale 7), represented by dr. Tamás Balázs Tamás, intervened –

against the **Museum of Fine Arts** (1146 Budapest, Dózsa György út 41.) as the first degree defendant, the **National Gallery of Hungary** (1014 Budapest, Dísz tér 17.) as the second degree defendant, and the **State of Hungary**, represented by dr. József A. Kovács (Budapest IX, Soroksári út 138.) authorized by the Treasury Assets Department (1054 Budapest, Zoltán u. 16.) as the third degree defendant, all of which were represented by dr. Tibor Soós (Gödöllő, Malomtó u. 16.), the court has entered the following

j u d g m e n t :

The court obligates the 1st degree defendant to return to the plaintiff within 15 days the following paintings:

Follower of Anthonis van Dyck – Portrait of Princess Marguerite of Lorraine,
Lucas Cranach the Elder – The Annunciation to Joachim Among the Shepherds
Barthel (Bartholomaeus) Bruyn the Elder – Portrait of Petrus von Clapis Jurist, Mayor
Alonso Cano – Portrait of Don Balthasar Carlos, Infant Prince
Gustave Courbet – Winter View of the Lake Neuchatel with the Chateau Nyon
El Greco – Holy Family
Pierfrancesco Fiorentino – Mary with Child

The court obligates the 2nd degree defendant to return to the plaintiff within 15 days the following paintings:

Károly Brocky - Sleeping Bacchante
Mihály Munkácsy – In the Studio
Mihály Munkácsy – La Visite (The Afternoon Visit)

The court dismisses the complaint beyond the above.

The court obligates the 1st and 3rd degree defendants to pay jointly to the plaintiff within 15 days the sum of HUF 7,500,000, that is Seven Million Five Hundred Thousand Hungarian Forints and the 2nd and 3rd degree defendants to pay jointly to the plaintiff within 15 days the sum of HUF 350,000, that is Three Hundred and Fifty Thousand Hungarian Forints as legal fees. The court obligates the defendants to jointly pay to the intervening party legal fees in the amount of HUF 30,000.

The judgment may be appealed within 15 days of its delivery. The appeal must be addressed to the Supreme Court but submitted to the Metropolitan Court in at least 7 copies.

The court advises the parties that if the appeal is only with regard to bearing the legal fees or the amount thereof, the payment deadline or only the reasoning of the judgment, they may request a hearing from the Supreme Court; furthermore prior to the expiration of the appeal deadline, they may jointly request that the case be judged without holding a hearing.

R e a s o n i n g :

Erzsébet Herzog was one of the three children of Lipót Herzog, the man who completed the Herzog collection and the plaintiff is the daughter of Mrs. Alfonz Weiss, nee Erzsébet Herzog.

1) Follower of Anthonis van Dyck – Portrait of Princess Marguerite of Lorraine

The Jewish Government Commission took this painting on its inventory as the possession of Mrs. Alfonz Weiss, nee Erzsébet Herzog on May 20, 1944 as a work of art owned by a Jew. The painting was placed with the 1st degree defendant, and then, following undiscovered events was obtained by the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections. On September 5, 1946, it was handed over to a person by the name of Greiner, then to a person called Schweiger, then the Economic Police attached it due to the smuggling abroad of pieces of the Herzog collection. Following this, the Budapest Criminal Court ordered the confiscation of Mrs. István Herzog's complete real and movable property by its ruling no. B.XI.4070/1949/17. In this respect, ruling no. B.II.10.161/1950/23 of the Supreme Court did not affect the ruling. On 6 October 1950, officials of the Finance Department of the Executive Committee of the Budapest Council, which was competent according to Mrs. István Herzog's place of residence, presented to the 1st degree defendant order no. 150.911/1950 of the Budapest City Council Executive Committee entered on the basis of the binding ruling, and stated in a record that the paintings guarded until then by the 1st degree defendant, including this painting, will be transferred to the property of the state. It was recorded in the register in 1950 under no. 50.750, with the indication "taken over" as István Herzog's confiscated art object. The Finance Department of the Executive Committee of the Budapest Council transferred the painting to the ownership of the 1st degree defendant on May 8, 1951 with transfer document no. 0343/Ne/3/6/1951/I/1/f.

2) Lucas Cranach the Elder's painting The Annunciation to Joachim Among the Shepherds was also owned by Mrs. Alfonz Weiss, nee Erzsébet Herzog. The undated and unmarked report of the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections mentions it among the lost art objects of Mrs. Alfonz Weiss. The painting was transferred for guarding to dr. Henrik Lóránd and was subsequently transferred to some state body at an unknown time and on unknown legal basis. Later, it was also given to Greiner, then transferred to Ödön Graf. The 2nd degree defendant transferred it to the 1st degree defendant on February 13, 1962 as an object received from the Ministry of the Interior. The 1st degree defendant registered it in its inventory under no. 62.2 with the note "given my the Hungarian National Gallery with document no. 863-135/1962 (from the Ministry of the Interior)".

In a letter dated August 13, 1965, Mrs. Alfonz Weiss requested that the Ministry of Culture certify that the painting is in the possession of the 1st degree defendant on the basis of the 1954 Law-Decree.

3) Barthel (Bartholomäus) Bruyn the Elder – Portrait of Petrus von Clapis Jurist, Mayor

This painting was also recorded on May 20, 1944 on the inventory of the government commission established to account and guard the confiscated property of Jews as the possession of Mrs. Alfonz Weiss, as a work of art owned by a Jew. The painting was placed with the 1st degree defendant. In 1945, following undiscovered events it was transported from Szentgotthárd to Budapest and was obtained by the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections. On September 5, 1947, it was handed over to the person by the name of Greiner, then the Economic Police attached it due to the smuggling abroad of pieces of the Herzog collection. The rest of the painting's history is identical to that of the painting under no. 1) above. The 1st degree defendant recorded it in its register in 1950 under no. 50.754, with the indication "taken over" as István Herzog's confiscated art object.

4) Alonso Cano – Portrait of Don Balthasar Carlos, Infant Prince

This painting was also recorded on the inventory of the Jewish Government Commission on May 20, 1944 as the possession of Mrs. Alfonz Weiss, as a work of art owned by a Jew. Then in 1945, following undiscovered events it was transported from Szentgotthárd to Budapest and was obtained by the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections. The painting was placed with the 1st degree defendant. On September 5, 1947, it was handed over to Greiner, then the Economic Police attached it due to the smuggling abroad of pieces of the Herzog collection. On June 19, 1950, it was given to the 1st degree defendant for guarding by the National Center of Museums and Monuments. The 1st degree defendant recorded it in its register in 1951 under no. 51.2828, with the indication "taken over".

5) Gustave Courbet – Winter View of the Lake Neuchatel with the Chateau Nyon

This painting was owned by Mrs. Alfonz Weiss, however, it was shipped from Budapest, Szemlőhegy street 29/b by the so-called Jewish Government Commission to the 1st degree defendant for further guarding as István Herzog's sequestered art object on June 24, 1944. Then, following undiscovered events it was transported from Szentgotthárd to Budapest in 1945 and was obtained by the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections. The painting was returned to the 1st degree defendant from the Ministerial Commission. The 1st degree defendant recorded it in its register in 1959 under no. 59.534B, with the note "from the Herzog collection; received from the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections".

6) Károly Brocky - Sleeping Bacchante

Although this painting was also owned by Mrs. Alfonz Weiss, it was shipped from Budapest, Szemlőhegy street 29/b by the so-called Jewish Government Commission to the 1st degree defendant for further guarding as István Herzog's sequestered art object on June 24, 1944. Then, following undiscovered events it was transported from Szentgotthárd to Budapest in 1945 and was obtained by the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections. Later, as a piece of the Légrády collection, on June 19, 1950, the painting went from the National Center of Museums and Monuments to the 1st degree defendant for guarding. It was recorded in the register that year under no. 50.525, with the indication "remnant" and "Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections".

7) Mihály Munkácsy's painting In the Studio was owned by Mrs. Alfonz Weiss. It was shipped from the Herzog palace to the Museum of Fine Arts in June 1944 as the property of

Mrs. Sándor Sváb. After undiscovered events it was transported from Szentgotthárd to Budapest in 1945 and was obtained by the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections. Later, as a piece of Mrs. Alfonz Weiss' collection, on June 19, 1950, the painting went from the National Center of Museums and Monuments to the 1st degree defendant for guarding.

9) Mihály Munkácsy's *The Afternoon Visit* was also owned by Mrs. Alfonz Weiss. After unknown circumstances, in 1950 the Ministry of Foreign Affairs gave it as a gift to the Metropolitan Picture Gallery, the collection of which later became part of the collection of the 1st degree defendant. The painting later became the possession of the 2nd degree defendant and was recorded on its inventory in 1973.

10) John Opie's *Portrait of a Woman* was owned by Mrs. Alfonz Weiss. The undated and unmarked report of the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections mentions it among the lost art objects of Mrs. Alfonz Weiss.

Later from 1948, the painting was guarded as a favor by dr. Péter Domony as the property of the plaintiff's predecessor and then transferred for guarding to Ilona Gyarmathy in May 1949. After her death, it went to the possession of Mrs. Tibor David nee Gizella Gyarmathy, who was informed by dr. Domony that the painting's owner was the plaintiff's predecessor. The painting was then obtained by Endre Gyarmathy who donated it to the 1st degree defendant in 1963 and it was registered in that year under no. 63.15 as a gift from Endre Gyarmathy.

The plaintiff's predecessor requested information regarding the painting on April 14, 1965 and then her attorney, dr. Henrik Lóránd informed the 1st degree defendant on May 15, 1965 that the donator was not the owner, and asked them to make a statement as to whether they consider the donation invalid. The director of the 1st degree defendant rejected the plaintiff's claim to ownership in a letter dated March 31, 1966.

11) El Greco – Holy Family

This painting was owned by Mrs. Alfonz Weiss. It was sequestered as her property in Iregszemcse in Móric Kornfeld's castle on June 11, 1944 and taken away. After undiscovered events it was transported from Szentgotthárd to Budapest in 1945 and was obtained by the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections. On September 5, 1947, it was handed over to the person called Greiner, then to Árpád Molnár. Later, the Economic Police attached it due to the smuggling abroad of pieces of the Herzog collection. The rest of the painting's history is identical to that of the painting under no. 1) above. The 1st degree defendant recorded it in its register in 1950 under no. 50.755, with the indication "confiscated from Mrs. István Herzog".

12) Pierfrancesco Fiorentino's painting *Mary With Child* was owned by Mrs. Alfonz Weiss. It was shipped to the office of the State Security Police on May 22, 1944 where it was discovered from Alfonz Weiss' box. After undiscovered events it was transported from Szentgotthárd to Budapest in 1945 and was obtained by the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections. On September 5, 1947, it was handed over to Greiner, then to a person by the name of Schweiger. Later, the Economic Police attached it due to the smuggling abroad of pieces of the Herzog collection. The rest of the painting's history is identical to that of the painting under no. 1) above. The 1st degree defendant recorded it in its register in 1950 under no. 50.752, with the indication "confiscated from Mrs. István Herzog".

In 1973 the Governments of the United States of America and the People's Republic of Hungary settled the claims of their citizens and companies toward the other state within the framework of a treaty. The Treaty settled claims for compensation by American citizens in respect of assets, rights and interests that were affected by Hungarian nationalization, forced liquidation, appropriation measures or other utilization, regardless of whether the Hungarian party was informed thereof or not.

The plaintiff's predecessor submitted a claim in the United States when the Treaty was signed in respect of paintings #1, #3, #4, #5, #10, #11 and #12 with reference to nationalization; in respect of the latter, only for 1/3 of the value.

Mrs. Alfonz Weiss nee Erszébet Herzog passed away leaving a will on July 7, 1992. In part four of her will dated November 30, 1990, she left all her clothing, jewelry, personal belongings or decorative items, all her books, furniture, art objects, household items and decoration to her daughter, the plaintiff.

In the amended complaint, the plaintiff requested that the court obligate the 1st degree defendant to return the paintings

- Follower of Anthonis van Dyck – Portrait of Princess Marguerite of Lorraine (hereinafter painting #1),
- Lucas Cranach the Elder – The Annunciation to Joachim Among the Shepherds (painting #2)
- Barthel (Bartholomaeus) Bruyn the Elder – Portrait of Petrus von Clapis Jurist, Mayor (painting #3)
- Alonso Cano – Portrait of Don Balthasar Carlos, Infant Prince (painting #4)
- Gustave Courbet – Winter View of the Lake Neuchatel with the Chateau Nyon (painting #5)
- John Opie – Portrait of a Woman (painting #10)
- El Greco – Holy Family (painting #11)
- Pierfrancesco Fiorentino – Mary with Child (painting #12)

and the 2nd degree defendant to return the paintings

- Károly Brocky - Sleeping Bacchante (painting #6)
- Mihály Munkácsy – In the Studio (painting #7)
- Mihály Munkácsy – La Visite (The Afternoon Visit) (painting #8).

The plaintiff requested that the 3rd degree defendant permit the legal action.

She pointed out the fact that the assets she is requesting to be returned are her property since she obtained them from Mrs. Alfonz Weiss under the title of inheritance by will and the 1st and 2nd degree defendants – who are in possession in the name of the 3rd degree defendant – must return them to her as depositaries pursuant to Section 466 (1) of the Civil Code.

The defendants requested that the complaint be dismissed.

They disputed in the case of each painting that Mrs. Alfonz Weiss nee Erzsébet Herzog was the owner of the paintings and that they therefore formed a part of her legacy. They disputed that the plaintiff was the successor of Mrs. Alfonz Weiss nee Erzsébet Herzog and, in this respect, how the objects of the inheritance were divided among the heirs, and they therefore disputed the plaintiff's capacity in the lawsuit.

The defendants claimed that the 1973 US-Hungarian Treaty settled the plaintiff's predecessor's claims in relation to the paintings and referred to the lack of the court's jurisdiction since on the basis of the US-Hungarian Treaty, claimants must be directed to the government of their citizenship in disputed cases. In their defense, they stated that the plaintiff's predecessor requested compensation for paintings 1, 3, 4, 5, 9, 11 and 12. She too considered them to have been transferred into state property, while the effect of the Treaty extends to the other paintings as well, since it extended to all personal assets regardless of whether they were brought to the Hungarian party's attention or not.

They referred to the statute of limitations pursuant to Act II of 1994.

The defendants claimed that the paintings became state property as abandoned objects on the basis of Section 9 of Law-decree 13 of 1954 amending Law-decree 13 of 1949. In relation to this, they referred to the fact that reference to old legal grounds is ruled out in legal relationships affected by the compensation acts.

They referred to Constitutional Court ruling no. 15/1993 AB: "The fact that today the nationalization and other laws removing private property violate the constitution and have been annulled, or the illegality of the official proceedings in relation to possession by the State and lack of any legal remedies against them should not lead us to conclude that establishment of constitutional violation or illegality means that the State's title is terminated."

They referred to the fact that on the basis of Section 2 (5) of Act XXV of 1991 any person whose claim has been settled by an international treaty shall not be entitled to compensation.

In their view, on the basis of Section 9 (1) of Law-decree 13 of 1954 amending Law-decree 13 of 1949 all of the art objects became state property or title to them was acquired – by way of acquisition of abandoned goods – on the basis of Section 127 (2) of the Civil Code.

They stated that the plaintiff's predecessor was successful when she requested that the paintings that are not subject of this lawsuit be returned to her. This leads to the conclusion that she was not hindered in enforcing her ownership rights and since she did not request other paintings, she acknowledged compensation under the Treaty and acquisition by the Hungarian State.

The defendants also referred to adverse possession.

In addition to the above, in the case of paintings 1, 3, 4, 5, 6, 7, 11 and 12, the defendants stated that according to Section 169 of the Civil Code the paintings are non-disposable and that paintings 1, 3, 11 and 12 became state property by confiscation during the criminal proceeding against Mrs. István Herzog.

Paintings 2, 4, 5, 6 and 7 became state property on the basis of Section 1 (3) and 4 (1) of Act XXVIII of 1948. They also based the acquisition of these paintings on Decree 24.390/1946 ME.

In the case of painting # 7 they also referred to the fact that it was not shipped to the Museum of Fine Arts as the property of the plaintiff's predecessor but as that of Mrs. Sándor Sváb.

They also pointed out that the 1st degree defendant received painting #2 as a gift from the Ministry of the Interior on the basis of Council of Ministers Resolution 1073/1954, painting #9 was a gift of the Ministry of Foreign Affairs and the 1st degree defendant received painting #10 as a gift from Endre Gyarmathy in 1963.

In the case of paintings 1, 3, 11 and 12 they also referred to the fact that they were confiscated during the criminal proceeding against Mrs. István Herzog and the 3rd degree defendant acquired title by way of this official resolution.

The larger part of the complaint is well founded.

The court first reviewed the defendants' procedural defense.

Lack of the plaintiff's legal capacity in the lawsuit

According to Section 48 of the Act on Civil Procedures, only a party that may have rights and obligations according to the rules of civil law can be party to a lawsuit (have legal capacity). According to Section 8 (1) of the Civil Code all persons in the Hungarian Republic have legal capacity: they may have rights and obligations; according to Section 9 a person is entitled to legal capacity from the moment of his conception and, according to Section 22, legal capacity ceases with death. Consequently, the plaintiff has legal capacity, the defendants' reference to this lacked basis, therefore the court did not dismiss the lawsuit on the basis of Section 157 of the Act on Civil Procedures considering section 130 (1) e).

Lack of jurisdiction

The defendants referred to Section 130 (1) f) of the Act on Civil Procedures. In this respect the court agreed with the plaintiff's reasoning in relation to Section 204 of the Civil Code and did not find that the defendants' reference to this was well grounded. At the same time, although the defendants indicated subsection f), they disputed the court's jurisdiction on the basis of Article 6 (3) of the 1973 Hungarian-American Treaty. According to this Article, if either a Hungarian or an American citizen submits a claim referenced in the Treaty, then he must be directed to the government of his citizenship.

The lack of the court's jurisdiction cannot, however, be concluded from this provision, especially considering that the plaintiff did not submit a claim for compensation, but requested that her assets be returned. Pursuant to Sections 1 and 8 of Act LXVI of 1997 and Section 7 (1) of the Civil Code, claims in a lawsuit must be enforced by a court, therefore, on the basis of Section 130 (1) b) and f) of the Act on Civil Procedures, the court did not dismiss the lawsuit.

Missing the deadline for enforcing the claim

The defendants objected to the fact that the plaintiff had missed the deadline of March 15, 1994 stipulated in Section 1 (1) of Act II of 1994 which, according to Section (3) a) leads to a loss of rights.

The court did not find this objection well founded either, since first of all, the deadline indicated in the act is a deadline for enforcing claims and not a deadline for initiating a lawsuit. Also, the Compensation Acts settle claims that have replaced property, and the plaintiff did not submit a claim for compensation but requested that the assets she owns be returned to her. Consequently, the defendants' objections based on the Compensation Acts cannot be accepted. Therefore, on the basis of Section 130 (1) h) of the Act on Civil Procedures, the court did not dismiss the lawsuit.

The plaintiff's right to initiate the lawsuit

In terms of their contents, the defendants' statements on the plaintiff's capacity dispute the plaintiff's right to initiate the lawsuit. The court had to examine this issue substantively, since on the basis of Section 212 (1) of the Act on Civil Procedures, as a defense on the substantive part of the case, it can only be decided with a judgment.

The defendants disputed primarily that the plaintiff's mother Mrs. Alfonz Weiss nee Erzsébet Herzog became the heir of the requested paintings following the death of Lipót Herzog. The court accepted the plaintiff's statements in the complaint regarding the ownership rights of her predecessor on the basis of the following documentary evidence:

According to the record dated May 20, 1944 attached to the complaint as Exhibit F/1, painting #1 was found in the box of Mr. Alfonz Weiss, while the last page of the document attached as F/3/B mentions the painting among those art objects of Mrs. Alfonz Weiss, which were taken away from the basement of the Budafok laboratory. Exhibit A/9, submitted by the defendants also supports ownership by the plaintiff's predecessor due to the note "W.A. no!". Exhibit A/40 does not prove that the painting was owned by Mrs. István Weiss. The court, after deliberation pursuant to Section 206 (1) of the Act on Civil Procedures, established that the painting was owned by the plaintiff's predecessor. In its view, the person(s) who placed the art objects into the boxes prior to their concealment knew the identity of the owners better than the financial investigators in the case of document A/9 and the Finance Department of the Budapest City Council in the case of document A/40. The handwritten note on record no. A/9 questions whether the investigators' knowledge was correct.

The last page of Exhibit F/3/B mentions painting #2 among Mrs. Alfonz Weiss' lost property. Ownership by the plaintiff's predecessor is also supported by dr. Henrik Lóránt's statement under Exhibit 43/F/1.

In respect of painting #3 ownership is proven by record no. III dated May 22, 1944 under Exhibit F/1 and the last page of Exhibit F/3/B mentions the painting among those art objects of Mrs. Alfonz Weiss, which were taken away from the basement of the Budafok laboratory. The court thought that the letter dated January 18, 1946 in Exhibit A/57 and Exhibit A/40, which are contradictory, are not suitable to place the evidence in doubt, since the former proves András Herzog's while the latter Mrs. István Herzog's ownership. The court, after deliberation pursuant to Section 206 (1) of the Act on Civil Procedures, established that the painting was owned by the plaintiff's predecessor. In the court's view, the person(s) who placed the art objects into the boxes prior to their concealment knew the identity of the owners better than the director of the 1st degree defendant at the time or the Finance Department of the Budapest City Council.

In respect of painting #4 ownership is proven by record no I, dated May 18, 1944 under Exhibit F/1 and the last page of Exhibit F/3/B, which mentions the painting among those art

objects of Mrs. Alfonz Weiss that were taken away from the basement of the Budafok laboratory. Exhibit A/16 submitted by the defendants proves the same. The court applied the deliberation criteria outlined for paintings 1 and 3 and is of the view that Exhibit A/57 is not sufficient to destroy the evidence, therefore, András Herzog's ownership was not proven.

Painting #5 is mentioned on the last page of Exhibit F/3/B as one of Mrs. Alfonz Weiss' art objects, which are guarded by the Ministerial Commission. The plaintiff's predecessor's ownership is also supported by Exhibit A/44 submitted by the defendants and the record prepared on June 15, 1945 regarding the opening of the boxes containing the art works shipped from Szentgotthárd to Budapest, recording the contents of box #63. The record under Exhibit A/44 – which contains István Herzog's sequestered property that was shipped to the 1st degree defendant – has a handwritten correction by the first two items (paintings 5 and 6): Baron Alfonz Weiss, Kelenhegyi út 58. The record prepared in June 1945 at the opening of box #63 the "István Herzog's property" is crossed out and replaced with "Mrs. A Weiss". All of this indicates that the art objects thought to have belonged to István Herzog were owned by Mrs. Alfonz Weiss. The letter submitted as Exhibit A/57 is not sufficient to destroy the evidence, therefore, András Herzog's ownership was not proven, since this also contradicts the data, which was later corrected, regarding István Herzog's ownership. The court, after deliberation pursuant to Section 206 (1) of the Act on Civil Procedures, established that this painting was also owned by the plaintiff's predecessor.

Painting #6 is mentioned on the last page of Exhibit F/3/B as one Mrs. Alfonz Weiss' art objects, which are guarded by the Ministerial Commission. This is also supported by Exhibit A/44 submitted by the defendants in the same way as in the case of painting #5.

In the case of painting #7 the court found the plaintiff's predecessor as the proven owner of the painting, as opposed to Mrs. Sándor Sváb who is indicated as the owner on page 12 of the record submitted as Exhibit A/45 by the defendants. The ownership title of the plaintiff's predecessor is proven by Exhibit A/16, whereby it was given for guarding to the 1st degree defendant on June 19, 1950 from Mrs. Alfonz Weiss' collection. In the deliberation pursuant to Section 206 (1) of the Act on Civil Procedures, the court used the latter document to establish the facts because the record under A/45 does not include the additional information – the knowledge of the packers – due to which the contents of the 1944 records had more weight in the deliberation of the ownership of paintings #1, #3 and #4. In addition, similarly to Exhibit A/16, item 4 of the record of May 12, 1997 of the expert committee established to determine the Herzog collection also proves ownership of the plaintiff's predecessor.

Painting #9 is mentioned on the last page of Exhibit F/3/B as one Mrs. Alfonz Weiss' art objects, which are guarded by the Ministerial Commission. Page 5 of the record of March 27, 1997 of the expert committee established to determine the Herzog collection also mentions it as the property of Erzsébet Herzog.

The director of the 1st degree defendant – as a member of the committee – according to item 4 of the May 12, 1997 record mentions paintings #1-7 and 9 as the art objects of the plaintiff's predecessor beyond all doubt. The court accepted this evidence, which also reflects the results of the latest research and knowledge regarding the paintings, as binding evidence in respect of paintings 1-7 and 9.

Ownership of painting # 10 by the plaintiff's predecessor is proven by Exhibit A/37 and 43/F/1.

Ownership of painting #11 is proven by record no. 78/1944, submitted by the plaintiff as Exhibit 41, which was taken at Iregszemcse, in Móric Kornfeld's castle on June 11, 1944. The record states that the painting was found in the box with the sign Mrs. Alfonz Weiss.

According to record no. 202/1944 taken at the offices of the State Security Police on May 22, 1944, which was submitted in Exhibit F/1, painting #12 was found in the box with the sign "property of Alfonz Weiss." However, item 20 on page 2 of the record taken on June 8, 1945 regarding the contents of box no. 7 transported from Szentgotthárd to Budapest, submitted by the plaintiff in Exhibit 41, indicates it with the mark "heirs of L.M." Upon comparing these two documents, the court – accepting the plaintiff's statement whereby Alfonz Weiss was not an art collector – established that this painting was also the property of Mrs. Alfonz Weiss nee Erszébet Herzog. The court deliberated the evidence in the same way as in the case of paintings 1, 3, and 4.

On the basis of the above, the court decided that Mrs. Alfonz Weiss's ownership right was proven in respect of all of the paintings requested to be returned.

The second issue that the defendants disputed in respect of the plaintiff's right to initiate the lawsuit was whether the plaintiff is the only successor of Mrs. Alfonz Weiss nee Erszébet Herzog, whether she is the exclusive heir of the paintings on the basis of her mother's will.

In part four of her will dated November 30, 1990, she left all her clothing, jewelry, personal belongings or decorative items, all her books, furniture, art objects, household items and decoration to her daughter, the plaintiff. The defendants' interpretation of this – whereby the will lists the testator's personal belongings which were in her immediate possession – is a narrow, restrictive interpretation of the will which is not supported either by the grammatical construal of this part or the logical interpretation of the entire will. It expressly contradicts the interpretative provision of part nine, whereby the expression "property" includes **any and all property anywhere**. Although the fourth part is not regarding property in general but about certain belongings, it is clear that since there is no restriction, the will of the testator – in accordance with part nine – can only be interpreted to mean that she wished to bequeath all of her assets listed in part four to the plaintiff, regardless of their whereabouts.

The defendants' definition of "direct property" is unintelligible in any event. At what point in time – at the date of the will, when the inheritance is transferred or at some other time – should the testator be in possession of the belongings that she bequeathed in part four?

As evidenced by part five of the will, the testator had several real estate properties, consequently she could not have been in possession of all of her belongings on all of her real estate. It is obvious that the will cannot be interpreted such that part four extends only to those belongings that are located at the place of death. Ad absurdum, had the testator not passed away on her own property, part four of her will would only affect those belongings in her immediate possession. On the basis of the above, the court did not accept the defendants' defense based on the incorrect interpretation of the will, whereby the plaintiff is not the exclusive heir of the late Mrs. Alfonz Weiss in respect of the paintings that are the subject of this lawsuit.

Since, on the basis of the will, the plaintiff is the testator's only heir in respect of the paintings, any agreement between the heirs affecting these paintings is invalid, and bears no relevance in respect of the plaintiff's right to initiate this lawsuit.

As a consequence of the above, the plaintiff is an interested party in the legal dispute and on the basis of the second sentence of Section 2 (1) of the Act on Civil Procedures she is entitled to submit a complaint: she has the right to initiate a lawsuit, therefore the complaint must be examined substantively.

Claim settled by international treaty

The defendants based their defense on the Hungarian-American property treaty in two contexts.

On the one hand they mentioned it as a legal basis – to be discussed below – for the obtaining of property by the 3rd degree defendant and on the other hand they referred to Section 2 (5) of Act XXV of 1991, according to which “no compensation is due to the person whose demand was settled by international treaty.” In accordance with the explanation above, the court did not find this latter defense of the defendants justified as the plaintiff’s complaint was not aimed at compensation but at the return of the paintings, and the statute referred to by the defendants does not exclude the enforcement of this claim as, in accordance with what was stated above, the treaty itself also does not exclude the submission of such a claim.

The other element of the defendants’ substantive defense was that the defendants acquired ownership right of the paintings that the plaintiff requested to be returned and are therefore not obligated to return them. It was not disputed between the parties that the 1st and 2nd Degree defendants possess the paintings not independently but on behalf of 3rd degree defendant.

The defendants referred to Constitutional Court Decision 15/1993 AB whereby the fact that today the nationalization and other laws removing private property violate the constitution and have been annulled, or the illegality of the official proceedings in relation to possession by the State and lack of any legal remedies against them should not lead to the conclusion that if a constitutional violation or illegality are established, the State’s title is terminated. At the same time, however, the plaintiff did not refer to termination of ownership by the state, and did not dispute the constitutionalism of the statutes which served as a basis of the 3rd degree defendant’s ownership right; instead, she disputed whether as a result of the occurrence of any of the conditions stipulated in such statutes, any of the paintings had become the property of the state. At the same time, however, the subject of the examination was whether the 3rd degree defendant obtained ownership right on the basis of the statutes effective at that time.

Counterclaim’s being unnecessary

Although the plaintiff did not object to the fact that the defendants may not refer to acquisition of property in a counterclaim, but only by filing a counter complaint, the court had to take a stand on the issue of whether filing a counter complaint is necessary or if a reference to acquisition of ownership by the 3rd degree defendant in a counterclaim is sufficient.

The court based its judgment on the fact that in accordance with the second sentence of Section 123 of the Act on Civil Procedures a lawsuit for declaration may be filed only if such declaration is necessary to protect the plaintiff’s rights against the defendant. According to the court’s judgment to protect the defendants’ rights against the plaintiff it is sufficient if the defendants refer to possession under title of the 1st and 2nd degree defendants – based on the

3rd degree defendant's ownership right – in a counter request. On this basis and in view of Section 4 of the Act on Civil Procedures the court is obliged to examine the obtaining of property by the 3rd degree defendant, and not only if a counterclaim is filed. The necessity of protection of rights, which is one of the conditions for the filing of a lawsuit for declaration, is missing, therefore, the filing of a counter complaint with such a content is not only unnecessary but also excluded.

Taking into state ownership by virtue of statute

In respect of all the paintings required to be issued, the defendants stated that on the basis of Section 9 of Law-decree 13 of 1954 amending Law-decree 13 of 1949, they were taken into the possession of the state as abandoned assets.

Accordingly, at the time this Law-decree came into force, the objects guarded by the museum whose owners were unknown or left for abroad illegally were nationalized. The defendants did not refer to the fact that the plaintiff's predecessor's left Hungary illegally, however, they stated that the owner of the paintings was unknown.

On the basis of the defendants' defense the court established that at the time the Law-decree came into force, paintings No. 2 and 10 were not in the safekeeping of the museum: painting No. 2 was obtained from the Ministry of the Interior in 1962 whereas painting No. 10 was taken from Endre Gyarmathy into the safekeeping of the museum in 1963.

The owner of paintings Nos. 1, 3, 4, 5, 6 and 9 was known to the 3rd degree defendant which can be established on the basis of the undated and unmarked report of the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections, which was attached as Exhibit F/3/B to the complaint.

The owner of painting No. 7 was not unknown either, as evidenced by the receipt attached as Exhibit A/16, the director of the 1st degree defendant took it over as a painting originating from the collection of the plaintiff's legal predecessor in 1950.

On the basis of the records made at the opening of the cases containing art treasures taken from Szentgotthárd to Budapest, the owner of paintings #11 and #12 could not be considered as unknown because it was stated that they were the property of Mór Lipót Herzog's heirs. Furthermore, record No. 78/1944. Kb. made in baron Móric Kornfeld's castle stated that painting No. 11 was in the case with the inscription Ms. Alfonz Weiss, whereas record No. 202/1944 made in the office of the State Security Police on May 22, 1944 states that painting No. 12 was found in the case marked as the property of Mr. Alfonz Weiss.

These latter reports were available in the Hungarian National Archives 45 years after the statute had come into force, in 1954 they must have been at the same place or in the archives of one of the state organs. It is the court's position that for the nationalization of the paintings on the basis of Section 9 of the Law-decree, the identity of the owner had to be unknown before the 3rd degree defendant. The defense of the defendant stating that there is no evidence supporting that the 1st degree defendant received information about the contents of the list prepared by the Police Headquarters of the 1st District of Greater Budapest, is lacking ground. In view of the fact that the 1st and 2nd degree defendants possessed the art objects on behalf of the 3rd degree defendant, the availability of data relating to the identity of the owner at any state organ means that reference to an unknown owner cannot be made. Thus, in order to establish this fact, it is not sufficient that the identity of the owner is unknown to the employee of the museum safekeeping the painting, it is also necessary that the identity of the

owner cannot be established in spite of the use of all the possible means available to the state for the finding of the owner. The defendants evidenced no performance of such investigation, however, they made no reference to that either. Furthermore, the fact that the owner of the paintings can be identified after almost half a century had passed – when some of the available evidence obviously vanished – proves that the 3rd degree defendant failed to take the necessary steps which could be expected from the state. Near paintings No. 1, 3, 11 and 12 the hand written comment “*W.A. nem!*” (“W.A. no!”) in the attached report also confirms that these paintings’ being owned by the plaintiff’s legal predecessor was known.

On the basis of the above the court established that 3rd degree defendant did not obtain the ownership right of any of the paintings on the basis of Section 9 of Law-decree 13 of 1954, as at least one of the conjunctive conditions stipulated there is missing.

In accordance with the defendants’ standpoint paintings Nos. 4, 5, 6 and 7 were also obtained by the 3rd degree defendant by virtue of statute on the basis of Section 1 (3) of Act XXVIII of 1948, which states that those assets which were removed from the property of their unknown owner as a result of the conditions of war, should also be considered as abandoned.

On the basis of Section 4 (1) of the Act the assets considered to be abandoned become the possession of the State Treasury without any indemnification.

The plaintiff referred to the fact that as a result of the statutes detrimental to Jews Item a) of the section was removed from the personal effect specified in Section 1 (1), and the assets of owners who were deported were removed, thus on this basis the assets of the plaintiff’s legal predecessors could not be considered as abandoned. This reference is correct, however, the defendants base the acquisition of title by the 3rd degree defendant not on this statutory provision but on Section (3) regarding which Item a) of Section (1) in respect of the indicated assets does not grant an exception.

At the same time, however, the court did not find paintings #2, #4, #5, #6 and #7 to be considered as abandoned in accordance with Section (3) either. On the one hand on the basis of what was outlined above, the owner of the paintings could not be considered as unknown, and on the other hand these paintings were removed from the possession of the plaintiff’s legal predecessor not as a result of the conditions of war but by virtue of the execution of the provisions of decree No. 1600/1944.M.E. As a well-known fact on the basis of Section 163 (3) of the Act on Civil Procedures it need not be proven that the acts of war of the 2nd World War had not reached Budapest in June 1944.

Due to the lack of conjunction of both conditions of Section (3) the art objects claimed did not qualify as abandoned assets, thus by virtue of Section 4 (1) of Act XXVIII of 1948 they did not get into the possession of the State Treasury.

Also, the paintings did not get into the possession of the state on the basis of Section 1 (3) of decree No. 24.390/1946. M.E. Section 1 (1) specifies that the assets falling within Section 1 of decree No. 7.880/1946. M.E. – i.e. the assets taken to the west from the **territory** of Hungary by the Hungarian Nazis or the Germans or as a result of the regulations by the military or civil authorities or any other organs between March 19, 1944 and the liberation – are subject to this statute. Owing to the agreeing statements of the parties, on the basis of Section 163 (2) of the Act on Civil Procedures it could be stated without any further evidence that the paintings in question did not leave the territory of the country, thus they did not fall within decree No. 24.390/1946. M.E., therefore, on the basis of Section 1 (3) they could not have been transferred to the ownership of the Treasury.

The court also points out that even if the paintings fell within this statute, the condition for the getting into state's possession stipulated in Section 1 (3) , i.e. that in accordance with subsection (2) the Minister of Finance should publish the assets taken into safe custody or handling, was not fulfilled in respect of these paintings. The defendants did not prove this, nor did they state, or dispute at all that this might have been the condition for taking into state possession. But, in accordance with the second sentence of subsection (2), the term of 1 year could not have commenced due to the lack of the announcement, it could not lapse, a fact which excludes obtaining of ownership by the treasury.

The paintings in the legal proceedings could not be considered as abandoned assets on the basis of decree No. 10.490/1945. M.E. either, as Section 3 (1) – in harmony with Section 1 (3) of Act XXVIII of 1948 – stipulates that such assets are the ones which were taken out of their owners' property as a result of the conditions of war or assets the owners of which are unknown.

Nationalization of abandoned assets

In accordance with Section 127 (2) of the original text of the Civil Code, the objects being not personal property – if they do not have owners – pass into the ownership of the state. In order to prove acquisition of ownership by 3rd degree defendant, the defendants should have proved that the paintings in the litigation did not have owners.

In accordance with Section 607 of the bill of Civil Law (Mt.) not published by virtue of Article XXII of 1931, which had settled the private law legal relations before Act IV of 1959 came into force and which served also as the basis for judgments by the courts “the ownership of movable property ceases if the owner ceases the possession of the object with the intention of waiving its right of ownership.”

The defendants did not prove that the plaintiff's legal predecessor waived her right of ownership of these paintings, whereas in accordance with Section 164 (1) of the Act on Civil Procedures the onus of proof is on them. The fact in itself that the plaintiff's legal predecessor – to save her life – left the country leaving her movable property behind is not sufficient to state that she waived her right of ownership of her movable property. No such conclusion may be drawn in the case of movable property, the possession of which she was deprived by force by the authorities and she was not in a position to take them with her.

Also, the fact, that the legal predecessor of the plaintiff, in the knowledge that some of her paintings were nationalized, lodged a claim for indemnification, is not fit for establishing that the right of ownership was waived. Just the contrary: the lodging of the claim for indemnification proves that she was not indifferent as to the fate of the assets, she did not waive her right of ownership of them as it is also proved by the correspondence attached to preparatory filing No. 24 of the plaintiff, the legal predecessor of the plaintiff did not wish to waive her right of ownership of her art treasures.

In the spirit of Section 208 (2) of the Civil Code (the current Section 207 (3)) the lodging of the claim for indemnification may not be interpreted in a wider sense in a way that by doing so, she waived her right of ownership.

Being non-disposable

In the case of paintings #1, 3, 4, 5, 6, 7, 11 and 12 the defendants also referred to the fact that they are not disposable on the basis of Section 169 of the Civil Code. In this respect the court shares the plaintiff's objection, i.e. that the referenced statute is not a title to the acquisition of property. The 3rd degree defendant's right of ownership may not be derived from being non-disposable in accordance with the original Item c) of Section 169 (1) of the Civil Code.

Obtaining of ownership of property by official decision

On the basis of the defendants' standpoint, paintings Nos. 1, 3, 11 and 12 were taken into possession by the 3rd degree defendant through an official decision, the confiscation of property declared in the criminal proceedings against Mrs. István Herzog. A reference was made to decision No. 180.911/3/1950 of the City Committee of the Metropolitan Council.

As the paintings in question were in the possession of the plaintiff's legal predecessor and not in that of Mrs. István Herzog, they do not fall within the scope of ruling No. B. XI. 4070/1949/17 of the Budapest Criminal Court of Justice – which became final by ruling No. B.II.10.161/1950/23 of the Supreme Court – which declares the confiscation of all of Mrs. István Herzog movable and immovable property. Decision No. 180.911/3/1950 of the Metropolitan Council was not attached, its content could not be known. On the basis of Section 164 (1) of the Act on Civil Procedures, the onus of proof is on the defendants for showing evidence that the 3rd degree defendant's acquisition of ownership would be based on this decision. Owing to all these there was no official decision on the basis of which the state obtained right of ownership of these paintings.

International Treaty as a title for obtaining of property

The defendants referred to the Hungarian-American Property Treaty also in the respect that in accordance with Article 1 (1), Article 2 (1) and Article 6 (1) the claim for ownership of the plaintiff's legal predecessor ceased. They argued that the state obtained right of ownership of the assets for which the plaintiff's legal predecessor claimed indemnification wholly (painting Nos. 1, 3, 4, 5, 9 and 11) or in part (painting No. 1) even if it did not obtain this before. Owing to the complexity of the treaty originating from Article 6 (1), the state also obtained ownership of the paintings (all the other paintings) for which the plaintiff's legal predecessor did not claim indemnification.

The Treaty – by the state measure indicated in Article 2 (1) – settled the indemnification for the damages caused earlier to the property of the persons concerned. In the judgment of the court, however, the treaty covers only the assets with regard to which the above measures were actually taken or which were actually taken into state possession by virtue of statute.

On the basis of the above, however, none of the art objects of the plaintiff's legal predecessor that are subject of this lawsuit fall within this range. The joint error of the parties to the treaty and the plaintiff's legal predecessor does not change this fact.

On the basis of the international treaty, neither the contracting parties, nor their citizens transferred right of ownership to the other member state. Indeed, they could not have

transferred such rights as the governments were not entitled to make a declaration to this effect in respect of their citizens' assets, whereas the individual citizens – thus also the plaintiff – were not parties to the convention and they did not make a contractual statement at all. It was even less likely that the 3rd degree defendant obtained right of ownership of the paintings not covered by the claim for indemnification by means of transfer.

Therefore, the letter attached as Exhibit A/20 is insignificant either as an evidence or as a legal basis in respect of the right of ownership of 3rd degree defendant.

Gift

In accordance with the original Section 170 of the Civil Code the state socialist property is single and indivisible, and in accordance with Section 171 (1) the state's ownership right is not affected by the fact that it gives its individual assets into the management of state organs; furthermore, the state is entitled to rearrange and redistribute the assets given into the management of the individual organs.

Consequently, the 3rd degree defendant could obtain right of ownership also through the legal actions of the 1st and 2nd degree defendant, furthermore a publicly financed institution (Ministry of the Interior, Ministry for Foreign Affairs) could not present a gift to another publicly financed institution (1st degree defendant or the Metropolitan Gallery), as no such transfer or change of owners is possible because the owner, the 3rd degree defendant, is unchanged. In case of paintings #2 and #9 donation cannot be a title for obtaining ownership, as on the basis of the last term of 171 Section (1), they were taken to 1st degree defendant by the regrouping of state property.

Defendants, in order to obtain right of ownership, should have proved that the 3rd degree defendant, through a legal action of the "donator", the Ministries of the Interior and Foreign Affairs obtained right of ownership earlier. In this respect, however, the defendants could not offer any evidence, whereas the onus of proof is on them in accordance with Section 164 (1) of the Act on Civil Procedures.

In the case of painting No. 10 defendants based the obtaining of ownership by 3rd degree defendant on being a gift from a private individual. At the same time, however, plaintiff referred to the fact, evidenced also by Exhibits A/37 and 43/F/1 that the owner was the plaintiff's legal predecessor, therefore, on the basis of Section 117 of the Civil Code, the 3rd degree defendant could not obtain right of ownership from Endre Gyarmathy. As opposed to this, the defendants should have proved that the donator was the owner, since on the basis of Section 164 (1), the onus of proof is on them. This, however, did not happen.

Therefore, in the case of painting # 2, 9 and 10 alike, the court found that the 3rd degree defendant's ownership right obtained through donation could not be established.

Adverse possession

In accordance with the first paragraph of Section 603 of Mt. "the person who has uninterrupted possession of movable property for thirty two years as his/her own, obtains title to that property by way of adverse possession, unless he/she acquired the property in bad faith."

On this basis the court had to examine whether the 3rd degree defendant possessed the paintings in the litigation as its own through its organ, i.e. in the lack of any other titles regarding the keeping in possession, and if this condition is fulfilled, how it obtained its property.

Paintings Nos. 1, 3, 11 and 12 were confiscated in the course of the criminal proceedings against Mrs. István Herzog. In accordance with Section 169 of Act XXXIII of 1896 “the objects which are to be confiscated in accordance with the criminal laws ..., have to be seized and sequestered or measures have to be made for their safekeeping in any other way.” The paintings were taken to the 1st degree defendant in accordance with this latter term, i.e. the last term of Section 183.

As no documentary evidence survived, it could not be clearly established, on the basis of which provision of decree No. 1600/1944. M.E. paintings Nos 4, 5, 6 and 7 were delivered to the 1st degree defendant ..., the 3rd degree defendant entered into their possession. Both ways possible on the basis of the statute, however, exclude the acquisition of title by means of adverse possession.

On the basis of Section 1 (1) of the decree the legal predecessor of the plaintiff had the obligation of notification. If she met this obligation, then strict sequestration was effected in accordance with Section 12 (1) and in this case a sequestrator was appointed in accordance with Act LX of 1881 (Vht.). This is the less likely possibility, as it was the finance management and not the state security police, which had the authority to make arrangements in accordance with Section 12, furthermore in accordance with Section 75 of Vht. strict sequestration is effected on the spot of sequestration.

The other more likely way is that [the paintings] were sequestered because the legal predecessor of the plaintiff did not fulfill her obligation of notification and this is how they were taken to the 1st degree defendant. This is shown also by the location where painting Nos. 1 and 3 were found.

In both cases, however, the 1st degree defendant was the sequestrator of the paintings possessing the paintings on behalf of 3rd degree defendant, whose rights and obligations are equal with those of the person authorized in accordance with Section 245 of Vht.

Thus, it can be stated that the 3rd degree defendant entered into the possession of paintings Nos. 1, 3, 11 and 12 as the legal capacity of the state in spite of the change of political regimes, the governments executive powers is unchanged: indeed, it is not a legal succession but a legal continuity.

In accordance with Section 1 (1) of decree No. 300/1946. M.E., however, the legal predecessor of the plaintiff was obliged to claim them back in accordance with Section 8 (4) and until December 31, 1946. If no such action was performed the commissioner of abandoned assets might dispose with the paintings in accordance with decree No. 10.490/1945. M.E. In accordance with Section 10 (1) of this decree the commissioner had to take the necessary safety measures for the safekeeping of the abandoned assets.

Consequently from this respect the legal fates of paintings Nos. 1, 3, 4, 5, 6, 7, 11 and 12 are the same: the 3rd degree defendant had a title to keep these paintings in possession, therefore, it has them in its possession not as its own in accordance with Section 445 of Mt. it was only their bailee and not their possessor.

This fact excludes obtaining ownership by adverse possession both in accordance with the first paragraph of Section 603 of Mt. and Section 121 (1) of the Civil Code. Consequently it was not necessary to examine how it entered into the possession of the paintings.

Defendants should have proved also in the case of paintings Nos. 2 and 9 that the 3rd degree defendant – in the lack of any other titles – possesses the paintings as its own. In order to state the existence of the conditions for adverse possession it is not sufficient to prove that 1st and 2nd degree defendant possess the paintings as their own because they thought that the paintings were the gifts from the Ministries of the Interior and Foreign Affairs.

In view of what is written in connection with Section 170 and Section 171 (1) of the Civil Code, for the obtaining of ownership by the 3rd degree defendant, the establishment of the possession by the state – through any of its organs – as its own is required.

Defendants did not show evidence, indeed they did not make any statements regarding the circumstances of 3rd degree defendant's entering into possession. As the entering into possession of 3rd degree defendant could not be clarified, it is excluded that possession as its own can be established. The onus of proof to show evidence for this latter is on the defendants in accordance with Section 164 (1).

It could be stated, however, that although 3rd degree defendant entered into possession of painting No. 10 through 1st degree defendant under a title invalid in accordance with Section 117 of the Civil Code, it based its possession on an ownership right on the basis of a deed of gift thought to be valid. This painting was possessed by 3rd degree defendant as its own and after the reply dated March 31, 1966 (A/41) given to the plaintiff's notice, nobody disturbed it in this possession.

Against adverse possession plaintiff mentioned that defendants entered into the possession of the painting(s) treacherously. In the case of the gift from Endre Gyarmathy this cannot be stated, the plaintiff did not prove it. In the opinion of the court the donee is not obliged to check if the donator is the owner if there is no data available questioning this fact at the time of the donation. Even if it is proved that Endre Gyarmathy was not the owner, it cannot be stated that the donee acted treacherously when accepting the gift. Therefore, the obtaining of ownership by 3rd degree defendant is not excluded by Section 121 (2) of the Civil Code.

The plaintiff also argued that its legal predecessor, for forgivable reasons, was not in a position to exercise its ownership rights, accordingly adverse possession was in abeyance in accordance with Section 123 of the Civil Code, indeed, the term of adverse possession did not start because at the time when the defendants entered into possession of the painting(s) it did not dare to assert its claim as it was afraid of the sanctions of the state dictatorship existing at that time. In its opinion this threat ceased on the day Act XL of 1990 was passed, i.e. on June 25, 1990.

The court did not find the plaintiff's relevant reference justified either.

In the period in question the plaintiff's legal predecessor was living abroad, thus she should not have been afraid of any consequences detrimental to her entity. In respect of the reprisal against her relatives she mentioned two persons living in Hungary only in her pleading, then in spite of several notices by the court (order No. 1-I., minutes of the hearing No. 43) containing the legal consequences, she did not present the facts regarding the possible

occurrence of adverse legal effects, she did not prove either this latter fact or that she left relatives behind in Hungary, although the onus of proof was on the plaintiff in accordance with Section 164 (1) of the Act on Civil Procedures. At the same time, however, on the basis of the evidence available (A/26, 27) it can be stated that the plaintiff's legal predecessor, in order to have her right of ownership acknowledged, raised a claim in the period indicated by the plaintiff, thus her actions to be performed to protect her rights of ownership were not paralyzed by the fear of the retaliatory measures of the dictatorial state power.

During the period in question, the plaintiff's legal predecessor also claimed the issue of her other paintings, a fact not disputed by the plaintiff either. The reference by the plaintiff, i.e. that these paintings had been handled as deposit and issued by the 3rd degree defendant in such capacity, was not found justified by the court, because at the time when the application for the issue had been presented its success had not been foreseeable. If the owner really had had to be afraid of retaliatory measures if she had filed her claim for ownership because of the political climate of that time, then she should have been afraid of these in the case of any claims aimed at assets being in the possession of a state organ. If there was property the issue of which the plaintiff's legal predecessor requested, then she would not have been prevented from exercising her right of ownership in respect of any other property, thus also in respect of painting No. 10.

All of this evidence and circumstances support just the opposite of what the plaintiff stated to be well known.

Therefore, it can be stated that the 3rd degree defendant obtained the right of ownership of painting No. 10 in accordance with Section 121 (1) by adverse possession on April 1, 1976. Thus this painting is possessed by 1st degree defendant not as deposit, but as its bailee based on the ownership right of 3rd degree defendant, plaintiff is not entitled to possess it, therefore in respect of this painting the court rejected the plaintiff's claim on the basis of both Section 466 (1) and Section 193 (1) of the Civil Code.

The legal basis for the possession of paintings Nos. 1, 3, 11 and 12 ceased by the repealing of decree no. 1600/1944. M.E, whereas the title of possession of paintings Nos. 4, 5, 6 and 7 ceased after the judgment declaring confiscation, which did not extend to these paintings, became binding. Therefore, the 1st and 2nd degree defendants keep paintings Nos. 1, 3, 4, 5, 6, 7, 11 and 12 in their responsible safe custody and are obliged to issue them to their owner entitled to their possession. Paintings Nos. 2 and 9 are kept by the 1st and 2nd degree defendants without having any title to do so.

In view of all the above, on the basis of Section 193 (1) of the Civil Code, the court obligates the 1st degree defendant to issue paintings Nos. 1, 2, 3, 4, 5, 11 and 12 in its possession, and the 2nd degree defendant to issue paintings Nos. 6, 7 and 9 in its possession to the plaintiff, while the 3rd degree defendant must accept the legal action in view of Item c) of Section 109/b of Act XXXVIII of 1992.

The court provided for the bearing of the legal costs in respect of the claims against 1st (and 3rd) degree defendant on the basis of Section 81 (1) of the Act on Civil Procedures, while in respect of 2nd (and 3rd degree) defendant on the basis of Section 78 (1) of the Act on Civil Procedures.

The 1st and 3rd degree, and 2nd and 3rd degree defendants, as co-defendants falling within Item a) of Section 51 of the Act on Civil Procedures, on the basis of Section 82 (1) are universally obligated to reimburse to the plaintiff, pro rata to the losing of the case, i.e. as the losers of the case, the legal costs consisting of the court fees advanced by the plaintiff and the attorney's fees. The court obligated the defendants to reimburse the legal costs of the plaintiff's interveners on the basis of Section 83 (1).

The court fixed the fee due to the plaintiff within the limits stipulated in Item b) of Section (1) of Ministry of Justice Decree No. 12/1991. IM – following also the increase of the amount of the claim, after deliberation – as 0.5% of the value of the subject of the litigation being 1,500,000,000 Hungarian Forints. The interveners' costs during the course of the legal proceedings – in addition to the notification of the intervention – was fixed pro rata with the activity of their representative who did not make any statements, being 30,000 Hungarian Forints.

Budapest, October 20, 2000

Dr. László Németh
Judge

In witness whereof:

Round rubber stamp
Signature