

“In the instant case, Martha Nathan pursued restitution and damages immediately after the war for property she had lost as a result of Nazi persecution, but did not file for the Painting. If she believed she had a claim to the Painting, she could have investigated and brought suit back then. Up to her death in 1958, twenty years after the alleged sale, she did not challenge the art dealers’ purchase or the subsequent sale to the TMA. TMA did not try to hide its possession of the Painting and Martha Nathan knew better than anyone the facts surrounding her own purported sale.”<sup>1</sup>

Earlier in his ruling he had written:

“In short, this sale occurred outside Germany by and between private individuals who were familiar with each other. The painting was not confiscated or looted by the Nazis; the sale was not at the direction of, nor did the proceeds benefit, the Nazi regime.”

It is difficult — painful even — to be put in the position of denying a Holocaust-related art claim and the DIA has an honorable history of dealing with such matters. To recapitulate: in the 1949/50 transaction the DIA became the first US museum to return a work of art (a painting by Claude Monet) to a Nazi victim; in 2000, my suspicions that the provenance of a Dutch marine painting under consideration for purchase might be Holocaust-related led to the location of the heirs and the subsequent purchase of the work from them eighteen months later. In 2003, we promptly investigated a claim that turned out to have no merit whatsoever; in 2004, the DIA (in this case, along with a sister institution) initiated an extensive and expensive research

<sup>1</sup> Judge Jack Zouhary, US District Court for the Northwestern District of Ohio Western Division, Case No 3:06 CV 7031, December 28, 2006.

campaign that established the actual circumstances behind the sale of works of art in 1938.

In conclusion, I believe that it is fair to say that the DIA’s scrupulous and costly conduct is representative of US institutions. We take all claims seriously and, regardless of the demand on our resources, follow the mandate established through the AAMD. Those cases where declaratory judgment has been sought are very much in the minority and result from a true impasse between the museum and the claimants. Under US law, it is incumbent on the governing body to take appropriate legal steps and seek the opinions of a judge who is impartial and reasonable.

### ► Agnes Peresztegi

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#### RECOVERY, RESTITUTION OR RENATIONALIZATION

Hungary used to be a good example of a former socialist country that attempted to compensate its citizens after the fall of the Iron Curtain. However, it was in 1998, ten years ago, when Hungary was last applauded as a good example by witnesses testifying before a US Congressional hearing dealing with Holocaust era restitution.

Hungary was an ally of Nazi Germany during WW II. However, unlike Germany, Hungary has never faced its past and has never bothered to establish a historical commission to examine Hungary’s wartime activities. Not taking responsibility for the past, Hungary avoids taking responsibility for redressing

the injustices of the past. Unlike Germany, which in 1998 immediately thought to deal with the issue and give meaning to the Washington Principles, Hungary turned inward and stonewalled and soon developed a negative attitude to the Washington Principles. From that attitude everything has followed.

When, from the middle of the 1990s, Holocaust victims turned to the newly elected, democratic Hungarian governments with requests that their families' artworks located in Hungarian state museums be returned to them, Hungarian governments, instead of negotiating in good faith, denied the ownership rights of Holocaust victims and chose to engage in lengthy and expensive lawsuits. Since 1998, Hungary has been a startlingly bad example proving that even its highest courts uphold the unlawful takings and deny the property rights of lawful owners. Essentially, Hungary has renationalized artworks looted during the Holocaust era.

When it comes to the return of Holocaust-era looted art located in Hungarian state museums, the Hungarian experience may be described as a total and concerted effort by successive governments to keep the looted art in their museums even if it requires that:

- ▷ The museums conceal or destroy archival evidence;
- ▷ Government officials deliberately lengthen negotiations, effectively delaying legal actions that would be filed against the state; and
- ▷ Pressure is brought on the courts through the media to render judgments that effectively renationalize these artworks.

It is very clear that the Hungarian government is hostile to the concept of restitution only when it claims the stolen art. Its receptivity to restitution is quite different when the government seeks to obtain return of art that was stolen from Hungary during WW II and its aftermath. The Hungarian government has been very active in making claims for art displaced from Hungary during WW II. It established a Hungarian Committee for the Restitution of Cultural Property to address the recovery of art known to be located in other countries. It sponsored the research and publication of a book, *Sacco di Budapest, Depredation of Hungary, 1938–1949*, detailing many losses, including some from private collections belonging to people “of Jewish origin.” The Hungarian government successfully sued a museum in Montréal, Canada, to recover a painting by Giorgio Vasari and has repeatedly requested the Russian Federation to return art taken from its citizens, churches and institutions. Hungary actively sought the return of Russian Trophy Art until the Russian government asked whether Hungary would commit to the return of repatriated art to the rightful owners. At that point Hungary lost interest and ceased to pursue the claims of its Holocaust victims.

I shall summarize the determined efforts of the heirs of Baron Mor Lipot Herzog and Baron Ferenc Hatvany, respectively, to obtain restitution of their art in the face of the state-sponsored scheme to keep art that was stolen during the course of government persecution of its own citizens.

The story of the Hungarian Holocaust is little known outside of Hungary. Many of you probably know what happened to the Hungarian deportees of the summer of 1944 who were transported to Auschwitz and of whom over 430,000 died in the gas chambers. However, what happened before the 1944 German invasion of Hungary is less known. The first law discriminating against

Jews was enacted in Hungary as early as 1920. Later, other so-called "Jewish Laws" served the purpose of removing Jews from all segments of Hungarian life. Jews were restricted from university education and then prevented from participating in social and economic life, which deprived many of their ability to earn a living. Eventually, Jews were deprived of their property, of their liberty and, finally, of their lives.

In 1938, only the Jews residing in Germany, Austria and the Netherlands were wealthier than Hungarian Jews who, in fact, possessed thirteen percent of all Jewish wealth in Europe. That number rose to close to twenty percent by 1941 because Hungary annexed territories with considerable Jewish populations. Not only were Hungarian Jews wealthy compared to other European Jews, they held the largest and most significant property pool in Europe in proportion to the national wealth – factories, bank deposits, real estate, cash and, of course, art collections. So it is not surprising that many in Hungary made plans for the "redistribution" of Jewish wealth.

Hungary, especially Budapest, was home to many outstanding art collections during the inter-war period. The majority, about seventy to eighty percent, belonged to famous Jewish art collectors and their families. The two largest collections were assembled by the Herzog and the Hatvany families, respectively. Baron Mor Lipot Herzog, whose father Peter started the collection, purchased a majority of his collection at international auctions and galleries. The collection, which was kept in the family palace on Andrássy út boulevard (Budapest's Champs Elysees), featured Old Masters mixed with Renaissance furniture, tapestries, sculptures and decorative arts, altogether approximately 2,500 pieces at its peak. The paintings included works by El Greco, Lucas Cranach the Elder, Zurbaran, Gustave Courbet, Velázquez, and

Mihály Munkácsy as well as impressionist art by Renoir, Monet and others. The collection constituted an exquisite display of the history of art in Europe. In 1940, the three Herzog children, Elizabeth, András and István inherited the collection.

When the first of the so-called Jewish laws was introduced in 1938, it did not deal directly with Jewish property, but indirectly influenced the fate of artworks because it severely limited Jewish presence in economic activities. Between May 1938 and March 1944, twenty-two anti-Jewish laws and more than two hundred and fifty anti-Jewish ministerial and prime minister's decrees were issued.

One of the anti-Jewish laws enacted in 1939 dealt with setting up a forced labor system for Jews within the Hungarian army. While wealth may sometimes buy one's safety, this was not the case for Andras Herzog. He was drafted into forced labor service in 1942 and was sent, without arms or clothes and with little food, to the Russian front where he died along with 27,000 of his fellow forced labor servicemen.

A decree that authorized the disguised confiscation of art from Jewish owners was promulgated in April 1944, after Andras' death. According to the decree, Andras and all other Jews were required to report all artworks, carpets, silverware and other luxury items.

When the Hungarian government began to systematically catalogue and seize the valuables of Hungarian Jews, Denes Csanky, the government commissioner responsible for taking possession of art, who was also the director of the Museum of Fine Arts, proudly asserted that "[t]he Mór Herzog collection contains treasures the artistic value of which exceeds that of any similar collection in the country. If the state now takes over these treasures, the Museum of Fine Arts will become a collection ranking just behind Madrid."

After Hungarian Jews were stripped of all of their property the deportations started, and about 560,000 of the 825,000 Jews of wartime Hungary were murdered within three months.

Although the first laws repealing anti-Jewish legislation were enacted in 1945, laws providing for restitution of property that had been confiscated during World War II were rarely implemented. Not only did the Hungarian government refuse to return Jewish property, it took still more of it from its Jewish and other citizens. Even before the Communist takeover, gold, jewelry and hard currency had to be turned over to the government; land, heavy industry and banking were nationalized. However, it is very important to point out that during the Communist period artworks (which were not considered instruments of production or needed to change the structure of the economy) were never nationalized.

Elizabeth Herzog escaped Hungary and successfully emigrated to the United States. While living in New York, she displayed reproductions of the family's artworks in her apartment and often expressed her hope that, one day, the treasures would be returned to her family. With the opening of Hungary to the West in 1989, the Herzog heirs started making inquiries and learned that many pieces of the Herzog collection were being openly exhibited, hanging on the walls of the Hungarian National Gallery and the Museum of Fine Arts. Elizabeth Herzog, then 89 years old, attempted negotiations with the Hungarian government to retrieve the art that belonged to her. Before her death in 1992, she had obtained only seven artworks, all attributed to unknown artists. The identifiable masterworks remained in the Museum of Fine Arts and the Hungarian National Gallery.

Martha Nierenberg, the daughter of Erzsébet Herzog, continued her mother's efforts to recover a portion of the Herzog collection.

There followed many months of negotiations, and in April 1996, an agreement was reached with the Hungarian Minister of Education and Culture to appoint a "Committee of Experts" to determine the legal ownership of the artworks. The Committee, consisting solely of government appointees, was established, reviewed the status of twenty artworks and concluded that all of them remained the property of the heirs of Erzsébet and István. Despite this, the government rejected a friendly and generous proposal by the family to settle the dispute and a year later ordered that a new Committee of Experts be formed, again exclusively of Hungarian officials. When the Herzog family offered to submit their claim to arbitration, the proposal was met with silence.

The negotiations were still going on when in, 1998, forty-four nations came together for the Washington Conference on Holocaust-Era Assets to discuss the persistent and problematic legacy of Nazi-looted art. At the Conference, the Hungarian delegation acknowledged that Hungary "took part in World War II as an ally of Germany," and that from March 1944 to April 1945, "[p]ersecution of Jews proliferated and the confiscation of Jewish property took place." The Hungarian delegation further stated:

"The Hungarian Government is fully committed to the restitution or compensation of Holocaust victims concerning cultural assets. For managing this complex task – which includes scholarly research, political decision-making, bill drafting and negotiations ... [and] contacts with Holocaust survivors, etc. – a state commissioner will be designated."

However, even after the Washington Conference, Hungary continued to postpone the negotiations with the Herzog family without committing to any concrete action and, a year after the Conference, it was clear that Hungary did not plan to live

up to the promises it made at the international forum. As a result of the delays and broken promises, Mrs. Nierenberg felt that she had no choice but to commence a lawsuit in the Hungarian courts, which she did in October 1999.

After the lawsuit was filed, Hungary sent a government delegation to the Vilnius International Forum on Holocaust-Era Looted Assets. At the Vilnius Forum, Hungary was the only country singled out for its non-compliance with the international norms. However, this did not deter the Hungarian government representative to the Forum, upon his return to Hungary, from giving an interview in the principal Hungarian daily, *Népszabadság*, stating that Hungary had been applauded in Vilnius for its compliance with the Washington Principles. The Hungarian government ever since has been effectively using the media to deflect the fact of its non-compliance with the Washington Principles in the Hungarian press. State institutions have also disseminated false information abroad. The National Gallery, which refuses to return the Hungarian paintings to the Herzog family, has stated on the Looted Art website that it “has a computerized database of artworks which were looted from Hungarian collection, which can be accessed at the museum.” This is false; no such database can be located. The National Gallery hosted the research group dealing with Hungary’s wartime losses in the mid 1990s, but the result of that research was never accessible, and only part of the research was published.<sup>1</sup> Hungary committed itself to review the inventory of its museums, and, after the Washington Conference, the Ministry of Culture requested its museums to review the provenance of their holdings. However, only a few museums complied with the request and even those reports were simply filed away in the Ministry and not made public.

<sup>1</sup> Sacco di Budapest, Depredation of Hungary, 1938–1949.

Government officials have stated numerous times that they are open to claims. However, in reality, no government official or body has the authority today to negotiate or a mandate to return art to Holocaust victims. Claimants’ only remedy is to commence lawsuits against the government and its museums.

During the course of Mrs. Nierenberg’s lawsuit, Hungary has employed legal defenses that are not applicable to art stolen during the Holocaust and that were never intended to apply to the return of art stolen by a government during the course of genocide of its own citizens. Eventually, in January 2008, Hungarian courts issued a final but legally flawed decision that Mrs. Nierenberg could not obtain the return of the Herzog artworks. Realizing that justice is not served in Hungary, the Herzog family will now continue its effort to recover the Herzog collection in a forum outside of Hungary.

#### **Hatvany Collection**

I do not want to create an impression that the Herzog collection is the only Holocaust-era looted art claim that was denied in Hungary. Everyone who has tried to approach the Hungarian government requesting the return of art looted during the Holocaust from family collections has met with the same fate as the Herzog heirs.

Baron Ferenc Hatvany was the most famous Hungarian art collector of his time. His collection was one of the finest in Budapest although not the largest (that being the Herzog collection), comprising some 750–900 works of art. Between 1905 and 1942, Baron Hatvany purchased mainly masterpieces by 19<sup>th</sup> century French painters. Members of the Hatvany family also were famous for supporting art in Hungary. Lajos Hatvany, a friend of

Thomas Mann, Karel Čapek and Arthur Koestler, was the patron of Endre Ady, Dezső Kosztolányi and other great Hungarian writers. He also owned a large number of works by artist friends. While Mor Lipot Herzog preferred to give large cash donations to the Museum of Fine Arts to enable the Museum to purchase important artworks, Ferenc Hatvany donated art to the Museum drawn from his famous collection.

The heirs of the Hatvany family later claimed that some of the art that was displayed at the Museum of Fine Arts had never been donated by Ferenc Hatvany. They spent years exchanging letters with various government entities, eventually being directed to the Treasury Assets Department for negotiations. In 2000, during the negotiations, the Treasury Assets Department agreed to return one of the claimed paintings, a Hans Canon. That painting was one of the fifteen paintings that the Soviet Union returned to Hungary in the 1970s, paintings that had been held at the Museum of Fine Arts and at the National Gallery without notice to the owners for thirty years.

While the government had recommended that the heirs take up their claim with the Treasury Assets Department, the Department rejected the claim on a number of very questionable grounds, including an assertion (not supported by evidence) that the paintings had been donated to the State. The Hatvany heirs filed a lawsuit in 2003 but both the trial and the appellate courts denied their petition. The courts found that the Council of Ministers, in 1951, planned to remove the citizenship and to confiscate the property of Alexandra Hatvany, the daughter of Ferenc Hatvany, because she had left the country illegally. The court did not find any evidence that the confiscation of property was carried out at that time, nor did the court pay attention to the evidence that Alexandra Hatvany only left Hungary in 1952, a year

after the proposed confiscation. Based on the assumption that members of the Hatvany family – after being persecuted during WW II as a result of their Jewish origin – left the country without obtaining permission (at the height of the communist terror when they were again facing persecution), the court held that the Hungarian government obtained ownership of artworks of those Hungarian citizens who had been twice persecuted by their own government.

### **Conclusion**

The failure of the attempts to obtain restitution of the Herzog and Hatvany collections reflect not the exception but rather the rule in Hungary today. Legal representatives of other owners of Holocaust-era looted artworks face similar obstacles first in the government agencies then in the courts. Another example of Hungarian intransigence is the so-called Danos case in which, after the trial court ruled in favor of the Danos heir, an appellate court dismissed the Danos claim based on the theory that the government had possessed the paintings for ten years and acquired title to them by prescription. However, under Hungarian law, the forced deposit agreement made by Danos with the government in 1943 turned into “responsible custody” when the deposit was revoked. By not examining whether the paintings’ status changed from deposit to something else when the deposit was revoked, the court found no obstacle to the government’s acquisition of ownership by adverse possession.

Consider the difference between the manner in which Germany and Hungary each treat the issue of Holocaust-era looted art. Germany recognizes not only the legal but the moral obligations as well. Not once during the Hatvany or Danos litigation or during the nine years of court proceedings in the Nierenberg lawsuit

for the Herzog art was there an admission that a wrong had occurred. Suffering under the Holocaust was never mentioned, nor was the issue of righting historical wrongs ever discussed in any of the looted art litigation.

The legal arguments denying the return of Holocaust-era looted art are technical in nature and are based on what seems to be erroneous and novel interpretations of the law, and are hardly consistent with the Washington Conference Principles (to which Hungary is a signatory). These Principles require the Hungarian government “expeditiously” to take steps “to achieve a just and fair solution” regarding claims for art stolen during the Holocaust. Nevertheless, the government, despite repeated electoral changes, have failed to live up to those Principles by hindering archival research, setting up procedural obstacles to the recovery of the claimants’ rightful property and failing to establish a fair and effective system whereby claims may be examined and adjudicated by an independent body.

Ten years have passed since the Washington Conference and, as members of the United States Senate Commission on Security and Cooperation, including now Secretary of State Hillary Clinton, have written to the Hungarian Minister of Foreign Affairs, the question remains: *Why would the Hungarian government insist on retaining custody of artwork stolen by the Nazis, when it could return it to the rightful owner?*

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**THE WASHINGTON PRINCIPLES:  
TEN YEARS LATER**

Ten years ago I addressed the Washington Conference and nearly 30 years have passed since I first began research in the area of the World War II era displacement of art. I was far from the first to have done so: from the first postwar years there had been a thin but steady stream of books and articles on the subject. But by the 1970s, the extraordinary and highly successful restitution and compensation efforts carried on in the postwar years in every affected nation had come to an end, overtaken by more immediate issues. Because it is so often misstated that “nothing has been done” to reconstitute works for 50 (or by now 70 years) I think it is vital to remember the vast number of works that were returned and advertise the extraordinary amount of investigative work that was done after the war first, by Allied military and recuperation officials and, later, by the claims and compensation agencies of both Germany and the occupied nations, all of which generated invaluable, and still extant, archives.

As we all know, attention to the looting issue was revived in a major way in the mid-nineties. There were many reasons for this revival: the advancement of Holocaust Studies; renewed interest in World War II, spawned by commemorative activities; and, especially, the opening of Eastern Europe and its archives, with the revelation of the terrible destruction and confiscations that had taken place in the former Soviet Union, and the fact that large quantities of objects and archives from the West, long thought to have been lost forever, were, in fact, in Eastern Europe. The media took notice and the issue of looted art became hot. In this