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Working Session on Art Law

THE ART OF DEALING WITH ART

National Report of Hungary

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A. Background

The Private Client Commission's focus this year will be the art market, which has grown at an extraordinarily fast pace in recent years. In January 2015 the world's two largest auction houses Christie's and Sotheby's announced an increase in their quarterly revenue of around 17% year on year, while in February Sotheby's broke the record for the highest sales total at any London auction with a staggering figure of GBP186 million. The art fair Art Basel recently attracted record attendance with 92,000 visitors in 2014. Needless to say, this growing market has led to a growing need for legal advice.

The Private Client session will address some of the most important aspects of the rules governing art assets which we, as private clients lawyers, will need to deal with now and in future. In particular, we will be considering the tax issues which arise in connection with the ownership and acquisition of artworks, and the legal requirements which our clients must consider when buying and selling art (including cultural heritage schemes and the recovery of stolen art). We will also consider succession law and art, bearing in mind that, while artworks can act as a convenient repository for wealth which will appreciate over time, for many families they will have more personal connotations as well, having been passed down through generations or serving as a powerful indicator of individual taste.

B. Introduction

Please return the completed Questionnaire and your answers to the case studies below by **Saturday 28 February 2015**.

Please answer the following questions (including those following the case study), with reference to statute and case law as appropriate. We would be particularly interested in any illustrative examples of case law which may be relevant to the issues raised. Please provide answers which are as detailed as possible, including where relevant explanations of why a particular question or fact pattern does not raise any issues in your country.

For your information I marked everything green, which was additional content to your questions. In other words, these are jurisdiction specific issues, which I thought would have relevance, when making the interdisciplinary comparison of art law.

Please note that the specification such as “art” or “art law” does not exist in the Hungarian legal system. Legally all transactions which are related to any pieces of art are subject to the general regulations on civil law, all regulations of the Civil Code relating to contracts relating to any pieces of art are applicable. Within the Civil Code there is no special subject matter of a contract such as “art” or “art law”. Different areas of art might have industry specific regulations relating to that specific area, e.g. film production in Hungary has a very favourable taxation scheme, which attracts a lot of US productions (see under taxation). Other areas of art (antiquities, applied art, fine art) might have their subject specific legal regulations. The Act on Copyright itself contains a lot of regulations which shall protect literary, scientific and artistic creations.

The general notion used is “art work” which is in legal terms very often called as “cultural objects” or “cultural goods”. The definition of cultural goods is further elaborated under point 12. e)

Introductory questions

1. In which jurisdiction(s) do you practise art law? Do your answers cover other jurisdictions as well?

I practice in a civil law jurisdiction. In Hungary the main sources of law are the Constitution, the Acts of Parliament, and the governmental, ministerial and municipal decrees. Since Hungary’s accession to the European Union on 1 May 2004, European laws also form part of the Hungarian legal system.

Although judicial precedents are not binding, selected higher court decisions are regularly reported and frequently followed by the lower courts. In order to develop jurisprudence, the Supreme Court may issue judicial guidance opinions, which are binding on the lower courts. The highest legislative authority is the Parliament, which consists of one elected Chamber. The central and local governments are entitled to enact laws, which must be in compliance with the Constitution and the Acts of Parliament. The Constitutional Court is authorised to review the constitutionality of all Hungarian legislation (although there are some limitations in this regard). The Constitutional Court examines neither the EU Treaties nor the amendments thereof nor the regulations nor the directives. The Constitutional Court only examines the Hungarian laws that implement the respective EU laws.

Legislation is worded in Hungarian. The most relevant laws and regulations are available in English, however many lower level legislation is still available only in Hungarian.

2. How long have you been practising in the art law field?

I have been practising in private international law for more than 10 years. Private client practices very often require special knowledge of specific areas such as art law. As I am an enthusiastic art fan, I am always happy to be involved in projects, cases when art is in the focus. Usually I worked on IP cases, when the authorship was questioned or an illicit use was to be prohibited.

3. How would you describe the majority of your art law cases:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Inheritance law related | <input type="checkbox"/> Trade law related |
| <input type="checkbox"/> Tax law related | <input type="checkbox"/> Insurance law related |
| <input checked="" type="checkbox"/> IP law related | <input type="checkbox"/> Litigation |
| <input type="checkbox"/> Corporate matter of art dealers incl. art dealer/artist relationship | <input type="checkbox"/> other: _____ |

4. Would you describe Art Law as your main area of practise? How much of your working time do you spend on art law related matters (in %)?

As a private client lawyer I am focused on all matters and issues which relate to private clients. I would say, I spend 15% of my working time to art law matters. The unfortunate situation in Hungary is that there has been rarely a decade when was full piece in all democratic and political sense. There are lot of cases which relate to national tragedies such as the II WW, the Holocaust (see Herzog case below) or the entire period of socialism where has been a lot of confiscation by state. These cases are much more complex and complicated cases which often require substantial research.

5. What are the major changes and challenges relating to your work on art law related matters in recent years (in a broad sense, e.g. acquisition of clients, required expertise, material law questions)?

The expertise required is crucial as very few attorney focus only on art law. I think one major challenge is the on-line action which raised several international issues, territorial jurisdiction, verification of authenticity etc.

Also, the last 10-15 years brought a lot of changes into Hungary's life. Hungary joined the EU and harmonisation of laws took place. Nevertheless, it also meant that the market opened up. Hungary in a lot of sense is still less developed as other Western European countries (also in

with respect to prices). The activity of arts and artists is very strong but often market players are less informed with respect to law, and their rights. After 2008 the market became more diversified, less and less people can afford legal advice in this area.

Taxation

6. What determines liability to tax of moveable assets for individuals in your country (e.g. habitual residence, domicile)?
7. What determines liability to tax for structures holding moveable assets in your country?

In Hungary there is no general-national tax burden on the possession of movable assets.

The local municipalities have the right – since the 90's - to impose property tax on real estates situated in their administrative territory.

As a new regulation, since the 1st January, 2015, the local municipalities have the additional right to impose local taxes on any tax object that is not already burdened by any kind of taxes. For the time being, such new local tax is established only by a few numbers of local municipalities and only on the possession of agricultural lands.

Under the laws being in effect currently, national (general) tax is not payable on the basis of the possession, but upon the acquisition of movable asset.

Depending on the circumstances of the transaction, (i) personal income tax, (ii) inheritance tax, (iii) gift tax, (iv) tax on "acquisition for consideration" might be payable by the recipient of movable assets.

Personal income tax: the natural person shall pay tax on every income – irrespective to the kind of such income - receipt by him/her.

Acquisition tax (taxes referred to in points (ii)-(iv) above) is payable in case of inheritance, receipt of a gift, acquisition for consideration of real estates and certain kind of movable assets, as set out in the Act.

Both the Act on Personal Income Tax and the Act on Acquisition Taxes defines certain exemptions to ensure that no double taxation situation may occur.

8. Has your country planned or proposed to introduce any new taxes on individuals who are either non-resident or non-domiciled with moveable assets in your country? Laws being currently in effect:

Under the Act on Acquisition Taxes,

- (i) if the heritage is situated in Hungary, the successor shall bear the inheritance taxes, irrespective to its nationality;
- (ii) if the transfer of the gift is realized in Hungary, the gift tax is payable by the recipient, irrespective to his/her nationality.

Under the Act on Personal Income Tax, the non-Hungarian resident person qualifies as Hungarian resident and shall also pay personal income tax, if he/she resides more than 183 days / year in Hungary.

I have no information about any proposed new law in the subject matter.

9. Has your country planned or proposed to introduce any new taxes on structures holding moveable assets in your country?

Act on Tax over High Value Properties was in effect from 2009-2010. Under such Act, tax was payable on high value real estates, autos, boats, aircrafts. This Act is not in effect anymore.

I have no information about any proposed new law in the subject matter.

10. Does your country have any favourable tax schemes in life or on death for people who own items of significant cultural value? If so, is an election required to participate in these?

Under the Act on Acquisition Taxes no inheritance tax or gift tax is payable, if the heritage/gift is granted for scientific, artistic or cultural education purposes.

If the heritage contains high value artistic products (fine arts, applied arts, folk art, etc.), the successor is exempted from payment of inheritance tax if he/she transfers the given elements of the heritage to the state, to a local municipality or a higher education institute.

In the Act on VAT there is a special regime for the distributors of artistic products.

The main elements of such regime are:

- it is applicable only if the distributor buys the artistic product from a non-taxable person or from another distributor;
- no VAT may be calculated on the selling price by the distributor;
- no VAT may be deducted by the distributor in respect of the buying and selling of the artistic product under this regime;
- the distributor shall pay VAT only over its profit on the selling of the artistic product;
- the distributor has the right to choose the "global-settlement system", which means, that the distributor shall calculate VAT on the net profit of a tax period and not on the profit of individual transactions in such period.

11. Film industry has a very favourable taxation scheme in Hungary.

Hungary's 20% tax refund has established the territory as the go-to location in Eastern Europe for footloose productions. To access the refund, projects must pass a broad, 32-point test for European criteria scoring at least 16 points overall and obtaining at least two points from cultural criteria. Projects that pass the test can then be registered with the National Film Office (NFO) by a Hungarian production company.

Production costs must be paid by a NFO registered production company which also pays taxes in Hungary, so a local partner is essential. Invoices must likewise be issued by taxable Hungarian companies or individuals. Any Hungarian expense can qualify for the refund, with a few exceptions: publicity, distribution, crew per diems and airfare not routed through Hungary do not qualify.

To qualify, expenses must be invoiced by a taxable Hungarian company or individual — or, in the case of the foreign spend allowance, a company or individual with a tax number in the country concerned.

Some production costs incurred outside Hungary are also eligible. Projects that qualify can claim a 25% refund on out-of-country costs of up to 20% of their Hungarian spend, provided those costs transit through a Hungarian tax entity. Warner Bros' exorcism thriller 'The Rite' partly shot in Hungary was able to apply the refund to some post-production and costs of shooting on location in Rome.

Buying and selling art

12. Is there any specific legal basis such as statutory codes or laws, or guidelines or regulations applied by market players or dealers which is applicable to art transactions (whether domestic or foreign¹ dealers are involved) in your jurisdiction (please also indicate, if any legislative procedures are currently planned or ongoing):

National Office of Cultural Heritage (hereinafter: "Office")

The National Office of Cultural Heritage is a governmental organisation under the professional supervision of the Ministry of Education and Culture. The National Office of Cultural Heritage is the administrative authority of first instance for historic monuments, archaeological sites and movable cultural heritage. The National Office is responsible for nearly 12.000 listed historic sites, buildings, conservation areas and historic gardens all over Hungary as well as for more than 100 thousand archaeological sites and 35.000 movable cultural heritage items and 240 collections in private ownership. The National Office of Cultural Heritage is a statutory authority on listed buildings and archaeological sites (providing planning permissions), a statutory authority on the movement-control of movable heritage, an advisor to the owners and managers of heritage property, a mediator among different public and private stakeholders playing a role in heritage conservation and enhancement.

Please find issues related to movable cultural heritage (classification, restitution, and export licensing under point 12. e).

In addition to the statutory laws described below several non-governmental lobby group exists. The Association of Hungarian Antique & Art dealers elaborated a Code of Ethics which shall be applied by market players in all transactions.

- a. Are such requirements applicable to any person trading art² Or does it depend on certain criteria, such as legal entity/private person (i.e. a collector selling one of his pieces of art), size or revenue/profit?

Ongoing legislative procedure

¹ Foreign art dealers, who for example sell at an art fair in your country.

Currently there is a government decree being drafted on the operation, registry of the art dealers which is now under a consultation process.

Art dealers - “droit de suite”

In Hungary in accordance with the legislation of the European Union the “*droit de suite*” is applicable. This legal instrument was first introduced in France in 1920 and ever since it is widely applied in certain European countries. Now it is regulated in Act No. LXXVI of 1999 on Copyright Act under section 70. The core elements of these regulations are the following. Usually fine artist and applied artist are those persons who do not benefit the most from selling their piece of art. Very often art dealers and auctions houses are those who profit the most from the sale of a piece of art. In order to protect the artists, the “right to follow” was introduced. According to this, the artist is entitled to a certain % of the sale and purchase price following any sale of the original work art. This however only applies to those transactions which take place after the first assignment of ownership of the work of art by the author. This right (right to follow) of the artist can not be waived, it is mandatory to apply in any such transaction.

The Act sets forth the criteria what shall be considered as “original work of art”.

Original work of art means creations of fine art (e.g. pictures, collages, paintings, drawings, engravings, prints, lithographs, and sculptures), creations of applied art (e.g. tapestries, ceramics, glassware) and photographic works, provided they are made by the author himself or are copies considered to be original works of art. Copies of works of art shall be considered to be original works if they have been made in limited number by the author himself or under his direction. Copies of works of art which are numbered, signed or otherwise appropriately marked by the author shall be considered to be such copies.

The remuneration (fee) shall be determined on the basis of the exchange value (sale price) of the work of art (without tax and other public duties)

- 4 per cent for the portion of the sale price up to the amount in HUF which is equivalent to EUR 50 000;
- 3 per cent for the portion of the sale price from EUR 50 000.01 to EUR 200 000, expressed in HUF;
- 1 per cent for the portion of the sale price from EUR 200 000.01 to EUR 350 000,

expressed in HUF.

The fee is payable to HUNGART which is Bureau for the Protection of Artists' Rights. This is the office where collective administration is done on behalf of visual artists.

Museums

Museums shall only be considered as official participants of the art dealer market if they are officially pursue art dealer activities. This means pursuing the activity on a regular basis and with the purpose of generating income.

- b. Are there different requirements for selling, leasing (e.g. investment), lending (e.g. to a museum)?

Sale and purchase

- Generally the rules of the Civil Code are applicable which regulate the sale and purchase of goods, contain all warranty rules. (There are different, specific warranty rules for real-estate, for permanent (long-term) use of goods, etc.,)
- In case of cultural works which are protected (please see below under Section e), the state has a pre-emptive right in case a sale and purchase would take place. This means that the state has a right to step in a contract for the previously negotiated price and conditions. In case of an auction sale the competent authority must declare the exercise of its right immediately after the knockout. In case of an ordinary sale and purchase agreement, after conclusion of the contract (which is valid, but not effective), the Office has 15 days to declare whether it would like to exercise its pre-emptive rights. The contract will only be effective with the declaration of the Office.

Leasing

- According to the rules of the Civil Code, the leasing has its own rules, including specific rules relating to warranty. However there is no distinction if the subject matter is a work of art.

Deposit

- According the Act CXL of 1997 on Museums there is a legal instrument called deposit for museums under Section 49. According to this the museum shall take art works for a maximum period of 5 years as a deposit regulated under the Civil Code. The act regulates the

form and the content of such contract of deposit. The detailed rules are further elaborated in the Ministerial Decree No. 19 of 2015 on deposit at the museums. It provides further the mandatory requirements on the content of the deposit contract.

- The deposit shall be distinguished from lending.

Lending

- Act No. XCV of 2012 on the special protection of cultural goods which are landed applies to all art works which are landed from abroad. There is a certificate which shall be issued by the National Office of Cultural Heritage upon request proving that the collection brought and exhibited in Hungary is under special protection.

- The Ministerial Decree No. 29 of 2014. on the rules relating to lending of art works from/to museums sets forth the detailed rules relating to lending any art work from a museum operated by the state or a local municipality. According to the rules lending from a museum may take place if the lender previously prepares a documentation where and under which circumstances it wishes to keep the art work which is to be landed by the museum. All costs relating to the lending shall be borne by the lender, it is a mandatory rule. In case the lending takes place between museums owned by the state no lending fee shall be paid.

- Another aspect of organising an exhibition could be the owner's right to dispose of his/her art work. According to Section 69 of the Copyright Act, the owner of a fine art, photographic, applied art or industrial design creation is obliged to make the work temporarily available to the author in order that he can exercise his author's right if such action is without prejudice to the owner's equitable interest.

The exhibition of fine art, photographic, architectural and applied art creations shall be subject to the author's consent. The exhibition of a work forming part of a public collection shall not be subject to the author's consent and no remuneration shall therefor be due to the author.

The author's name shall be indicated in the case of the exhibition of the work.

- c. Are there differences in regard to the type of art (e.g. age, origin etc.)? If so, what are the determining factors/definition of such art?

Different legislation applies to the protection of archaeological sites, protection of national monuments. Export of any art work which is more than 50 years – regardless of its value – shall

be reported to the Office no matter if it is transported to the EU or any other third country, please see below under point e.)

- d. Are there any other factors that determine the applicability of such requirements/ duties (e.g. price, temporary transaction (eg. loan for an exhibition)?

The applicability of specific rules of law shall always be first examined on the basis of the subject matter of the specific transaction. As mentioned, different rules apply, for paintings and for archaeological memories. Usually value dominates in transaction of art work which is related to fine art and applied art. Age is also a relevant factor as indicated with the 50 years old dividing line. (If the art work is younger than 50 years old, it can be exported without permission)

- e. What, in your jurisdiction, would be defined as a piece of art of national importance? Please provide details, including whether there is legislation in place which governs or imposes restrictions on dealing with art of national importance.

According to the Constitution of Hungary² “*Hungary ensures the freedom of scientific research and freedom of art works....*” This clearly shows the importance Hungary places on the freedom of art and art works.

The Act on cultural inheritance³ contains the relevant information what shall be considered as a “national legacy” with respect to art. The notion of ‘cultural goods’ (‘Cultural assets’) is defined by the Act as follows: “*outstanding and typical objects, images, sound recordings and written memories and other proof of the origin and development of lifeless and live nature, mankind, the Hungarian nation and the history of Hungary, as well as pieces of arts*”.

The competent authority (please see above, National Office of Cultural Heritage) have the right to declare certain goods to be protected which have national importance.

The National Office of Cultural Heritage shall declare protection for cultural goods, which are irreplaceable and of outstanding significance, shall register them and the owner of cultural assets for which protection has been declared shall be obliged to make arrangements for their safeguarding and scientific research.

² Section X. (1)

³ Act No. LXIV of 2001

Once they are protected the sale and purchase are subject to the approval of the competent authority.

There is a public registry with the National Office of Cultural Heritage of protected art works. Data can be accessed upon request.

The protected cultural goods may only be taken out of Hungary if there is a temporary export licence with the condition of return. Consequently the permanent exportation of protected cultural goods is prohibited.

An export licence is needed for the movement of all cultural goods which are more than 50 years old (either to other Member States or outside the European Community).

There is a registry with the National Office of Cultural Heritage of art works which have an export license, but it is not public. Nevertheless, upon special written request, data can be obtained.

The unprotected cultural goods may be transported from Hungary if there is an accompanying certificate relating to the cultural good.

Hungarian Academy of Arts

The Hungarian Academy of Arts was established in 2011.⁴ The Academy is a public body committed to national tasks concerning the arts – especially literature, music, fine art, applied art, design art, architecture, photography, film, performing art, folk art – as well as the analysis, support, education, national and international presentation and spreading of the arts together with the representation of Hungarian artists.

The main task of the Academy is to facilitate the prevalence and protection of the values of Hungarian and universal culture, the respect of the traditions of Hungarian arts and the birth of new and significant artistic works.

f. The export of certain pieces of art are regulated as follows:

According to Council regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods, the export of cultural goods referred to under Annex 1 to outside of the

⁴ Act No. CIX of 2011

customs territory of the EC are subject to the licence issued by the competent national authority which is National Office of Cultural Heritage as described by above.

13. What are the consequences if the requirements referred to in question 11 are not met? To what extent may the art dealer be held liable?

Please see the answer for the following question.

14. If an expert makes an error (e.g. attributing a painting incorrectly) under what circumstances would he be liable?

This could be either a question of criminal liability, if this results in a criminal offence. If the client brings a claim to court for compensation, then it is a civil law question. Finally, it could also bring in the responsibility of an insurance company, if that specific expert had liability insurance.

15. From a practice point of view, what are the major legal challenges in relation to trading art in your jurisdiction and what advice do you give clients with respect to art transactions?

The purpose of the art transaction shall always be taken into account in order to plan and execute professionally the transaction.

- What is the aim of the transfer? Conservation, maximizing profit or supporting artists? The transfer from one generation to the other one or to obtain the best purchase price, or to lend it for any reason?
- Who would be the beneficiary of the specific transaction: a family member, a private person, a company, a public institution?
- What would be the subject matter of transfer?
- Is it protected or not, accordingly are there any mandatory statutory requirements?

Title issues and recovering stolen art

16. How does one establish title to art in your jurisdiction? We would be particularly interested in relevant case examples involving modern forms of art such as graffiti.

According to the Act on Copyright literary, scientific and artistic creations are protected. All literary, scientific and artistic creations are protected by copyright, regardless of whether or not they are specified in this Act. Such creations are, in particular:

- a) literary works (e.g. fiction works, technical literature, scientific works and journalistic works),
- b) public speeches,
- c) computer program creations and the related documentation (hereinafter referred to as 'software') whether fixed as source code, object code, or in any other form, including application programs and operation systems,
- d) plays, musicals, ballets and pantomimes,
- e) musical works with or without lyrics,
- f) radio and television plays,
- g) cinematographic creations and other audiovisual works (hereinafter jointly referred to as 'cinematographic creations'),
- h) creations produced by drawing, painting, sculpturing, engraving, lithography or in any other similar manner as well as designs therefor,
- i) photographic works,
- j) maps and other cartographic creations,
- k) architectural works and plans thereof as well as the plans for building complexes and urban architecture,
- l) designs for engineering structures,
- m) applied art creations and designs therefor,
- n) costume, scenery and designs therefor,
- o) industrial design creations,
- p) databases qualifying as collection of works.

Matters not regulated by the Copyright Act (e.g. for the transfer, assignment, pledge of copyright and related rights and also in any other moral or economic legal relations in connection with works or other subject matter within the scope of this Act), the provisions of the Civil Code shall apply.

According to Section 12 the author shall be entitled to make his work public without the indication of his name or under a pseudonym. The author may require that his work having been made public with the indication of his name shall, in the case of a subsequent legitimate use, be further on used without the indication of his name.

The author may request that his author's capacity shall not be called into question.

However, according to Section 8 of the Copyright Act, if a work has been made public anonymously or under a pseudonym, the author's rights shall be exercised, until the author takes action, by the person who has first made the work public.

17. What principles or rules apply to the recovery of stolen, illicitly exported or looted art?

The Customs Authority's task is to ensure that no cultural goods older than 50 years should be taken out of Hungary without the necessary Community or/and National export licence issued by the National Office of Cultural Heritage. Anyone who violates the export or import regulations in connection with cultural goods commits a crime or a compound crime of smuggling. During the control process, Customs Authority has the right to retain the goods for the necessary length of time with the aim of further research and in case of grounded suspicion propose an investigation or report anyone who violates the law, while at the same time seize the related cultural goods. Ultimately the court will determine whether to confiscate or return the goods. However, please note that the Hungarian Customs Authority has no special power in connection with cultural goods. Control process in connection with cultural goods is carried out according to the general rules.

In all other criminal issues relating to art work the National Police Headquarters is responsible. The National Office of Investigation has a special unit called Art Treasure Unit which shall be notified upon any commitment of crime.

A person who exports a cultural object without the necessary licence or involving deviation from the licence shall be considered to be committing a crime (according to the Criminal Code)⁵. A person importing cultural goods in violation of the import regulations shall be subject to conviction for compound smuggling while unlawful export is considered „*illegal use of cultural goods*” and shall be subject to a sentence of at most 3 years imprisonment.

Violating the provisions of the Act can also be punished with a heritage protection fine imposed by the National Office of Cultural Heritage.

There is an open registry with the National Office of Cultural Heritage of stolen art works which can be accessed through internet after registration.

Looted art, The Herzog case⁶:

David de Csepel, Angela Maria Herzog, and Julia Alice Herzog filed the case in 2010 with US courts. They are the heirs of Baron Mor Lipot Herzog, a Jewish Hungarian collector who died in 1934. According to the complaint, in May 1944, laws were issued requiring Jews to declare their property. The Herzogs tried to hide their collection, but the works were discovered and taken to Adolf Eichmann.

The complaint involves over 40 works with a combined value over \$100 million, including masterworks by El Greco, Francisco de Zurbaran, and Lucas Cranach the Elder.

The plaintiffs allege that the collection was disbursed among various German and Hungarian authorities. The Budapest Municipal Court initially recognized and acknowledged the Herzog Heirs' ownership rights in the paintings at issue, but in January, 2008, as a result of proceedings that were not conducted in accordance with international law; an appellate court reversed the lower court's decision ordering restitution and rejected the demand. The Claimants filed suit in 2010 in the U.S and invoked the federal court's jurisdiction in two, non-exclusive ways.

Following this, however, an extra lengthy procedure can be expected since answers to questions affecting the outcome of the trial must be found in Hungary: it was here that the paintings were stolen from the Herzog family by the Nazis in World War II, and then they were turned over to museums, mostly as deposits. The documents are in Hungarian, the witnesses are Hungarian, in other words, the examination of evidence will be gruelling and time-consuming.

⁵ Section 358§ of Act No. C of 2012 of the Criminal Code

⁶ <http://www.hungarylottedart.com/>

Once a binding decision is made in favour of the heirs and the Hungarian state refuses to return the requested art treasures, the implementation of the decision in the United States might result in the seizure of the Hungarian state's assets if the plaintiffs also sue for compensation for the paintings and the court rules in their favour.

Program of the Hungarian Central Bank

The Hungarian Central Bank introduced a program which aims to support the re-purchase of art works which for certain reasons happened to pass into foreign ownership. The aim of the program is to re-gain and keep these artistic works within the territory of Hungary.

This program was modelled on similar programs of other foreign national banks. The Hungarian Central Bank aims to quest and to keep the extraordinary art treasures in a form of an art collection. This way the Bank intends to make a long-term investment into cultural arts. The amount in which the Bank is allowed to furnish re-purchase amounts to 100 million Euro up to December 21, 2018.

This program was recently scrutinised and questioned in the 2014 Annual Report of the European Central Bank as it may violate the European directive on the prohibition of financing monetary politics. In other words this program can be viewed as taking over tasks of the state which is prohibited for Central Banks on the basis of the European Directive.

18. Does your jurisdiction participate in any international restitution schemes to assist in the recovery of stolen, illicitly exported or looted art?

- Hungary is a member of the UNIDROIT Convention on stolen or illegally exported cultural objects (Rome, 24 June 1995) which was ratified in 1998.
- Hungary ratified the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970

19. Art works which shall be restituted by the state to the lawful owners

According to the Government Decree No. 449 of 2013, there is a procedure regulated in case the title of the art works - which are located in a state owned museum - is disputed by a natural or legal person. Legal representation is obligatory. Evidence must be attached to the application and which supports his/her/its ownership. In case the ownership of the state can not be

proved without any doubt, and the applicant can prove its ownership, the art work shall be restituted.

Succession

20. What determines succession to moveable assets in your country?

The succession of all assets located in Hungary takes place within the inheritance proceedings conducted by public notary's assigned by statutory regulations. If there was a private will and it is brought to the attention to the public notary is shall prevail. If there was a public will, the notary will ex officio apply it. If there wasn't any will in the procedure, the rules of the Civil Code on inheritance shall be applicable.

21. Are there any restrictions as to who can inherit artworks of national importance?

There is no restriction as to who can inherit artworks of national importance. However, according to the rules of Act No. LXXX of 2001 all changes relating to the owner (including inheritance) shall be reported and registered with the Office within 8 days of the change.

22. How would an individual donate artworks to an institution or charity during his/her lifetime or on death?

There are different ways of donating on art works, depends on the purpose and intent of the person who donates it. It could be donated simply just providing as gift in accordance with the rules of the Civil Code. It could be also being transferred to a foundation. Different tax schemes apply, so that would be the dividing line probably.

Case study

You are very pleased to receive a referral of two new clients from one of the many charming AIJA members you met at the London Congress 2015. Suzanne is Argentinian and Frederick is English, and they married in a lavish ceremony in Venice in 2011, attended by many celebrities and paparazzi. The couple have two children: Alberto (born in 2012) and Victoria (born in 2014).

Frederick comes from a wealthy family and has inherited many artworks which are kept at his family's rural mansion. Last time Frederick visited his family home, he decided to give Alberto

a painting for his third birthday so he put a label reading "For Alberto" on the back of his favourite Rembrandt.

Suzanne also has a keen interest in art, and has built up her own extensive collection. Suzanne and Frederick currently travel the world, going to galleries and attending auctions to find pieces to add to Suzanne's collection. They are considering moving to your country and living there until the children go to university. Suzanne would like to bring her collection with her, initially to hang in their new home but she is also considering selling some pieces through auction houses.

23. What pre-arrival tax planning opportunities in relation to Suzanne's artworks would you advise? As mentioned above in Hungary there is no property tax. Therefore bringing in the artworks in Hungary does not require any specific measure relating to tax planning. However, if she is willing to sell some of these art works, selling it as a private person would most likely result a higher tax obligation as selling it as part of a company's asset.

24. Once they have moved to your country, what estate and tax planning opportunities should Frederick and Suzanne consider in relation to their artworks?

Please see above.

25. Who will have a financial claim to the artworks if either Frederick or Suzanne dies without leaving a Will?

If there is no will all assets located in Hungary will be the subject of an inheritance proceeding. The substantive law will be the rules relating to the statutory inheritance set forth in the Civil Code. According to this rule, all movable assets will be inherited in a 50-50% ratio by the dependents and the wife/husband.

26. In relation to question 23, would the position be different if Frederick and Suzanne were not married?

According to the rules of Civil Code, if the couple is not married, their position will be not the same as if they were married, they will be not entitled to statutory rights of inheritance. In other words, if they are not married, they can only inherit anything if they had a will. (This reflects the current government's very conservative way of thinking of families, as the new Civil Code was adopted in 2013 and contains many new rules which are not in favour of those who are not married.)

27. When either Suzanne or Frederick dies, what estate tax will be payable on the artworks?

There is no estate tax to be paid. There is no duty or tax in inheritance for straight line dependents and matrimonial fellow.

28. Has Frederick made an effective gift of the Rembrandt to Alberto for succession and for tax purposes?

Yes, indeed as in Hungary there no inheritance and no gift tax between close family members.