

Metropolitan Court 4.P.20.389/2003/35

IN THE NAME OF THE REPUBLIC OF HUNGARY

In the lawsuit initiated by

the plaintiff, MARTHA NIERENBERG, nee Marta Alice Julianna Weiss (15 Middle Patent Road, Amonk, New York, 10504, USA), represented by Dr. Tamas Varga, attorney (1063 Budapest, Sziv u. 33. I/5), against

the MUSEUM OF FINE ARTS (1146 Budapest, Dózsa György út 41) as first defendant,

the NATIONAL GALLERY (1014 Budapest, Dísz tér 17) as second defendant

the HUNGARIAN STATE represented by the Treasury Asset Management Department (1054 Budapest, Zoltán u. 16.) as third defendant

JOHN DE CSEPEL as fourth defendant PETER HERCZOG as fifth defendant

STEFAN GABRIEL HERZOG as sixth defendant

ANGELA MARIA HERZOG (Rome, Lungotevere Flaminio n. 16, Italy) as seventh defendant and JULIA ALICE HERZOG (Rome, via Torre Spizzichina Casale n. 7, Italy) as eighth defendant

for the return of belongings, the Metropolitan Court has rendered the following

j u d g m e n t :

The court obligates the first defendant to give the plaintiff possession within 15 days of the painting by El Greco entitled The Holy Family, which is a 138x103.5 cm oil on canvas painting.

Beyond this, the court dismisses the plaintiff's claim.

The court establishes that each party bears the costs of this litigation itself.

This judgment can be appealed within 15 days from the date of its delivery, to be submitted at this court, but addressed to the Metropolitan Appellate Court, in eight copies.

Prior to the expiry of the deadline for appeal, the parties may request that the appeal be judged without holding a hearing. If the appeal is only regarding payment of interest, bearing legal fees or the amount thereof, or the payment of stamp duty, or the payment of costs advanced by the state, or regarding prior enforceability, the deadline for performance or the permission of payment in installments, or if the appeal is only regarding the reasoning part of the judgment, either party may request that the appeal be adjudicated by the second instance court at a hearing.

If the sum being disputed in the appeal does not exceed HUF 200,000 or 10% of the claim indicated in the statement of claim, an appeal can be based on a material violation of the rules of the first instance court proceeding or on an incorrect interpretation of the laws serving as the basis of the substantive adjudication of the case. In the second instance proceeding no new facts shall be stated or new evidence presented, except where the facts or evidence were not presented in the first instance court proceeding due to the violation of the rules of procedure or incorrect application of the law by the court. If the appeal lacks the reference indicated, the chair of the

second instance court panel dismisses the appeal ex officio. The second instance court decides on the substantive issues of the case without holding a hearing, however, at the request of either party, it holds a hearing. The party submitting the appeal may request in the appeal that a hearing be held.

In matters involving assets, where the value disputed in the appeal exceeds HUF 500,000, parties acting through legal representatives may initiate in a joint request attached to the appeal submitted, that the Supreme Court adjudicate directly the appeal, which is based on the violation of a material statute. In such case, there shall be no reference to new facts or evidence in the appeal. The appeal will be adjudicated without holding a hearing, duly applying the rules on review proceedings; the Supreme Court decides on the basis of the documents and the judgment shall not be reviewed.

R e a s o n i n g

The plaintiff and the 4th-8th defendants are relatives of each other, as described below. Their grandparents were Mor Lipot Herzog, who was born in 1869 and died in 1937, and his spouse, Mrs. Mor Lipot Herzog, nee Janka Deutsch de Hatvany, who passed away on February 19, 1940. They had three children together: - Andras Julian Herzog, born in 1901, who died in 1943, and whose children are the 7th defendant, born in 1932, and the 8th defendant, born in 1938; - Istvan Herzog, born in 1905, who died in 1966, whose child from his marriage with Maria Parravicini is the 6th defendant, born in 1937 and the 5th defendant, born outside of marriage in 1950; - Mrs. Alfonz Benno Weiss, nee Erzsebet Herzog (Elizabeth Weiss de Csepel), who was born in 1898 and died in 1992 and who had four children: Mary Radcliffe, nee Maria Weiss, the 4th defendant, Gabriel de Csepel, born in 1922, who died in 1997, and the plaintiff, who was born in 1924.

At the turn of the 19th and 20th centuries, the grandparents of the parties, Mor Lipot Herzog and his wife were the owners of one of the largest art collections of the country, including various paintings, which they kept at their residence and the neighboring villa, that is, in the villas at 93-95 Andrassy street. On December 18, 1929 the couple made a joint will, which they signed in the form of a notarial document, simultaneously withdrawing other earlier wills. The will included the following: they acknowledged that they each had separate assets, which they inherited from their respective families and that on the basis of their premarital agreement, concluded in 1897, all assets acquired during the marriage became marital property, to which they were entitled in equal proportions. They also set forth that “the statue and painting collection of the couple located at their residence at 93 Andrassy street, which was acquired exclusively during the marriage,” was also marital property. In respect of the assets, both Mor Lipot Herzog and his wife willed that upon their death, their spouse should inherit them, while if they both die, their three children should inherit them jointly in equal proportions between them “in kind, without making any calculations or valuations.” In respect of the statues and paintings, section VI/3 of the will provides that they “should be divided in kind amongst our children possibly in completely equal parts.”

Document No. Kjö. 119/1940 prepared by dr. Szigfrid Holitscher is regarding the probate of the will of Mrs. Mor Lipot Herzog, who passed away on February 19, 1940. According to the probate of the will, the inheritors of the deceased are her children, Mrs. Alfonz Weiss, Andras Herzog and Istvan Herzog. The plaintiff’s mother inherited – among others – “one third of the goods registered in group 6, items 1-37,” where the value goods is 92,455 pengos. Page 13 of

the notarial document provides that in addition to the real estate properties “other goods of the estate are available to the inheritors, who shall divide them amongst themselves privately – wherefore no probate actions are required in respect of these goods.”

After the death of Baron Mor Lipot Herzog and his wife their children acted in accordance with the will and divided the artworks that were part of the estate into three equal portions, which they split amongst themselves. Of the goods that were at 93-95 Andrassy street until then, the plaintiff’s mother had her share shipped to the Weiss villa at 38 Kelenhegyi street, while Istvan Herzog had his share taken to his villa on Szemlohegy street.

The father of the 7th and 8th defendants, Andras Herzog, lived at the Herzog villa together with the art that he inherited until he was ordered to do work service in the army. He disappeared on the Soviet front in 1943 and was later declared deceased. After the divorce in 1939, his children were raised by their mother, who in 1942 married Count Istvan Bethlen jr., who became the custodian of the children after Andras Herzog’s death.

The plaintiff left Hungary officially with a Hungarian passport, together with her parents and siblings in 1944. They first stayed in Portugal and then moved to the United States.

Because of the Second World War and especially the prosecution of Jews – especially Decree 1600/1944 ME on the notification and seizure of Jewish assets – members of the Herzog family attempted to withdraw their assets from the effect of the Decree. They therefore placed a part of the artwork, using experts and indicating the identity of the owner, into boxes, which they placed partly in the cellar of the Budafok Laboratory Company and partly with acquaintances – primarily – in the country. The state security police found the boxes hidden in the cellar of the Budafok Laboratory Company in May 1944, and handed them over to the Jewish Government Commissioner for seizure and safeguarding, with a list, which also included the names of the owners of each item.

In June 1944 and thereafter, the Jewish Government Commissioner seized a significant part of the artwork that remained both at the Herzog and the Weiss villas.

The head of the Government Commission set up in 1944 for accounting and safeguarding the artworks of Jews (the so-called Jewish Government Commissioner) was the then director of the first defendant, Denes Csanky. Thus, a part of the artwork collected by the Government Commissioner went to the first defendant, then, together with the objects of the museum, in 1944, they were taken to Pannonhalma and in January 1945, to Szentgotthard. From there, at the end of March 1945, a part of the artworks packed in boxes went to Germany by rail, while those that were not forwarded, were returned to Budapest in June 1945.

Following the Second World War, a large part of the artwork that was taken from Hungary to Germany, where it was under American control, was returned to Hungary in 1946-48 (by the so-called Silver Train and Art Train). Pursuant to Decree 30/1947 of the Minister of Public Education, which came into force on January 3, 1947, the ministerial commissioner responsible for the affairs of taken artwork had to take measures in relation to these: search the art that was still abroad, determine the owners of the art that arrived to Hungary and return the goods to them. Several of the paintings that returned to Hungary were given to each of the three Herzog heirs.

In order to locate and get back the art that belonged to his wife, in 1947 Alfonz Weiss corresponded with the US military authorities in Germany and in 1950 he had a notice published in *Weltkunst* that he was seeking the lost paintings (including painting No. 9). In addition the family tried to achieve through Hungarian representatives to repossess the art of the plaintiff's predecessor that remained in Hungary.

On August 23, 1950, by its judgment no. B.XI.4070/1949/17 the Budapest Criminal Court found Mrs. Istvan Herzog, nee Ilona Kiss guilty of exporting assets from the country without permission, and therefore ordered the confiscation of Mrs. István Herzog's complete real and movable property. Judgment no. B.II.10.161/1950/23 of the Supreme Court, rendered on June 26, 1951, partly reversed the first instance court judgment. According to the reasoning of the final judgment, from the paintings that he inherited from his parents, Istvan Herzog donated 15 paintings of great value to his wife in 1944. In 1946-48, Mrs. Istvan Herzog arranged for Greco: Annunciation, Goya: Drinkers and Ph. Kormick: Landscape, to be taken abroad without permission (Exhibits A/29 and A/30). The Budapest City Council Executive Committee acted under order no. 180.911/1950 for the confiscation of the assets (Exhibit A/38), however the contents of the substantive resolution on the matter is unknown because the document could not be located.

The plaintiff became a US citizen in November 1951, while her mother, Mrs. Alfonz Weiss, nee Erzsebet Herzog, became a US citizen on June 23, 1952.

On the basis of the taking without compensation of the paintings by the Hungarian Government in 1954, the plaintiff's predecessor filed a claim in 1959 with the US Foreign Claims Settlement Committee under no. HUG-21.587, and she received compensation for paintings 1, 3, 4, 5, 7 and 11 and for 1/3 of painting no. 12.

On April 17, 1959, Mrs. Sándor Sváb nee Iren Herzog died in Budapest, leaving a will. Not all of her assets were listed in probate ruling no. 122/1959/14 of the Budapest State Notaries' Office (Exhibit F/3 of the second instance court proceeding, submitted on June 18, 2002), and no paintings that are the subject of this lawsuit are among the assets listed. According to the probate ruling, on the basis of the written private wills dated May 17, 1951 and May 23, 1956, the general inheritor of the estate of the testator was the plaintiff's mother (as the child of the testator's brother, Mor Lipot Herzog).

By its letter no. 35-466 US/4 dated March 14, 1973 (attached as Exhibit A/20), the Financial Institute Center advised the Ministry of Culture that on the basis of the signed and effective Agreement, all claims of US citizens had been settled regarding any artwork that was the subject of some sort of limiting or curbing measure in respect of Hungarian state ownership. According to the treaty the affected US citizens could not file any claim against the Hungarian state or its institutions, but may file for compensation. "The art objects in question – if they have not become Hungarian state property to date – became Hungarian state property pursuant to the Treaty. (...) The paintings [1, 4, 5, 7 and 9] regarding which we corresponded in 1966-68 under the referenced case numbers [in the case of Weiss family, no. 67.353/66] also fall under the scope of the treaty."

In its letter of December 11, 1973, with reference to information from the Financial Institute Center and the Agreement, the Ministry of Culture informed the 1st defendant that, if not done so earlier, 12 paintings that used to be owned by "the Weiss family of Csepel (of these 2

Munkácsys, the others by foreign painters” became Hungarian state property, and “14 paintings confiscated from the Herzog collection, which were received by the representative of the Museum of Fine Arts (dr. Bela Biro) on October 6, 1950 (including J. Borsos: Portrait of an Architect).”

On March 9, 1989, the 1st defendant – through a representative – returned three protected paintings that were on its inventory (L 3.014, L3.143 and L 3.144) to the plaintiff’s predecessor.

The plaintiff’s mother died on July 7, 1997 and in her will of November 30, 1990 she provided the following: “Fourth: I leave my clothing, jewelry, personal belongings or decorative items, all my books, furniture, art objects, household items and decoration to my daughter, Martha Nierenberg, or if she did not survive me, to my surviving children, dividing them in practice into the most equal parts. My belongings should be divided among my children as they can agree, or if they were unable to agree, then as decided by the executor of my estate, without regard to his personal interest.”

In April 1996, the plaintiff – in the name of the Herzog family – personally and through her legal representative, contacted the Ministry of Culture and Education, as the representative of the 3rd defendant, to clarify with the involvement of museums and experts the list and ownership status of the Herzog collection. The “committee” formed with the agreement of the parties held several meetings, searched and analyzed archive documents, however, the agreement urged by the plaintiff, to clarify the ownership and possession status of the art objects, was not reached.

The plaintiff’s brother, Gabor de Csepel died on December 19, 1997 leaving behind a will prepared in October 1993, which was accepted as valid in the probate proceeding. After the monetary bequests, the will includes the following: “Fourth: regardless of their nature or location, I leave the rest of my estate, including all of my assets over which I have any right of assignment or disposal at the time of my death, half and half to my sister Martha Nierenberg and my brother John deCsepel.”

In 1999, the plaintiff’s sister and brother, Mary Radcliffe and John de Csepel, signed a written statement whereby they bequeath their mother’s officially not approved will leaving all the art that was part of the Herzog collection, regardless of whether they are in Hungary or Russia, and all the rights attached to such art objects, to the plaintiff.

Mrs. Istvan Herzog, nee Maria Bertalanffy died on March 8, 1999, also leaving behind a written private will. Although according to probate ruling no. 1430.Kjo.218/1999/19 she bequeathed the itemized objects to a person who is not a party to this lawsuit, in relation to the order of inheritance she set forth that she left all assets (or any compensation or indemnification received for them) that were once the property of Istvan Herzog to the 4th defendant and Gabor de Csepel.

In their letter of June 14, 2000, the 7th and 8th defendants – as the heirs of Andras Herzog – notified the Treasury Asset Management Department, as the representative of the 3rd defendant, to return to them as their property the paintings that were taken from the Herzog villa and are in the custody of the 1st defendant. Painting nos. 2, 3, 4, 5, 11 and 12 are also on that list (as numbers 126, 127, 130, 134, 135 and 136.)

After setting forth the above, the court found the following in relation to the paintings that are the subject of this lawsuit:

1. Follower of Anthonis van Dyck – Portrait of Princess Marguerite of Lorraine (hereinafter referred to as painting no. 1), oil on canvas, in the possession of the 1st defendant, registered on the inventory under no. 50.750, with the note “taken over as Mrs. István Herzog’s confiscated art object.”

The painting was found in a box marked “Baron Alfonz Weiss” which was taken to the offices of the Hungarian state security police on May 20, 1944 (part II of Exhibit 1/F/I), from where it was placed with the 1st defendant (Exhibit A/43). Then, following undiscovered events, the painting was obtained by the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections. Then the painting was again placed with the 1st defendant, from where – according to the records of the Budapest 1st District Police – on February 5, 1947, it was handed over to a person by the name of [Jozsef] Greiner, then to a person called O. Schweiger.

The Finance Department of the Executive Committee of the Budapest Council notified the 1st defendant in memorandum no. 0343/Ne/3/6/1951 (Exhibit A/40) on May 8, 1951 that the painting had been seized from Mrs. Istvan Herzog, and it would be given free of charge to the ownership of the museum. According to record no. 515/1950 of the Museum of Fine Arts taken at the 1st defendant on October 6, 1950 (Exhibit A/9), on the basis of order no. 180.911/1950 of the Budapest City Council Executive Committee regarding the confiscation of the complete real and movable property of Mrs. István Herzog nee Ilona Kiss, the painting in the custody of the 1st defendant became the property of the 3rd defendant.

The plaintiff’s predecessor claimed and received compensation from the US Foreign Claims Settlement Committee in 1959, based on her claim no. HUNG-21.587, in which she indicated the painting as her art object that was taken in 1954 by the Hungarian Government without compensation.

In its letter of May 10, 1966 (Exhibit A/19), the Financial Institute Center notified the 1st defendant that the Weiss family had filed a claim for compensation for the painting, because “the Hungarian authorities had confiscated the painting and placed it in a public collection.”

2. Lucas Cranach: The Annunciation to Joachim Among the Shepherds (hereinafter referred to as painting no. 2), oil on wood, in the possession of the 1st defendant, registered on the inventory under no. 62.2, with the note regarding the mode of acquisition “handed over by the Hungarian National Gallery with document no. 863-135/1962 (from the Ministry of the Interior).”

The painting was transferred for safeguarding to dr. Henrik Lóránd by the plaintiff’s predecessor prior to her departure from Hungary. According to the records of the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections, it was lost. The date is unknown, but based on the contents of the record it was taken some time after January 1947. No data was available as to the date and circumstances of the finding of the painting, but the 2nd defendant transferred it to the 1st defendant on February 13, 1962 as an object received from the Ministry of the Interior.

In a letter dated August 13, 1965, the plaintiff's predecessor requested that the Ministry of Culture certify that the painting is "in the Museum of Fine Arts on the basis of the 1954 LawDecree." As testified by the letter of the Ministry of Culture to the 2nd defendant dated February 10, 1969 (ref. no 86.867/68 – Exhibit A/13), the Ministry ordered that museum items given to the 1st defendant be placed on the inventory.

In their letter of June 14, 2000, the 7th and 8th defendants notified the Treasury Asset Management Department as the representative of the 3rd defendant, to return the painting, which was removed from the Herzog villa, to them as the owners.

3. Bartholomaeus Bruyn – Portrait of Petrus von Clapis Jurist, Mayor (hereinafter referred to as painting no. 3), oil on wood, in the possession of the 1st defendant, registered on the inventory under no. 50.754, with the note "taken over as Mrs. István Herzog's confiscated art object."

The painting was found on May 22, 1944 in one of the boxes marked "property of "Baroness Alfonz Weiss" in the basement of the Budafok Laboratory Company, where it was hidden to avoid taking (Exhibit 37/F/1). The box was taken to the state security police and given to the 1st defendant. It was later transported from Szentgotthárd to Budapest in a box with an illegible number but marked IV and K.3 on the outside, which was opened on June 15, 1945. On the record taken in the presence of the experts of the first defendant, it was registered as the property of the "heirs of M. Lipot Herzog" (Exhibit 41/F/4). Subsequently, it was obtained by the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections, from where – according to the records of the Budapest 1st District Police – on February 5, 1947, it was handed over to a person by the name of [Jozsef] Greiner.

The Finance Department of the Executive Committee of the Budapest Council notified the 1st defendant in memorandum no. 0343/Ne/3/6/1951 (Exhibit A/40) on May 8, 1951 that the painting had been seized from Mrs. Istvan Herzog, and it would be given free of charge to the ownership of the museum. According to record no. 515/1950 of the Museum of Fine Arts taken at the 1st defendant on October 6, 1950 (Exhibit A/9), on the basis of order no. 180.911/1950 of the Budapest City Council Executive Committee regarding the confiscation of the complete real and movable property of Mrs. István Herzog nee Ilona Kiss, the painting in the custody of the 1st defendant became the property of the 3rd defendant.

The plaintiff's predecessor claimed and received compensation from the US Foreign Claims Settlement Committee in 1959, based on her claim no. HUNG-21.587, in which she indicated the painting as her art object that was taken in 1954 by the Hungarian Government without compensation. In 2000, the 7th and 8th defendants – claiming that they inherited the painting from their father, Andras Herzog – notified the 3rd defendant to return the painting to them (Exhibit A/57).

4. Alonso Cano (once under the name of Velasquez) – Portrait of Don Balthasar Carlos, Infant Prince (hereinafter painting no. 4), oil on canvas, in the possession of the 1st defendant, registered on the inventory under no. 51.2828 (received from the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections).

This painting was found on May 18, 1944 in a box marked "Baron Alfonz Weiss", which was taken to the state security police (Exhibit 1/F/1), and then given to the 1st defendant (Exhibit A/43), from where it was taken to Szentgotthárd under unknown circumstances. It was returned from there to Budapest in box no. 6, which was opened on June 8, 1945. The painting was

scratched and very moldy. On the record taken in the presence of the experts of the first defendant, it was registered as the property of the “heirs of M. Lipot Herzog” (Exhibit 41/F/4).

According to the letter of the director of the 1st defendant dated January 18, 1946 to the guardian of the 7th and 8th defendants, Count Istvan Bethlen jr., the painting was “currently safeguarded by the Museum of Fine Arts from the property of Baron Andras Herzog” (Exhibit A/57). The painting was handed over to a person by the name of [Jozsef] Greiner in 1947.

The plaintiff’s predecessor claimed and received compensation from the US Foreign Claims Settlement Committee in 1959, based on her claim no. HUNG-21.587, in which she indicated the painting as her art object that was taken in 1954 by the Hungarian Government without compensation. In its letter of May 10, 1966 (Exhibit A/19), the Financial Institute Center notified the 1st defendant that the Weiss family of Csepel had filed a claim for compensation for the painting, because “the Hungarian authorities had confiscated the paintings and placed them in a public collection.”

In 2000, the 7th and 8th defendants notified the 3rd defendant to return the painting to them (Exhibit A/57).

5. Gustave Courbet – Winter View of the Lake Neuchatel with the Chateau Nyon (hereinafter painting no. 5), oil on canvas, in the possession of the 1st defendant, registered on the inventory under no. 59.534.B, with the note that it was received from the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections as part of the Herzog collection.

According to a note from the 1940’s, the painting was in one of the boxes found at the Budafok Laboratory Company, which were opened by the state security police. As the property of Mrs. Alfonz Weiss, it remained in the custody of the Ministerial Commission. At the same time, according to a record of the Jewish Government Commission dated May 24, 1944, it was sequestered from István Herzog’s villa at 29/b Szemlőhegy street, and shipped for safeguarding to the 1st defendant (Exhibit A/44). It was taken to Szentgotthard under unknown circumstances and was later returned to Budapest in a box with an illegible number but marked IV and K.3 on the outside, which was opened on June 15, 1945. On the record taken in the presence of the experts of the 1st defendant, there is a typewritten note “prop. of Istvan Herzog” which was later crossed out and replaced by “Mrs. A. Weiss (Exhibit 41/F/4).

According to the letter of the director of the 1st defendant dated January 18, 1946 to the guardian of the 7th and 8th defendants, Count Istvan Bethlen jr., the painting was “currently safeguarded by the Museum of Fine Arts from the property of Baron Andras Herzog” (Exhibit A/57).

The plaintiff’s predecessor claimed and received compensation from the US Foreign Claims Settlement Committee in 1959, based on her claim no. HUNG-21.587, in which she indicated the painting as her art object that was taken in 1954 by the Hungarian Government without compensation. In its letter of May 10, 1966 (Exhibit A/19), the Financial Institute Center notified the 1st defendant that the Weiss family of Csepel had filed a claim for compensation for the painting, because “the Hungarian authorities had confiscated the paintings and placed them in a public collection.”

In 2000, the 7th and 8th defendants – claiming that they had inherited the painting – notified the 3rd defendant to return the painting to them (Exhibit A/57).

6. Károly Brocky - Sleeping Bacchante (hereinafter painting no. 6), oil on canvas, oval shaped – recorded on the inventory of the 1st defendant under no. 50.525, with the indication “remnant” from the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections. The painting later came into the possession of the 2nd defendant.

According to a note from the 1940's, the painting was in one of the boxes found at the Budafok Laboratory Company, which were opened by the state security police. As the property of Mrs. Alfonz Weiss, it remained in the custody of the Ministerial Commission. At the same time, according to a record of the Jewish Government Commission dated May 24, 1944, it was sequestered from István Herzog's villa at 29/b Szemlőhegy street, and shipped for safeguarding to the 1st defendant (Exhibit A/44). Under unknown circumstances it 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 defendant for guarding and the museum entered it on its inventory that same year.

7. Mihály Munkácsy: In the Studio (hereinafter painting no. 7), oil on wood, in the possession of the 1st defendant under inventory no. 50.521, with the indication “remnant” from the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections. The painting later came into the possession of the 2nd defendant, who still holds it.

The painting was seized in June 1944 at the Herzog villa as the property of Mrs. Sandor Svab, and taken to the 1st defendant (page 12 of the list in Exhibit a/45). It appeared in the box transported from Szentgotthárd to Budapest with an illegible number but marked IV and K.3 on the outside, which was opened on June 15, 1945. There is no note as to the identity of the owner on the record taken in the presence of the experts of the first defendant (Exhibit 41/F/4). The 1st defendant took the painting into its possession from the National Center of Museums and Monuments on June 19, 1950, as originating from the collection of the plaintiff's predecessor.

The plaintiff's predecessor claimed and received compensation from the US Foreign Claims Settlement Committee in 1959, based on her claim no. HUNG-21.587, in which she indicated the painting as her art object that was taken in 1954 by the Hungarian Government without compensation. In its letter of May 10, 1966 (Exhibit A/19), the Financial Institute Center notified the 1st defendant that the Weiss family of Csepel had filed a claim for compensation for the painting, because “the Hungarian authorities had confiscated the paintings and placed them in a public collection.”

9. Mihály Munkácsy: The Afternoon Visit (hereinafter painting no. 9), oil on canvas, 1879. The 2nd defendant recorded the painting on its inventory in 1973, and keeps it in its possession to date.

According to the records of the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections, made at an unknown date, but based on the contents of the record taken some time after January 1947, the painting was lost. According to an English note of unknown origin at the Hungarian National Archives, Jozsef Greiner, as the representative of

Baron Alfonz Weiss, accounts for it as lost property (Exhibit 32). The Weiss family searched for the painting as lost property in 1950 in the journal *Weltkunst*.

According to the defendants' notes, in 1950 the Ministry of Foreign Affairs donated the painting to the Metropolitan Picture Gallery, the collection of which later became part of the collection of the 1st defendant, from where the painting later went to the 2nd defendant.

According to the letter of May 10, 1966 of the Financial Institute Center (Exhibit A/19) to the 1st defendant, the Weiss family of Csepel had filed a claim for compensation for the painting, because "the Hungarian authorities had confiscated the paintings and placed them in a public collection."

10. John Opie: Portrait of a Woman (hereinafter painting no. 10), oil on canvas, is in the possession of the 1st defendant, registered under inventory no. 63.15 as a gift from Endre Gyarmati. According to the records of the Ministerial Commission for Affairs of Works of Art Seized from Public and Private Collections, made at an unknown date, but based on the contents of the record taken some time after January 1947, the painting was lost. According to an English note of unknown origin at the Hungarian National Archives, Jozsef Greiner, as the representative of Baron Alfonz Weiss, accounts for it as lost property (Exhibit 32).

In relation to the painting, New York resident dr. Peter Domony, stated in writing on January 19, 1965, that dr. Constantin Takacs had contacted him, as an attorney in Budapest, at the turn of 1947/48 to safeguard a painting depicting a middle aged woman in a red dress. He was told the painting was by John Opie and belonged to Mrs. Alfonz Weiss. In May 1949, Dr. Domony gave the painting for safeguarding to Budapest resident Ilona Gyarmathy, telling her what he had been told about it. After her death in 1960, the painting went to the possession of Mrs. Tibor David nee Gizella Gyarmathy. Dr. Domony corresponded with the new possessor regarding the painting, stating the name of the owner, while the possessor acknowledged that she was obligated to give out the painting. After the death of Mrs. David, the painting went to her son, Endre Gyarmathy.

In its memorandum no. 68725/1963 (Exhibit A/23), the Ministry of Culture gave permission to the 1st defendant to accept the painting as a gift from Endre Gyarmathy.

In a document dated April 14, 1965 (Exhibit A/26), the plaintiff's predecessor – with reference to her earlier letter – advised the 1st defendant that she had retained Dr. Henrik Lorant to arrange matters in relation to the painting. The representative of the plaintiff's predecessor wrote a letter on May 15, 1965 to the 1st defendant (Exhibit A/27) asking whether the museum was willing to acknowledge that the donation contract with the false owner was void. He attached Dr. Domony's above statement to his letter. On March 31, 1966, the Ministry of Culture wrote a letter to the 1st defendant and to the representative of the plaintiff's predecessor (ref. no. 66.897/1966 – Exhibit A/28) that the painting was in the custody of the 1st defendant as the property of the 3rd defendant.

11. El Greco – Holy Family (hereinafter painting no. 11), oil on canvas; in the possession of the 1st defendant, registered on the inventory under no. 50.755, with the note taken over as Mrs. István Herzog's confiscated art object.

The painting was sequestered from a box marked “Mrs. Alfons Weiss” from Móric Kornfeld’s castle in Iregszemcse on June 11, 1944 pursuant to Decree 1830/1944 ME on the Assessment and Custody of Jewish-Owned Art, and taken away (Exhibit 37/F/2).

This painting also went to Szentgotthard under unknown circumstances and was returned to Budapest in box no. 6, which was opened on June 12, 1945. The painting had mold on its back. On the record taken in the presence of the experts of the first defendant, it was registered as the property of the “heirs of M. Lipot Herzog” (Exhibit 41/F/4).

The Finance Department of the Executive Committee of the Budapest Council notified the 1st defendant in memorandum no. 0343/Ne/3/6/1951 (Exhibit A/40) on May 8, 1951 that the painting had been seized from Mrs. Istvan Herzog, and it would be given free of charge to the ownership of the museum.

The plaintiff’s predecessor claimed and received compensation from the US Foreign Claims Settlement Committee in 1959, based on her claim no. HUNG-21.587, in which she indicated the painting as her art object that was taken in 1954 by the Hungarian Government without compensation.

12. Pierfrancesco Fiorentino: Mary With Child, Angels, St. John the Baptist and St. Catherine of Alesandra (hereinafter painting no. 12), tempera and oil on canvas from wood, currently in the possession of the 1st defendant, registered on the inventory under no. 50.752, with the note that it was taken over as Mrs. István Herzog’s confiscated art object.

The painting was found by the state security police on May 22, 1944 in one of the boxes marked “property of Mr. Alfonz Weiss”, where it was hidden to avoid taking (Exhibit 37/F/1). It was later found in box no. 7, being transported from Szentgotthárd to Budapest. The box was opened on June 8, 1945 and the painting was scratched and moldy. On the record taken in the presence of the experts of the first defendant, it was registered as the property of the “heirs of M. Lipot Herzog” (Exhibit 41/F/4).

According to the letter of the director of the 1st defendant dated January 18, 1946 to the guardian of the 7th and 8th defendants, Count Istvan Bethlen jr., the painting was “currently safeguarded by the Museum of Fine Arts from the property of Baron Andras Herzog” (Exhibit A/57).

According to record no. 515/1950 of the Museum of Fine Arts taken at the 1st defendant on October 6, 1950 (Exhibit A/9), on the basis of order no. 180.911/1950 of the Budapest City Council Executive Committee regarding the confiscation of the complete real and movable property of Mrs. István Herzog nee Ilona Kiss – along with paintings 1 and 3 – the painting in the custody of the 1st defendant became the property of the 3rd defendant.

The plaintiff’s predecessor claimed and received compensation from the US Foreign Claims Settlement Committee in 1959, based on her claim no. HUNG-21.587, in which she indicated the painting as her art object that was taken in 1954 by the Hungarian Government without compensation.

In 2000, the 7th and 8th defendants – claiming that they had inherited the painting from their father, Andras Herzog – notified the 3rd defendant to return the painting to them (Exhibit A/57), and in their letter of June 14, 2000, they also notified the Treasury Asset Management

Department, as the representative of the 3rd defendant, to return the painting, which was taken from the Herzog villa and is in the custody of the 1st defendant.

The plaintiff filed a claim against the 1st and 2nd defendants on October 7, 1999 with the Metropolitan Court, which rendered judgment no. 15.P.27.693/1999/44 on October 20, 2000, obligating the defendants to return paintings 1-7, 9 and 11-12 to the plaintiff, while it dismissed the claim in respect of painting no. 10. In respect of the paintings that the court ordered to be returned, the court determined Erzsebet Herzog's ownership title, which the plaintiff inherited by will and did not find acquisition of title by the state as proven on the basis of any of the legal titles invoked by the defendants. The court's position in respect of painting no. 10 was that the 3rd defendant acquired title to it by adverse possession in 1976.

The Supreme Court of the Republic of Hungary, as second instance court issued ruling no. Pf.IX.26.770/2000/21 on November 2, 2002 vacating the judgment of the first instance court and instructed the first instance court to hold a new proceeding and render a new judgment in the matter. With reference to the defendants' defense the second instance court stated that it did not find any circumstances giving grounds for the rejection of the claim without issuing a summons. The court pointed out that in Article 27 (1) of the 1947 Paris Peace Treaty promulgated with Act XVIII of 1947, the Hungarian State agreed to restore any goods confiscated, impounded or seized after September 1, 1939 on grounds of ethnic origin or religion, or if such restoration is not possible, to grant compensation. The provisions of the Paris Peace Treaty obviously served as the basis of any settlement through international agreements on the reparation of violated rights and interests, including the Agreement on the Settlement of Claims concluded on March 6, 1973 between the Governments of the Hungarian People's Republic and the United States of America. In relation to the Agreement, the court stated that in the second instance court proceedings, the defendants did not dispute that Article 2 of the Agreement did not withdraw property from the owner, nor did it create ownership for the state. In respect of the permissibility to file an action, the Supreme Court bore in mind that the plaintiff may have a claim for indemnification or compensation as an obligation under law if the state's acquisition of the property were proven. However, this is not the case here, as the second instance court – in agreement with the judgment of the first instance court – stated that the plaintiff's claim is a classic case of *rei vindicatio* by the owner. On the basis of the defendants' defense regarding the plaintiff's capacity in the lawsuit, the position of the second instance court was that there are serious doubts as to her capacity in light of the inheritances after the death of the art collector, Mor Lipot Herzog and his wife. The court required that, in accordance with judicial practice, all the owners and any persons with any interest attached to the claim must stand in action and instructed the first instance court accordingly. At the same time, the second instance court did not dispute that the plaintiff's capacity in the lawsuit partially exists, however, she should have credibly proved this fact in respect of each painting being claimed – both in respect of the plaintiff's mother and the sole inheritance of the plaintiff herself. In the case of paintings 1, 3, 11 and 12, on the basis of the decision of the Budapest Criminal Court and the resolution of the Budapest City Council on taking into state ownership, the Supreme Court decided that the onus of proof of the contrary of the public documents lay on the plaintiff. The Supreme Court agreed with the first instance court's legal conclusion, whereby the defendants did not prove beyond doubt that the paintings being claimed became state property by virtue of statute. In contrast with the reasoning of the first instance court, the Supreme Court pointed out that the provisions of Law-Decree 13/1954 issued as a supplement and amendment of Law-Decree 13/1949 on Museums and Monuments did not affect the

paintings that are the subject of this lawsuit: none of the paintings became state-owned property based on these Decrees. The Supreme Court also referred to the fact that although recording in the museum's inventory and a reference on the mode of acquisition does not create ownership, it can serve as the basis for the museum's possession of an object. According to the Supreme Court, the first instance court failed to interpret the plaintiff's predecessor's legal acts related to claiming compensation in 1959 from the US Government for a part of her assets that are the subject of this lawsuit, as it failed to evaluate the new legal situation that was created following the preparation and execution of the 1973 Agreement. Finally, the Supreme Court did not find any reason for questioning the first instance court's decision on painting no. 10, apart from the deficiencies in the plaintiff's capacity in the lawsuit.

In the repeated proceeding, in her filing of March 25, 2003, the plaintiff extended her claim to the 4th-8th defendants.

The plaintiff maintained her claim as amended in the original proceeding. She asserted that she had acquired title to all of the paintings through inheritance by will from her mother and as the owner she requested that the 1st defendant return to her possession painting nos. 1, 2, 3, 4, 5, 10, 11 and 12, while the 2nd defendant should return painting nos. 6, 7 and 9. The plaintiff requested that the 3rd-8th defendants be obligated to accept the above. In respect of the 3rd defendant, the plaintiff invoked the fact that the 1st and 2nd defendants were in possession of the goods in its name.

The 1st-3rd defendants requested that the claim be dismissed. In light of the first instance court judgment and the Supreme Court ruling, in the repeated proceeding they did not maintain their request for the termination of the lawsuit based on Section 157 a) of the Act on Civil Procedures. They continued to dispute the plaintiff's capacity in the lawsuit in respect of all of the paintings. In their final defense, in respect of paintings 1, 2, 3, 5, 11 and 12 the defendants invoked primarily the fact that the 3rd defendant had acquired title to the paintings on the basis of an official resolution (statute and the court judgment ordering the confiscation of assets). The defendants' primary defense in respect of paintings 4, 6, 7, 9 and 11, and secondary defense in respect of paintings 1, 2, 3, 5, 11 and 12 was that the state had acquired title to the paintings by obtaining abandoned goods. The defendants' secondary defense in respect of paintings 4, 6, 7, 9 and 11, and third defense in respect of paintings 1, 2, 3, 5, 11 and 12 was that they had acquired the paintings through adverse possession.

The 4th-6th defendants did not file a counterclaim; they did not make any substantive written statements in the lawsuit and did not appear at the hearings in spite of summons.

The 7th-8th defendants, who intervened in the "original" proceedings on the side of the plaintiff – first (at the May 24, 2004 hearing) requested that the claim be dismissed in respect of paintings 3, 4 and 7, asserting that their father, Andras Herzog had acquired title thereto, following which they inherited the paintings from him in equal proportions. In respect of the other paintings they did not object to awarding the plaintiff's claim. They acknowledged that after the death of Mor Lipot Herzog and his wife, their children had divided the art inheritance into three parts and each of the three children inherited one part, which they took into their possession. Later (at the December 6, 2004 hearing), they changed their counterclaim regarding paintings 3, 4 and 7 and did not dispute the plaintiff's ownership title and thus supported that the plaintiff's claim be awarded in respect of these paintings as well.

The court upheld a minor part of the plaintiff's claim.

In line with the requirement set forth in the ruling of the second instance court invalidating the judgment, in the retrial, this court ensured that all of the descendants of Mor Lipot Herzog (who died in 1937) and Mrs. Mor Lipot Herzog (who died in 1940), who may hold title to the paintings and artwork that are the subject of this lawsuit, be involved in this action.

In relation to this, the court notes that from among the descendants of Erzsebet Herzog, Gabor de Csepel, who passed away on December 19, 1997, willed in the section of his will beginning with "fourth", that the plaintiff and John de Csepel should be the inheritors of his assets that were not affected by other provisions, including his tangible assets. John de Csepel is the 4th defendant in this lawsuit. As testified by their statement made on September 30, 1999, which was submitted as Exhibit 7/F/1, the fourth child of the plaintiff's predecessor, Mary Radcliffe, along with the 4th defendant, acknowledged and accepted as binding upon them the provisions of their mother's officially not approved will, whereby all the artwork owned by their mother, which formed part of the earlier Herzog collection, was inherited by their sister. In the statement they declared that they irrevocably waive all their inheritance rights, either under will or by law, in relation to any art object.

Section 206 (1) of the Act on Civil Procedures provides that the court establishes the facts on the basis of the statements of the parties and the evidence presented during the evidentiary procedure; it evaluates the evidence as a whole and adjudicates according to its conviction. Section 164 (1) of the Act on Civil Procedures provides that generally the onus of proof is on the party in whose interest it is for the court to accept certain facts as true.

Section 98 of the Civil Code provides that an owner has the right of possession and is entitled to protect the possession. Sections 115 (1) and (3) of the Civil Code provide that Ownership claims shall not lapse; an owner may demand the termination of illegal intrusions or influences and, if things have been removed from her possession, to have them returned.

Examination of the plaintiff's ownership title and thus her legal capacity in this action

On the basis of the defendants' upheld defense and the instructions of the second instance court, this court first examined in respect of each painting, whether in 1944 they were owned (at least partly) by Erzsebet Herzog, and if the title to the painting did not change until her death, did the plaintiff inherit it on the basis of inheritance by will?

First of all, the court found in respect of all paintings that if Elizabeth Herzog owned them in 1992, they were inherited solely by the plaintiff. In this respect this court only refers to, and upholds, the findings of the first instance court judgment regarding the interpretation of the will of Elizabeth Weiss the Csepel. In addition this court considered the statement of the plaintiff's two siblings, Mary Radcliffe and the 4th defendant as proof of the plaintiff being the sole inheritor, because they accepted as binding upon themselves their mother's will naming the plaintiff as the sole inheritor of the artwork belonging to the Herzog collection and they declared that they do not wish to enforce any claims in relation to such art.

Furthermore, the court held as evidence in respect of all of the paintings the fact that the first three defendants did not dispute in the lawsuit that they belonged to the collection of Mor Lipot Herzog and his wife and that they had owned them upon their death, while the 7th-8th defendants expressly stated this all through the trial, in line with the plaintiff. On the basis of

the will of the couple who founded the collection, which was submitted during the retrial (Exhibit 17/F/1), the probate ruling of Mrs. Mor Lipot Herzog, the statement of the 1st-3rd defendants in the initial lawsuit regarding the division of the art, and the statements of the plaintiff and the 7th-8th defendants, made through their legal representatives, this court also found that no joint ownership was formed in respect of the paintings between the siblings; the Herzog children inherited the title to each painting separately from each other. Therefore, when exploring the 1944 ownership status of the paintings, the court – considering the other available evidence as well – rejected the possibility of joint ownership and, on the basis of Section 164 (1) of the Act on Civil Procedures, the court evaluated the lack of evidence against the plaintiff.

As no direct evidence was available regarding the 1944 ownership statuses, the court deliberated on the basis of the indirect evidence as set out below.

The state security police found painting No. 1. in a box marked “Baron Alfonz Weiss”, and it was given to Greiner in 1947. It was later confiscated as the property of Mrs. Istvan Herzog, however, there is no data as to the facts or evidence on the basis of which her ownership was established in the state security proceeding. Furthermore, it can be set forth as a fact that at the end of the 1940s, Budapest resident Jozsef Greiner acted on behalf of Alfonz Weiss to achieve the return of the art that formed part of the Herzog collection, and the US authorities also established the plaintiff’s ownership title during the compensation proceeding, also on the basis of unknown evidence. After deliberating on all of this evidence, this court arrived at the conclusion that in 1944 the painting was owned by Erzsebet Herzog, who was by then a member of the Weiss family.

The plaintiff’s mother gave painting No. 2 for safeguarding to dr. Henrik Lorant, so for lack of other evidence, the court established Erzsebet Herzog’s title.

Painting No. 3 was referred to by the state security police, who shipped the painting from the cellar of the Budafok Laboratory Company, as the property of the Weiss family, stating that it was in a box marked “Baroness Alfonz Weiss.” The fact that after it was returned from Szentgotthard, the Herzog heirs were indicated as the owner, is not contrary to this. Although it was later confiscated as the property of Mrs. Istvan Herzog, there is no data in this case as to the evidence on which this was based. The first information on Andras Herzog’s title appeared from the notification that his children sent in 2000. The 7th and 8th defendants first stated in the lawsuit that the painting was their property, then they made a statement acknowledging the plaintiff’s title. The court held that the statements of the 7th and 8th defendants made in 2000 and thereafter, especially considering that they were inconsistent, were imponderable when compared with the old evidence, and established Erzsebet Herzog’s ownership title as a fact.

The state security police found painting No. 4 in a box marked “Baron Alfonz Weiss”, and after its return from Szentgotthard, the experts of the first defendant registered it as the property of the descendants of Mor Lipot Herzog. In spite of this, obviously on the basis of documents and possibly personal knowledge, in January 1946, the director of the first defendant informed the guardian of the 7th and 8th defendants that it is being safeguarded by the museum from the property of Andras Herzog. Compensation was awarded in 1959 to Erzsebet Herzog for the loss of title to this painting, but according to the information of the Financial Institute Center, the “Weiss family” claimed additional compensation. Data regarding Andras Herzog’s title only appeared in 2000 and thereafter, in the statements of his heirs. On the basis of this evidence – primarily from the 1940s – the court did not find the ownership title of the plaintiff’s mother

clearly evidenced, so without examining further the ownership status of the painting, the court dismissed the plaintiff's claim in respect of this painting for lack of a right to sue.

Painting No. 5 appeared from the cellar of the Budafok Laboratory Company and remained in the custody of the Ministerial Commissioner as the property of Erzsebet Herzog. According to another document, prepared in May 1944, it was seized at Istvan Herzog's Szemlohegy villa. Upon its return from Szentgotthard it was first deemed to be the property of Istvan Herzog, then an unknown person at an unknown time changed the note to Mrs. A. Weiss. In 1946, the director of the first defendant mentioned this painting as the property of Andras Herzog as well. The plaintiff's predecessor claimed compensation on the basis of this painting as well in 1959, then the 7th and 8th defendants reclaimed it as their property in 2000. The court accorded great significance to the contradictory evidence on the discovery of the painting in 1944 and the letter mentioning Andras Herzog's title and thus did not find Erzsebet Herzog's title proven, so the court dismissed the plaintiff's claim in respect of this painting as well without further evidence.

The data regarding the discovery of painting No. 6 are identical to that of painting No. 5. It came into the possession and inventory of the 1st defendant in 1950 as part of the Legrady collection. The court found that the lack of additional evidence regarding the title to the painting and the place of its discovery were against the plaintiff in this case as well, so the court did not establish the plaintiff's mother's ownership title and dismissed the claim in respect of this painting as well.

A single piece of evidence is available on painting No. 7 from the 1940s, whereby it was seized in the Herzog villa as the property of Mrs. Sandor Svab. The experts were unable to ascertain the identity of the owner upon the painting's return from Szentgotthard, and then Erzsebet Herzog claimed compensation for this painting as well in 1959. Although on the basis of this evidence the court found that without a doubt, the plaintiff's predecessor was not the owner of the painting in 1944, the court still examined substantively the plaintiff's claim, as Erzsebet Herzog could theoretically have acquired it on April 17, 1959, as the inheritor by will of Mrs. Sandor Svab.

In respect of painting No. 9, there is no evidence beyond the plaintiff's statements, her conduct over the decades and the statement of the 7th and 8th defendants acknowledging the plaintiff's title to the painting. While the plaintiff's family sought and had sought the painting as late as 1950, the Ministry of Foreign Affairs donated the painting to the Metropolitan Picture Gallery in that same year. For lack of any evidence contradicting the plaintiff's statement, this court accepted that in 1944 the painting was owned by Erzsebet Herzog.

All the evidence points toward the fact that painting No. 10 was owned by Erzsebet Herzog before she left Hungary, so the court accepted this as a fact as well.

Painting No. 11 was found in 1944 at the Kornfeld castle in Iregszemcse, in a box marked Mrs. Alfonz Weiss, and it was identified as the property of Mor Herzog's inheritors upon its return from Szentgotthard. Although in 1950 the Budapest Council's Finance Department notified the 1st defendant that as a confiscated asset, it became state-owned property, there is no data in this case either as to how Mrs. Istvan Herzog's title was established. When deliberating on this painting, the court also considered the well known fact that Erzsebet Herzog was related to the Kornfeld family through her husband: Moric Kornfeld was the husband of her sister-in-law,

Mariann Weiss. After considering all of this evidence, the court established the ownership title of the plaintiff's predecessor.

The state security police found painting No. 12 in a box marked "property of Alfonz Weiss." Upon its return from Szentgotthard, it was identified as the property of the heirs of Mor Herzog. In a 1946 letter, the director of the 1st defendant referred to it as the property of Andras Herzog and in 2000, the 7th and 8th defendants referred to it as their father's property. After deliberating this evidence, the court did not find that in 1944, the painting was owned by the plaintiff's mother without a doubt, therefore, the court dismissed this part of the plaintiff's claim.

Acquisition of title by the 3rd defendant through legislation in the 1940s and 1950s

The 1st-3rd defendants invoked several statutory provisions either primarily or secondarily, on which they based their acquisition of title, stating that the 3rd defendant acquired title to the paintings either by virtue of an express statutory provision or, based on such provision, by acquiring abandoned goods.

In Articles 26 and 27 of the so-called Paris Peace Treaty, which was promulgated by Act XVIII of 1947, Hungary undertook – inter alia toward the United States – that it would reinstate all the lawful rights and interests of the country and its citizens to the status as at September 1, 1939 and restore all their property in accordance with the 1939 conditions. Hungary declared that if the restoration of a certain asset is not possible or the goods in Hungary were damaged, the country had to pay compensation. Section 9 of Article 26 provides that those persons shall mean "citizens of the United Nations," i.e. citizens of the USA, who were citizens of the United States at the time when the armistice treaty was signed with Hungary, i.e. on January 20, 1945.

Since the plaintiff's predecessor only gained US citizenship in 1952, and until that date – and according to the available data, thereafter as well – she was a Hungarian citizen, the provisions of Article 26 of the Paris Peace Treaty are not applicable to her and her artworks.

According to Article 27 of the Paris Peace Treaty, Hungary undertook obligations toward persons who were under Hungarian authority, and whose property in Hungary, lawful rights or interests were seized, confiscated or otherwise taken due to racial origin or religion after September 1, 1939. Hungary undertook to restore the goods mentioned, or if this was impossible to provide compensation. Hungary fulfilled this obligation partly through bilateral international agreements regarding assets and partly through the compensation acts passed in the 1990s.

As in January 1945, the plaintiff's predecessor was solely a Hungarian citizen, she could have claimed compensation for the paintings based on the agreement regarding the settlement of claims signed in Washington on March 6, 1973 between the Government of the People's Republic of Hungary and the Government of the United States of America with reference to Article 27 (1) of the Peace Treaty. Since, however, the plaintiff's predecessor, who was the only person with a right to dispose over ownership title, was not a party to the agreement, neither her actions toward claiming compensation in 1959, nor any other actions refer to the fact that she retained either of the contracting parties to exercise such rights on her behalf, furthermore, there is not even a reference in the Agreement to the change of the ownership title of the assets affected by the compensation, the court reached the conclusion that the 3rd defendant could not have acquired title to any of the paintings on this legal basis either.

The 1st-3rd defendants also alleged in respect of all of the paintings that they became state-owned property as abandoned goods on the basis of Law-Decree 13/1954 issued as a supplement to Law-Decree 13/1949 on Museums and Monuments. Under Section 1 of the Law-Decree, museums may only guard objects and collections that are significant for the purposes of scientific research of historically, or of extraordinary artistic significance. Museums may only guard museum pieces that are not on their inventory, if the Minister of Culture ordered that the object be placed in a public collection, or if the museums are in receipt of the object on the basis of a written contract, for the purposes of safeguarding. Paragraph (2) provides that the Minister of Culture may order the placement of museum pieces in public collections if such is required to keep the object intact; the placement is for a period of 5 years from the date when it is ordered. Following the lapse of the 5 years – if the place of residence of the owner of the good is unknown or if he does not have it removed in spite of a notice – the Minister may order the placement of the object in a public collection until such time as the object is removed. Section 7 (1) of the Law-Decree provides that for those objects being safeguarded by museums upon the entry into force of the Law-Decree, which the museum received from the owner for safeguarding without concluding a contract, or on the basis of a contract for an indefinite term, a contract with a fixed term until August 31, 1951 must be concluded. The museum must notify the owner to conclude the contract. If the latter does not comply with the notice, or the owner's place of residence is unknown, the Minister of Culture orders the placement of the object in a public collection with effect until the conclusion of a contract. Section 9 (1) provides that objects being safeguarded by museums upon the entry into force of the Law-Decree, whose owners are unknown or left the country without permission, shall become state-owned property by virtue of the Law-Decree.

Thus the Law-Decree provided primarily for concluding a contract with the owner, secondarily for maintaining possession on the basis of the order of the Minister and thirdly, in the case of pieces safeguarded at museums whose owners were unknown, for becoming state-owned property. The defendants did not allege in respect of the plaintiff's predecessor that she left Hungary without permission; it could be ascertained on the basis of the data revealed during the lawsuit that in fact she did so in 1944 with the permission of the Hungarian state.

The defendants also referred to the fact that the owner of the paintings was unknown when the Law-Decree entered into force. In this respect the court points out that when determining state-owned property, the State and its bodies had to act circumspectly in judging whether the owner of the paintings was unknown. According to the data available, paintings 2, 9 and 10 were not being safeguarded by museums when the Law-Decree entered into force, so its scope cannot extend to such paintings, while the documents on the basis of which the paintings got to the 1st defendant and those regarding their fate after 1944 all include the fact that the paintings were owned by a member of the Herzog family. On the basis of all this, the court did not find this defense of the 1st-3rd defendants acceptable.

According to the 1st-3rd defendants, on the basis of Section 1 (3) of Act XXVIII of 1948 – which provided that those goods should also be considered abandoned that are from the property of unknown owners due to the events of war – became the property of the State Treasury without compensation on the basis of Section 4 (1). As was stated in the earlier first instance court judgment and this judgment, on the one hand, the owners of the paintings in the possession of the 1st and 2nd defendants could not have been considered unknown, while on the other hand they were not removed from the possession of the plaintiff's predecessor due to the events of

war, but due to the enforcement of Decree 1600/1944 ME or for the purposes of avoiding enforcement. The court notes the fact, which is also public knowledge, that in June 1944 the events of war had not yet reached Budapest. On the basis of all this, lacking the compulsory elements of the statutory provision, the paintings could not become the property of the 3rd defendant for this reason as well.

The scope of Decree 24390/1946 ME does not extend to the paintings either as Section 1 (1) of such Decree provided that it was applicable to goods taken west from the country by the arrow cross regime or the Germans at the order of military or civilian authorities or other bodies operating between March 19, 1944 and the liberation. The parties unanimously stated that none of the paintings in this lawsuit left the territory of Hungary and the available evidence also points to this. As the scope of the ministerial decree does not extend to either of the paintings, therefore the defendant's allegation that the 3rd defendant acquired title on this legal basis could also not be upheld.

Acquisition of title by the 3rd defendant on the basis of official resolutions

According to the 1st-3rd defendants, paintings 1, 3, 11 and 12 became the property of the 3rd defendant through an official resolution: through the ruling on confiscation against Mrs. Istvan Herzog. The plaintiff disputed this position and referred to the fact that in the ruling ordering confiscation there is no data suitable for identifying the paintings. In addition, the art objects treated as affected by the confiscation on the basis of the administrative ruling and the number of paintings smuggled abroad prior to the ruling exceeds 15.

According to the available data, there is no doubt that in 1950 a criminal ruling was rendered against Mrs. Istvan Herzog ordering the confiscation of all her tangible and intangible assets, which was enforced by the Budapest Council Executive Committee through proceeding No. 180911/1950. The criminal ruling claims that Mrs. Istvan Herzog obtained 15 valuable paintings that once belonged to the Herzog collection by donation, stating that the accused had three of these shipped abroad without permission before the ruling was entered. The ruling does not include any data that is suitable for identifying the remaining 12 paintings, nor is the resolution of the Budapest Council ordering confiscation available to the court. Lacking such documentary evidence, when rendering this decision, the court relied on the handover protocol dated October 6, 1950, which was submitted as Exhibit A/9, and the notes included in the inventory of the 1st defendant. According to the protocol, on October 6, 1950, 13 paintings were handed over to the 1st defendant as state-owned property, while according to the inventory sheet of the 1st defendant, which was submitted as Exhibit A/8, 9 paintings were registered in 1950 between Nos. 50747 and 50755. As the court has no information that Mrs. Istvan Herzog was in possession of any other paintings that were once the property of Mor Lipot Herzog and his wife beyond the 15 paintings that she received from her husband, the court could only have accepted the confiscation of maximum 12 paintings, in addition to the three that were taken abroad. Therefore, in the cases of paintings 1, 3 and 12, when rendering its judgment the court also considered whether other data was available regarding the ownership title of the paintings and decided on their ownership status as set out earlier and accordingly.

Acquisition of title by the 3rd defendant on the basis of donation.

On the basis of the historical facts, acquisition of title by the 3rd defendant by donation comes into question in the case of paintings 9 and 10 and possibly painting No. 2.

According to the court, due to the uniformity of state-owned property, where property is transferred between state bodies, donation (i.e. the transfer of title free of charge) as a concept can be excluded. The most we can speak of is the free transfer of the right to manage the asset. Thus, the 3rd defendant could not have acquired title to either painting No. 2 or painting No. 9 on the legal basis of donation.

If the donator is an individual, in theory, the acquisition of title by the state through donation cannot be ruled out – as is the case with painting No. 10. On the basis of the provisions of the Civil Code effective at the time and today, however, in addition to the taking into possession of the item, in order for title to be transferred, a valid contract of donation is required, which is missing in the case of painting No. 10. Although Endre Gyarmathy signed a statement waiving his ownership rights without consideration and the 3rd defendant signed a declaration of acceptance, however, on the basis of the *nemo plus iuris* principle, the non-owner Endre Gyarmathy could not have validly transferred title to the painting, thus the 1963 contract of donation was not created.

Acquisition of title by the 3rd defendant on the basis of adverse possession

The plaintiff disputed that the 3rd defendant acquired title to any of the paintings through adverse possession. In its position, adverse possession was in abeyance between 1949 and 1990, so it could not even have started, as the plaintiff's predecessor, who lived in the United States but had close relatives in Hungary, was not in a position, for an excusable reason, to exercise her ownership rights. The plaintiff explained that since there was a single-party dictatorship in Hungary during that period, which on the one hand hindered her from enforcing her rights, and on the other hand, since Erzsebet Herzog had good reason to believe that if she claimed her property her relatives in Hungary would suffer retributions, she was blocked in her actions.

The court did not agree with the plaintiff's position. In itself, the nature of the political system in a country cannot be the basis of the abeyance of adverse possession. In respect of the protection of relatives the court points out that according to the available data, the plaintiff's mother and family did not give up obtaining the paintings in this period either, so they had a representative in Hungary, who acted on their behalf before the Hungarian authorities, and John de Csepel came to Hungary regularly. As a result of the enforcement of their claim, three paintings were returned in 1989.

The plaintiff alleged that between 1951 and 1990 her mother made 9 wills and all of these wills included the paintings that are the subject of this lawsuit, and in 1996 and thereafter the plaintiff certifiably enforced her ownership claims. She claimed that each of these actions caused the abeyance of adverse possession by the defendant, so adverse possession could not have occurred.

The court was unable to accept the plaintiff's position in this case as well. According to judicial practice, for the purposes of adverse possession, making a will is in fact disposing over ownership right, however, only if the transfer of title based on this legal basis actually takes place. In the case in this lawsuit, this did not occur until 1992, so neither the will, nor the plaintiff's actions could hinder the acquisition of title by the 3rd defendant, if adverse possession occurred prior to this. Thus, the court substantively reviewed the adverse possession of the paintings that "remained" after the earlier examination.

Paintings 1 and 3 were given out to the owner's representative in 1948 and they were presumably confiscated from him in 1950 as the property of Mrs. Istvan Herzog, from where they were shipped to the 1st defendant. The 1st defendant handled the paintings as state property acquired through official resolution, which is how it placed them on its inventory. As no data arose in the lawsuit whereby either the government body ordering or performing the confiscation, or the 1st defendant acted treacherously and the 1st defendant started possession as its own in the subjective knowledge that nobody can disturb such possession, the court held that the conditions of adverse possession exist. The taking into possession in 1950, on the basis of the Civil Code, which entered into force on May 1, 1960 and on the basis of Section 80 of the old Civil Code, adverse possession took place on May 1, 1970. So the court dismissed the plaintiff's claim in respect of these paintings as well.

The fate of painting 11 is different from that of paintings 1 and 3 only in that the painting taken over for safeguarding did not leave the possession of the state, inter alia the 1st defendant after 1944. The 1st defendant only entered it on its inventory when notified by the Budapest City Council. At this time, however, with the due degree of care the 3rd defendant and its bodies, including the 1st defendant, should have known how, as who's property, the painting came into their possession in 1944. Measures taken without the due degree of thoroughness – be that by any state body, since due to the uniformity of state property, there must be a “unified subjective awareness” – impede the existence of the requirements of adverse possession (regarding possession of the thing as one's own). According to the court therefore, the legal position of the painting being safeguarded did not change after 1951: the 1st defendant held the painting on custody for the 3rd defendant, and as such, pursuant to Section 196 (1) of the Civil Code, it is obligated to return it upon the owner's request.

As the defendants did not mention any other facts that may affect title to the painting and no such information arose in the lawsuit, the court obligated the 1st defendant to return the painting, and the 3rd-8th defendants to accept this.

In respect of painting No. 2 no evidence whatsoever was available to the court in order to determine when and under what circumstances and for what reason it came into the possession of the bodies of the 3rd defendant after it was given into the custody of Dr. Henrik Lorant. Lacking evidence the court presumed that this took place lawfully, and thus, following possession by the Interior Ministry and the 2nd defendant, the 1st defendant had good reason to assume that the painting was state-owned. Thus, adverse possession started at the latest when the 2nd defendant took the painting into its possession and lacking any event to interrupt adverse possession, it took place some time in 1961-62. Therefore, the court dismissed the plaintiff's claim in respect of this painting as well.

It was clear on the basis of documentary evidence in respect of painting No. 7 that on the basis of the laws regarding the negative discrimination against Jews, it was seized as the property of Mrs. Sandor Svab, whence the 1st defendant took the painting into its possession. Although the painting was in Szentgotthard, but according to available data, it was not taken abroad, so it got to the Ministerial Commission for Goods Taken from Public and Private Collections for unknown reasons and under unknown circumstances, as a so-called remaining item (i.e. the steps taken to find the owner were unsuccessful, so it could not be returned). As the painting was not taken abroad, it did not fall under the scope of Law-Decree 13/1954. No data, however, points to the fact that the 1st defendant (or any other state organ) acted treacherously when

taking the painting into their possession in 1950, or that they had any information that would have questioned the existence of state ownership in spite of the circumstances under which they took the painting into their possession. The court found that possession as their commenced in 1950. Although Erzsebet Herzog's acquisition of title by will in 1959 interrupted possession, on the basis of the Civil Code and Section 80 of the old Civil Code, the 3rd defendant adversely possessed the painting on May 1, 1970. The court therefore dismissed the plaintiff's claim in respect of this painting as well.

The post-1944 fate of painting No. 9 is unknown, its whereabouts between 1947-1950 were unknown both to the state organs and to the plaintiff's family; they both thought it to be lost. The painting "appeared" in 1950 at the Ministry of Foreign Affairs, from where it went first to the 1st defendant, then to the 2nd defendant. In 1966, the Financial Institute Center notified the 1st defendant, who then had the painting in its possession, that the Weiss family had filed a claim for compensation, because in their position, the "Hungarian authorities had confiscated the painting and placed it in a public collection." According to this court, for lack of knowledge of the fate of the painting, on the basis of the statements included in the claim filed by the plaintiff's family, the 1st, then 2nd defendant, acting on behalf of the 3rd defendant, had good reason to believe that the painting became state-owned property in the 1950s. Lacking evidence on the latter, however, the court was only able to determine the start of possession as their own by the defendants, as a necessary requirement of adverse possession. Lacking any event to interrupt adverse possession, the 3rd defendant acquired title in 1976 at the latest, so the court dismissed the plaintiff's claim in this respect as well.

On the basis of the data available regarding painting No. 10, the 1st defendant accepted it as a gift from Endre Gyarmati with the permission of the Ministry of Culture, and also took the painting into its possession, but for lack of a valid legal basis, title could not be transferred then. In spite of this, in March 1996 the Ministry of Culture acting on behalf of the 3rd defendant rejected the plaintiff's claim for acknowledging her ownership title and for the return of the painting. According to this court, although the 1st defendant took the painting into its possession with an invalid legal basis, after 1966 its possession thereof was uninterrupted, so in 1975-76, the 1st defendant adversely possessed the painting. The court did not agree with the plaintiff's reasoning in this repeated proceeding either, whereby the 1st defendant obtained possession of the painting treacherously, which prevented adverse possession. Although there was and is knowledge available on the owners of painting of great value in professional circles, however, the court found that when concluding the contract, the donee was not obligated to examine whether the donator was in fact the owner – especially in light of the historical, and thus ownership changes of the two decades preceding the donation. The court found that the fact that the 1st defendant exhibited the painting with the note "part of the Herzog collection," does not mean that the 1st defendant considered the painting as the property of the plaintiff: they merely named the collector, as was general practice. Based on the above, on the basis of the defense of the 1st-3rd defendants, the court held that the 3rd defendant acquired title to the painting by adverse possession in March 1976 at the latest, and thus dismissed this part of the claim as well.

On the basis of Section 81 (1) of the Act on Civil Procedures, the parties must bear the legal fees in proportion with their awards, the amount of which is in line with Act No. XCIII of 1990, as amended, and also includes the stamp duty advanced by the plaintiff, the translation costs advanced by the plaintiff, and the court considered the provisions of Decree 32/2003 (VIII.22)

IM and accepted judicial practice. As the larger part of the plaintiff's claim was dismissed, but it advanced a larger part of the costs, the court decided that the parties should each bear their own costs.

Budapest, November 16, 2005

Dr. Eموke P. Csaszar Judge