

**Order
of the Kúria
acting as a court of cassation**

Case Number: Kfv.VI.38.158/2016/7.

Members of the Chamber: Dr. Kálmán Sperka, President of the Chamber, Dr. Tamás Sugár, Judge Rapporteur, Dr. Erzsébet Mudráné Láng, Judge

Applicant: ...

Representatives of the applicant: ... Law firm

Dr. ... attorney-at-law

Defendant: Minister of the Prime Minister's Office, as successor to the Forster Gyula Centre for National Heritage and Property Management

Representative of the defendant: ... Law firm

Subject-matter of the litigation: judicial review of an administrative decision concerning heritage and culture

Appellant for review: The applicant

Number of the application for review: 14.

Name of the court of first instance, Number and Date of the decision: Judgment No. 10.K.31.473/2016/11. of 19th September 2016, Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest-Capital Administrative and Labour Court)

Operative part

The Kúria sets Decision No. 10.K.31.473/2016/11 of the Budapest-Capital Administrative and Labour Court aside and orders the court of first instance to initiate new proceedings and to adopt a new decision.

The costs of the parties incurred in the review procedure are determined as HUF 300,000 (three hundred thousand – forint) each.

No review shall lie against this order.

Statement of reasons

The facts which gave rise to review

[1] The painting Golgotha by Mihály Munkácsy, painted in 1884, was deposited by the owners, ... and ..., at the Hungarian National Museum, with a contract signed on 24th June 1991, under the condition that the Museum is obliged to restore the painting and is entitled to display it in any other Hungarian museum. The painting had been transported to Hungary from the United States in November 1991. After restoration, the work had been transported to the Déri Museum in Debrecen in 1993, where it was displayed together with the painting Ecce homo; afterwards, from 1995 on, it was on exhibition

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open to the public, together with the third piece of the trilogy, Christ before Pilate. The painting Golgotha was bought by the Applicant, a US national, in 2003. On 15th January 2004, the applicant signed a gratuitous deposit contract with the Directorate of the Museums of Hajdú-Bihar County, which was later modified on 22nd January 2006. On 21st November 2012, a new deposit contract was concluded for one year; with that, the previous contracts ceased to have effect. The period specified in the latter deposit contract expired without prolongation.

- [2] There were negotiations between the applicant and the representatives of the Hungarian Government (Minister of the Prime Minister's Office and the Vice-President of the Hungarian National Bank) in order to buy the painting, but without results. On 7th June 2015, the applicant announced that he would let the painting be transported from the Déri Museum, since the negotiations on sale broke down, as the Hungarian State offered USD 6,000,000 for the work of art, but the applicant requested USD 9,000,000. On the next day, 8th June 2015, the Art Supervisory Office of the Forster Gyula Centre for National Heritage and Property Management initiated *ex officio* a procedure in order to place the painting under protection, declaring at the same time that, during the procedure, the painting would be temporarily protected. On 8th June 2015, the Prime Minister's Office published a statement, according to which 'the intention of the Government, with the procedure of placing it under protection, is to result in an outstanding masterpiece of painting staying in the Hungarian interest'. On 11th June 2015, the Minister of the Prime Minister's Office said the following at a press conference: 'I admit that the decision of the Government, although not sportsmanlike, was in favour and in the interest of the country and the nation. We would have liked to convince Mr. ... by this friendly step that it is worthwhile in any situation reaching an agreement with the Hungarian State'. On 23rd June 2015, the Vice-President of the Hungarian National Bank declared that 'the placement under protection was initiated by the Prime Minister's Office, but I would not make it a secret that I was involved in the case, too. During the negotiations, the disagreement could not be bridged and the deadline set by Mr. ..., 25th June, was coming near.'
- [3] The authority of first instance acquired the expertise of the Szépművészeti Múzeum (Museum of Fine Arts) and the Magyar Nemzeti Galéria (Hungarian National Gallery) (hereinafter: SZM-MNG), according to which Golgotha, as a piece of the trilogy of the painter, is a unique, extremely important and irreplaceable work of of Hungarian culture, therefore a highly protected status is advisable under all circumstances. The Committee of Cultural Goods, at the request of the authority, in its resolution recognised Golgotha as a masterpiece and of high importance; however, its owner was a foreign national, which gave rise to unresolved questions; furthermore, in the interests of stimulating the import of artwork from abroad, it did not support it being placed under protection.
- [4] In its decision, the authority of first instance placed Golgotha under protection, established conditions concerning its conservation and treatment, and ordered the applicant to keep and store the painting safely and provide professional treatment and conservation. It stated that, in the event of a transfer of ownership for consideration, the State shall have the right of first refusal, in which this right shall be exercised by the

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authority. It also required that the painting could only leave the territory of the country with authorisation given by the authority. In its reasoning, it underlined that there were no legal obstacles to placing it under protection and an obligation to re-export the painting did not exist.

- [5] The defendant's predecessor, acting on appeal submitted by the applicant (hereinafter: defendant) upheld the decision of first instance in its decision No. 160/116/2016 of 19th February 2016 and confirmed the protected status of the painting. In its reasoning, it analysed whether or not an obligation to return the painting abroad existed. It underlined that the intention of the legislator, justifying the provision on the obligation to re-export under section 47 (2) b) of Act LXIV of 2001 on protection of cultural heritage (hereinafter: Cultural Heritage Act) – as a ground for refusal of placing under protection – was not to prevent cultural goods owned by foreign nationals to be placed under protection in Hungary, but rather - as part of the protection of the cultural heritage of another State - to prevent cultural goods placed under protection according to the national law of a foreign country and brought to Hungary under a provisional export licence, with the obligation to re-export, from being withheld in Hungary against authorisation. The evidence available does not confirm the existence of an obligation to re-export abroad as alleged by the applicant. The obligation to return agreed in deposit contracts is not the same as the obligation to re-export abroad. The defendant stated that, according to section 46 of the Cultural Heritage Act, in force until 12th January 2014, the painting as a cultural good conserved in a museum is considered to be protected by law, therefore until that date the question of placing it under protection did not even arise. The defendant gave a detailed justification for there being no reasons to refuse its placement under protection pursuant to section 47 (2) d) of the Cultural Heritage Act, since the painting is an irreplaceable and important piece of art in Hungarian cultural history.

The Applicant's claim and the counterclaim

- [6] The applicant challenged the decision of the defendant by an action seeking judicial review. He argued that, on the one hand, the painting had been imported to the country with the obligation to re-export it abroad pursuant to section 47 (2) b) and d) of the Cultural Heritage Act, and, on the other hand, it has no Hungarian cultural-historical dimensions. Moreover, the authorities of first and second instance abused their power and did not respect the principles of good faith and fair dealing, infringing section 1 (2) of Act CXL of 2004 on the rules of administrative procedure and public service (hereinafter: Administrative Procedure Act) and section 1:3 and section 1:5 of Act V of 2013 on the Civil Code. The decision of the defendant also infringes Article 17(1) of the Charter of Fundamental Rights of the European Union (hereinafter: Charter of Fundamental Rights) and Article 1 of the First Additional Protocol to Act XXXI of 1993, proclaiming the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome, on 4th November 1950, and its eight Additional Protocols (hereinafter: Rome Convention), as it constitutes a violation of the right to property. The Hungarian State's intention was to achieve the reduction of the sale price through the contested decision. The administrative procedure infringes the principle of

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proportionality. The applicant submitted his arguments supporting his claim, especially in relation to the obligation to re-export, in preparatory pleading No. 5, filed before the first hearing.

- [7] The defendant sought dismissal of the actions in its counterclaim, stating that its decision was not illegitimate.

The judgement of first instance

- [8] The Administrative and Labour Court dismissed the claim with its final decision. Concerning the Hungarian cultural-historical dimensions of the painting – which were not challenged by the application for review – it stated that, in the administrative procedure, the expertise acquired from the SZM-MNG confirmed beyond doubt the importance and irreplaceable nature of the Golgotha, as well as its clear Hungarian cultural-historical dimensions.
- [9] As to the obligation to re-export, the court underlined that special protection, pursuant to Act XCV of 2012 on the special protection of loaned cultural goods (hereinafter: Loaned Cultural Goods Act), is not applicable to the painting, since it shall not exceed 12 months, and the painting has been situated in Hungary since 1991. Moreover, on the basis of section 46 of the Cultural Heritage Act, in force until 12th January 2014, the painting had been under general protection until that date, therefore it was unnecessary to place it under special protection.
- [10] According to the court of first instance, the applicant did not submit in the proceedings any documents with meaningful content concerning the obligation of re-exportation; no meaningful evidence has emerged in that relation in the proceedings. The court referred to the provisions on the temporary importation arrangements of the Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code (hereinafter: Regulation 1) and to Article 66 and Article 86(1) of the Commission Regulation (EEC) No. 2454/93 (hereinafter: Regulation 2), laying down provisions for its implementation. It further emphasised that the absence of the obligation to re-export is also confirmed by section III (1) and (2) of Law-Decree 12 of 1979, ratifying the Agreement on the Importation of Educational, Scientific and Cultural Materials, signed in Lake Success on 22nd November 1950 (hereinafter: Agreement).
- [11] The court evaluated the declarations of Dr. ... Dr. ..., former Director of the Directorate of the Museums in Hajdú-Bihar County, and of Dr. ... , former Director of the Hungarian National Museum, in relation to the deposit contracts concluded in the presence of the Applicant, and stated that, contrary to the declarations, the deposit contracts did not provide proof of the obligation to re-export.
- [12] Concerning the proportionality of the limitation, the court stated on the grounds of section 5 (1) of the Cultural Heritage Act and Article P (1) and Article XIII (1) of the Fundamental Law that taking ownership of Golgotha means at the same time taking on a social responsibility, including the responsibility to protect cultural heritage; therefore, the limitation of the right to property or a detriment to the legitimate interest of the applicant by placing the painting under protection was not disproportionate to the

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general interest.

The application for review and the counter-application

- [13] The applicant brought an application for review against the final and binding judgment, seeking primarily to repeal it as far as the administrative decisions of first and second instance were concerned and to terminate the procedure, and in the alternative, besides repealing the judgment, to order the court of first instance to initiate new proceedings and give a new ruling.
- [14] He pointed out that the facts of the judgment are deficient and contain logical contradictions and do not comply with the documents; moreover, the court had not evaluated the evidence in whole, and its decision is unjustified. Section 206 (1) and (2) and section 221 (1) of Act III of 1952 on the Code of Civil Procedure were infringed. The procedure was not for the benefit of professional goals but for the political-economic interests of the Hungarian State, but the evidence of this was not included in the facts.
- [15] The applicant detailed that the court had failed to exhaust the claim, since it did not rule on the violations of law relating to section 1 (2) of the Administrative Procedure Act, section 1:3 (1) and (2), section 1:5 (1) of the Civil Code, and Article 17(1) of the Charter of Fundamental Rights, and Article 1 of the Rome Convention. The proceedings of the court had infringed the principle of the right to a fair trial under Article XXIV (1) and Article XXVIII (1) of the Fundamental Law.
- [16] In relation to the obligation to re-export, the court infringed its duty to provide information, and still the failure of proof had been assessed to the detriment of the applicant, therefore its procedure was contrary to section 3 (3), section 163 (1) to (3) and section 164 (1) of the Code of Civil Procedure. The court erred in interpreting the burden of proof; it had been shifted incorrectly to the applicant, although the burden of proof lies with the authority according to section 50 (1) of the Administrative Procedure Act. A decision unfavourable for the applicant shall not be based on the lack of documentation of the customs procedure.
- [17] The applicant pointed out that the court wrongly defined its position on the existence and content of the obligation to re-export and therefore its judgment is contrary to section 47 (2) of the Cultural Heritage Act. As to the obligation to re-export, the circumstances of the import and the laws applicable at that date shall serve as guidance; customs provisions and the documentation of the customs procedure are irrelevant. Even in the case of a contrary position, the references made to the provisions of Community law were false.
- [18] The applicant underlined that the obligation to re-export had existed 1991, at the time of importing the painting; in 2003, at the time of acquiring ownership, and in 2015, at the time of initiating the protection procedure, with regard to the circumstances of the import and the laws applicable at the different dates. The existence of the obligation to re-export shall be examined as of the date of import of the painting to Hungary; however, the judgment was based on – an illegitimate – evaluation of laws applicable at much

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later dates. From this point of view, deposit contracts as civil law agreements are irrelevant.

- [19] The court of first instance had interpreted section 46 of the Cultural Heritage Act, in force until 12th January 2014, in an unlawful manner. There had been no general protection of artworks loaned to museums until that date. The obligation to re-export shall be interpreted from the aspect of the protection of cultural heritage; customs provisions are irrelevant in that respect. On the other hand, the customs provisions applicable in 1991 do not support the arguments of the defendant. Due to Article III of the Agreement, if the customs authority grants exemption from customs duties concerning the importation, the obligation to re-export shall apply.
- [20] The applicant argued that neither the authorities, nor the courts had examined whether or not the painting had been imported to Hungary legally. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the United Nations Educational, Scientific and Cultural Organisation in Paris on 14th November 1970 (hereinafter: Convention) was ratified by Hungary through Law-Decree 2 of 1979, which entered into force on 16th March 1979. According to that, the applicant should have acquired, at the very beginning of the procedure, the export permit issued by the authorities of the United States from the first Hungarian holder of the painting. As it had not been acquired, the painting is kept in Hungary illegally.
- [21] The court's procedure infringes section 206 (1) of the Code of Civil Procedure and section 5 (2) of the Cultural Heritage Act. Moreover, Hungary infringed the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, signed in Rome on 24th June 1995 (hereinafter: UNIDROIT Convention), ratified by Act XXVIII of 2001.
- [22] The applicant underlined that the court erred in law by basing his decision on civil law provisions and on the assessment of civil relationships. By contrast, the obligation to re-export is not based on private contracts, but on law provisions and international agreements.
- [23] The authorities and the administrative court had not even examined the law of which country should apply. The defendant authority abused its power and infringed the provisions of Article XXIV of the Fundamental Law.
- [24] The defendant, in its counter-application for review, sought the final and binding judgment to be upheld. It gave a detailed observation concerning the content of the application for review, and argued that there had been no breaches of law, as alleged in the application.

Decision and legal reasoning of the Kúria

- [25] The application for review is founded.
- [26] With regard to section 275 (1) and (2) of the Code of Civil Procedure, in review procedures, no taking of evidence shall be performed; the Kúria shall render its decision concerning the application for review relying on the available documents. The final

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decision shall only be reviewed within the framework of the application for review or the counter-application for review, unless it decides to dismiss the action *ex officio*, or if the court that rendered the decision had not been properly formed, or if a judge who should have been disqualified by law took part in rendering the decision.

- [27] The Kúria points out that the frame of the review procedure is set on the one hand by the claim and on the other hand by the direction and content of the application for review. The applicant shall not invoke any breaches of law in its application for review that had not been mentioned in its initial action. The breaches of law referred to in Point IV of the application for review had not been lodged by the applicant in the proceedings of first instance; therefore – also taking into consideration that they are not affected by the grounds for nullity regulated by section 121 (1) of the Administrative Procedure Act – they cannot be examined on the merits. The Kúria could therefore not examine whether the painting had been imported to Hungary legally, in compliance with the Convention and the UNIDROIT Convention. Nor had the applicant referred to which law was applicable to the assessment of the civil law relationship; as such, the breach of law referred to in Point V of the application for review, cannot be examined on the merits.
- [28] The claim contested the Hungarian cultural-historical dimensions of the painting, as described in Point 6 above, and stated that it entered the country with the obligation for re-exportation; moreover, the claim indicated the infringement of principles. The application for review did not contest the content of the final judgment concerning the Hungarian cultural-historical dimensions, hence the applicability of section 47 (2) d) of the Cultural Heritage Act could not be examined by the review court.
- [29] The procedure for placing under protection was initiated on 8th June 2015, thus, in principle, the provisions of substantive law applicable at that time shall apply. The provisions on the protection of cultural goods are contained in Chapter 3 of the Cultural Heritage Act, and within that, section 46 regulates general protection, whereas sections 47 to 49 regulate the placement of cultural goods under protection. According to section 46 (1), in compliance with this Act, cultural goods registered pursuant to paragraph (2) in museums, archives, or in picture and sound archives as collections of national treasures, or in libraries as historical documents, are considered to be protected. According to section 46 (2) a), in the case of museums, the protection under paragraph (1) applies to cultural goods registered in the basic inventory. The provisions of section 46 mentioned above are applicable as of 12th January 2014. Before that date, section 46 of the Cultural Heritage Act read, from the date of entering into force as follows: in compliance with this Act, cultural goods held by museums and archives – or in libraries as historical documents – are considered to be protected.
- [30] The Kúria does not agree with the reasoning of the court of first instance according to which the painting has been under general protection until 12th January 2014, with regard to section 46 of the Cultural Heritage Act. On the grounds of section 46 interpreted in connection with section 47; it is clear that only cultural goods in the archives of museums fall under general protection but loaned (deposited) works of art

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do not. The modification applicable from 12th June 2014 makes the initial intent of the legislator clear. It cannot be concluded from the modification that before 12th January 2014 the loaned cultural goods had stayed under general protection, this would have been contrary to international obligations assumed by Hungary. It follows from the above that the reason for initiating the procedure for placing under protection was not the *ex lege* termination of general protection.

- [31] Section 47 (1) of the Cultural Heritage Act provides that goods and collections of cultural heritage that are irreplaceable and of outstanding importance – not covered by section 46 – shall be placed under protection by the authority in order to preserve them. According to section 47 (2) b) of the Cultural Heritage Act, cultural goods imported to Hungary with the obligation to re-export cannot be placed under protection.
- [32] A central question of the relationship at issue is how the obligation to re-export under section 47 (2) b) shall be interpreted, and whether there is an obligation concerning the painting.
- [33] Section 7 of the Cultural Heritage Act contains explanatory notes; however, the obligation of re-exportation is not defined among them. According to the Kúria, the obligation to re-export requires that the country – in the present case Hungary – hosting the cultural goods at issue shall let the cultural goods out of the country unencumbered.
- [34] The court of review underlines that, for the existence of an obligation to re-export, the provisions of law on the protection of cultural goods shall apply; the provisions on customs play merely a technical or supplementary role. The customs destination of the painting – or its unsettled nature – generally has no effect on the decision concerning the existence of an obligation to re-export.
- [35] The final judgment refers to Community legislation, such as Regulation 1 and Regulation 2. These are – beyond those mentioned in the previous point – not applicable to the relationship at issue, since on the one hand they were not in force when the painting was imported; on the other hand, at that time Hungary fell outside the remits of Community law.
- [36] According to section 462 (1) of Act IV of 1959 on the Civil Code (hereinafter: old Civil Code), under a deposit contract, the depositary shall be obliged to safeguard things that are temporarily put into his care by the depositor. Section 466 (2) provides that if the duration of a deposit can be inferred from the contract, a depositary shall return the goods when this period lapses and the depositor shall take them back. Section 6:360 of the Civil Code provides that under a deposit contract, the depositary shall safeguard the movable property specified in the contract and return it upon the termination of the contract, and the depositor shall pay the fee.
- [37] It is not contested by the parties that the applicant – or his predecessors – concluded deposit contracts at different dates concerning the painting, which contracts had been limited in time, and the depositary was entitled to hold the painting with the obligation to return it upon the termination of the contract.

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- [38] The Kúria stresses that the obligation to return under the old Civil Code and the Civil Code is not identical to the obligation to re-export under the Cultural Heritage Act, since the obligation to return is part of the deposit as a civil law instrument, whereas the obligation to re-export is a public law instrument ruled by provisions on the protection of cultural heritage. The obligation to return for the benefit of the applicant does not mean that there also exists an obligation to re-export; the two legal instruments stay on different bases. Deposit contracts fall within the scope of civil law, where the parties have a horizontal relationship, therefore the fact that the contracts did not refer to the obligation to re-export as a public law instrument does not prove that the obligation to re-export did not exist. As detailed above, that has to be decided by applying the relevant provisions on the protection of cultural goods.
- [39] The court of first instance – partially because of its differing legal reasoning - did not take a position concerning the issue, with regard to which date the provisions on the protection of cultural goods shall be determined to be applicable for the obligation to re-export. In the view of the court of review, three dates could have relevance in this context: the date of import to Hungary, the date of the applicant acquiring ownership of the painting and the date of initiating the administrative procedure. Among these the importation of the painting to Hungary has primary relevance, since the obligation to re-export is not a personal obligation; it is bound to the object – in the present case to the painting –, and the obligation to re-export, as the name and content of the legal instrument reveal, first exists whenever the cultural good enters the country. An interpretation, according to which the existence of an obligation to re-export shall be examined exclusively on the basis of legal provisions in force at the date of initiating the administrative procedure, would be contrary to the substantive content of that legal instrument, since this obligation might begin with the cultural good entering the country.
- [40] Concerning the existence of an obligation to re-export, as of November 1991, two legal acts are applicable: Law-Decree 9 of 1963 on the protection of goods of historical interest (hereinafter: Historical Goods Act), and the Agreement. The Historical Goods Act was not subject to evaluation by the court of first instance, whereas section III (1) and (2) of the Agreement were invoked, but not examined on the merits.
- [41] At the time of the acquisition of ownership by the applicant, at the end of 2003 – establishing a precise date being impossible in the absence of the submitted sales contract– beside the Agreement, the provisions of the Cultural Heritage Act, especially section 47 (2) b), whereas on 8th June 2015, the provisions of the Agreement and of the Cultural Heritage Act – partially amended – shall apply to the examination of the existence of an obligation to re-export.
- [42] According to the court of review, the judgment of the court of first instance is correct in the sense that the Loaned Cultural Goods Act was not applicable to rule on the relationship at issue, since it states that the special protection shall not exceed 12 months, which period had been exceeded many times over during the exhibition of the painting in Hungary.
- [43] Section 213 (1) of the Code of Civil Procedure provides that the judgment shall cover

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all claims enforced in the action, or in joined cases, pursuant to section 149.

- [44] The applicant argued, in its application for review in correspondence to the facts, that the court of first instance had not ruled in its judgment on the following breaches of law: section 1 (2) of the Administrative Procedure Act (misuse of powers), section 1:3 (1) and (2) of the Civil Code (principles of good faith and fair dealing), section 1:5 (1) of the Civil Code (abuse of rights), Article 17(1) of the Charter of Fundamental Rights (right to property) and Article 1 of the Rome Convention (protection of property).
- [45] With regard to the above, the Kúria, on the grounds of section 275 (4) of the Code of Civil Procedure, set the contested judgment of first instance aside and ordered the court of first instance to conduct a new procedure and give a new ruling.
- [46] In its judgment to be delivered in the new proceedings, the court of first instance shall exhaust the claim and comply with its duty to state reasons. Concerning the existence of the obligation to re-export, the court shall rule on the existence of such obligation at the time of importation of the painting taking into consideration – as described by the Kúria in the present judgment – principally the provisions on the protection of cultural heritage in force in November 1991. If the obligation to re-export already existed in November 1991, an examination in relation to the later dates is unnecessary. Otherwise, the provisions on the protection of cultural goods in force at the date of acquisition of the painting by the applicant, at the end of 2003, then – if necessary – those in force at the time of initiating the administrative procedure, on 8th June 2015, shall be examined by the court to assess the commencement of the obligation to re-export. The provisions in force at the latter date shall only be examined if the obligation to re-export did not yet exist at the time of acquisition of ownership by the applicant.
- [47] The court of first instance shall take the following into consideration in its ruling. According to the principle enshrined in Article 28 of the Fundamental Law, in the course of the application of law, courts shall interpret the text of legal regulations primarily in accordance with their purposes and with the Fundamental Law. Pursuant to that, the procedure conducted by the defendant according to section 50 (1) of the Administrative Procedure Act shall be examined in the light of the right to a fair trial under Article XXIV (1) of the Fundamental Law and the duty of the authorities to give reasons. According to section 2 of the Code of Civil Procedure and Article XXVIII (1) of the Fundamental Law, the court shall also enforce the right to a fair trial in its own proceedings when ascertaining the relevant facts and taking of evidence, as provided in section 206 of the Code of Civil Procedure.
- [48] The court of first instance shall take into consideration Article P (1) and Article XIII (1) and (2) of the Fundamental Law, when interpreting the provisions on the protection of cultural heritage. The right to property enshrined in Article XIII of the Fundamental Law, regarding its evolution, is a first generation fundamental right, a special guarantee of freedom, that protects the right to property of individuals and entities against the intervention of the State power.
- [49] The Constitutional Court found in its decision No. 40/1997 (VII.1.) that, although

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property falls under general protection, it might be restricted in the public interest. For the assessment of the constitutionality of this restriction, it is of great importance whether the restriction of property is proportionate to the public interest. Decision No. 42/2006. (X.5.) of the Constitutional Court – confirmed by decision No. 3001/2016. (I.15.) of the Constitutional Court – states that, beside the test of proportionality, the requirements of constitutionality shall also be met.

- [50] The Kúria stresses that, for the interpretation of the provisions on the protection of cultural heritage, the court shall take into account Article B (1) of the Fundamental Law, and thereby legal certainty laid down in decision No. 11/2013. (V.9.) of the Constitutional Court as an essential factor of legal personality. With regard to the same decision of the Constitutional Court, State authority shall be distinguished from the State's quality as owner. When the state appears as civil party it is equal to the other party and may not enjoy greater protection. The State's act as public authority may not significantly affect the civil relationship between the parties. However if this happens, it is contrary to the constitutional requirements of legal certainty.

Content of the Decision of principal

- [51] *An object exhibited in a museum on the grounds of a deposit contract does not fall under general protection. In the case of a procedure for placing cultural goods under protection, the legal provisions on the protection of cultural heritage shall apply. The legal instrument of the obligation to re-export is governed by public law; it is not identical to the obligation to return with regard to a deposit contract. The existence of an obligation to re-export shall be examined primarily on the grounds of the provisions on the protection of cultural heritage in force at the time of importing the work of art into the country.*

Closing wording

- [52] The Kúria decided upon the application for review without a public hearing according to section 274 (1) of the Code of Civil Procedure.
- [53] The Kúria determined the amount of the costs incurred in the review procedure, whereas the decision as to the bearing of such costs lies with the court rendering the new decision pursuant to section 275 (5) of the Code of Civil Procedure.
- [54] Judicial review against this order may not be requested according to section 271 (1) e).

Budapest, 21th June 2017

Dr. Kálmán Sperka (signed), President of the Chamber, Dr. Tamás Sugár (signed), Judge Rapporteur, Dr. Erzsébet Mudráné Láng (signed), Judge

In witness whereof:

officer of the court