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Art Collections and Private International Law – The Case of the Esterházy Treasures

Abstract: In the *Esterházy* case, the plaintiff requested that Hungarian courts establish its ownership over cultural goods located in Hungary that had been part of the collection of the Fraknó castle of the aristocratic family through the centuries. History – through the removal of the goods from the castle; their nationalization; and the change of state borders – had an imprint on the legal status of the cultural goods concerned. By analyzing the case concerning cultural objects whose elements are located in different states but which once belonged to a single collection, this article sheds light on the practical difficulties related to the private international law treatment of such collections, and thereby intends to contribute to filling in a gap in the literature. The difficulties include ascertaining the law applicable to the existence of connections between things, as well as to the main legal issue and the determination of jurisdiction.

Keywords: private international law, cultural goods, collections, rights *in rem*, ownership, *fideicommissum*

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Introduction

The private international law treatment of cultural objects has been the subject of considerable attention in the legal literature.[1] The difficulties are, however, multiplied when the issue concerns not a single cultural object, but a collection whose elements are located in different countries. These complexities are clearly illustrated in the history of the Esterházy treasures (also known as the Fraknó treasures) and the recent legal disputes surrounding them before Hungarian courts.

The treasures formed a unique collection accumulated by an aristocratic family since the 17th century. Although the entire collection was found in one place and had been in the ownership of the Esterházy family over centuries, the vicissitudes of the 20th century did not leave the collection intact. The separation of parts of the collection, changes in state borders as well as political and property systems gave rise to intricate legal questions which culminated in both administrative and civil law proceedings in Hungary in the last few years.

The peculiar value of the interconnection between various cultural objects in the form of a collection is recognized not only in domestic law[2] but also by several international and European Union (EU) legal sources. In terms of the limitation period, objects belonging to public collections benefit from special protection for the purpose of restitution claims under the 1995 UNIDROIT Convention,[3] as well as return claims under the EU Return Directive.[4] The EU Export Regulation,[5] the EU Im-

[1] From the vast literature, see in particular: C. Roodt, *Private International Law, Art and Cultural Heritage*, Edward Elgar, Cheltenham 2015; M. Wantuch-Thole, *Cultural Property in Cross-Border Litigation*, De Gruyter, Berlin 2015; M. Frigo, *Circulation des biens culturels, détermination de la loi applicable et méthodes de règlement des litiges*, Brill Nijhoff, Leiden 2016; A. Chechi, *When Private International Law Meets Cultural Heritage Law*, in: A. Bonomi, G.P. Romano (eds.), *Yearbook of Private International Law – 2017/2018*, Vol. 19, Otto Schmidt, Cologne 2018, pp. 269-294; S.C. Symeonides, *A Choice-of-Law Rule for Conflicts Involving Stolen Cultural Property*, "Vanderbilt Journal of Transnational Law" 2021, Vol. 38, pp. 1177-1198; T. Szabados, *In Search of the Holy Grail of the Conflict of Laws of Cultural Property: Recent Trends in European Private International Law Codifications*, "International Journal of Cultural Property" 2020, Vol. 27, pp. 323-347; idem, *Internationalprivatrechtliche Aspekte der Restitution von Kulturgütern*, in: A. Peters, S. Hobe, E.-M. Kieninger (eds.), *Koloniale Kontinuitäten im internationalen Recht*, C.F. Müller, Heidelberg 2024, pp. 312-314, briefly presents the facts of the case analyzed here.

[2] See, for example, in Hungary 2001. évi LXIV. törvény a kulturális örökség védelméről [Act LXIV of 2001 on the Protection of Cultural Heritage], Magyar Közlöny, 2001/78, 10 July 2001, which defines the terms "collection" and "public collection" in its Art. 7, point 6) and Art. 7, point 9), respectively, and provides for some special rules on collections; see in particular Arts. 51(2) and 59.

[3] UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457, Arts. 3(4) and 3(5). The term "public collection" is defined in Art. 3(7) of the Convention.

[4] Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012, OJ L 159, 28.5.2014, p. 1, Art. 8(1).

[5] Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods, OJ L 39, 10.2.2009, p. 1, Annex I, A), points 1, 9, 10 and 13; Annex I, B), point 13.

port Regulation,[6] as well as the EU tariff and statistical nomenclature[7] all allude specifically to collections. The EU Export Regulation interprets the term "collection" with reference to the definition given by the Court of Justice of the European Union (CJEU) in the *Collector Guns* judgment, which concerned collectors' pieces.[8] According to this definition, they are "articles which possess the requisite characteristics for inclusion in a collection, that is to say, pieces which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility pieces, and are of high value".[9] However, due to the scope of the above legal sources, these definitions were not applicable in the case discussed in this article.

In private law terminology, collections qualify as a universality of goods (*universitas rerum*).[10] The pieces of an art collection, or books in a library in their entirety are such universalities of goods. Such collections consist of a multitude of objects which, due to their characteristics and purpose, create a unity. This unity is determined by the theme of the collection in a broad sense[11] and may be linked to its creator(s), a period, or a style of art history. Sometimes, collections are also associated with their location. In such cases, the cultural, and often the economic value, of a collection in its entirety may be greater than the value of the sum of individual items therein. Collections may be classified in various ways: private and public collections, as well as museum and incidental collections are distinguished.[12]

Private international law issues particularly emerge when pieces of a collection are located in a state or states different from the rest of the collection. This can happen in at least three ways. First, collections may be intentionally planned to be international, involving several venues, among which the objects belonging to the collection are split. Second, pieces can be physically moved from the territory of one state to another in accordance with (restoration or loan) or against (theft)

[6] Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods, OJ L 151, 7.6.2019, p. 1, Annex, Part A. (a), (i) and (j); Part C. (a) and (i).

[7] Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 256, 07/09/1987, p. 1, Annex I, Chapter 97, CN code 9705 00 00.

[8] Case 252/84, *Collector Guns GmbH & Co. KG v. Hauptzollamt Koblenz*, ECR, 1985, 3387. See also EU Export Regulation, Annex, point 13, footnote 2.

[9] *Collector Guns* judgment, para. 24.

[10] Regarding the concept of *universitas rerum* in Roman law, see I. Siklósi, *Római magánjog* [Roman Private Law], Vol. 1, Eötvös Kiadó, Budapest 2021, p. 569; in modern private law codifications see, for example, Codice civile [Civil Code], 16 March 1942, Gazzetta Ufficiale, 1942, Vol. 83, No. 79, p. 7, Art. 816.

[11] Council of Europe, Committee on Culture and Education, *Protection of "Incidental Collections" against Dispersal*, 6 May 1998, Doc. 8111, paras. 4-7 ("What is a collection?").

[12] Ibidem, paras. 8-10.

the owner's will. Third, albeit more rarely, changes in state borders can result in a situation whereby some parts of a collection are cut off from the rest by a state border.[13]

In practice, the first private international law issue is to decide whether the court seized has jurisdiction. However, insofar as concerns collections a preceding issue of qualification may be whether two or more goods should be treated uniformly due to their (functional/teleological) interconnection, or whether they should be treated independently. This is necessary because the hypotheses underlying both jurisdictional as well as conflict of laws rules can refer to connections between things. This requires deciding under which law the connection between them is to be ascertained. If such a question of qualification arises, only after answering this question can a court determine whether it has jurisdiction to hear the dispute. The law applicable to the main issue – for example, to an ownership claim – can be designated thereafter. In practice, answering these questions is difficult, particularly because most private international laws do not specifically address the universality of goods or other forms of connections between things.

Notwithstanding the relevance of private international law rules, the treatment of collections from a private international law point of view has been subject to less scholarly inquiry. This article aims therefore at shedding light on the practical difficulties related to the private international law treatment of collections, and thereby intends to contribute to filling a gap in the literature.

The article first presents the fate of the Esterházy collection amidst the storms of history. Then, focusing on the ownership claim put forward by the Esterhazy Private Foundation as plaintiff against the Hungarian state (as first defendant), it will analyze the decisions of the Hungarian courts from the perspective of private international law.[14] The contribution will thus assess the case in terms of the three private international issues already mentioned; i.e. designation of the law to decide whether a connection between the things concerned exists; the law applicable to the ownership claim; and jurisdiction. Although in legal disputes courts have to first answer the question of jurisdiction, we leave its discussion to the end of our work, as no jurisdictional concerns emerged in the *Esterházy* case.

[13] The effects of changes of state borders following the First World War (also relevant for the Esterházy treasures) are addressed by Andrzej Jakubowski in a broader context: A. Jakubowski, *State Succession in Cultural Property*, Oxford University Press, Oxford 2015, pp. 53-88.

[14] This contribution will discuss in detail the following decisions concerning the ownership claim: Fővárosi Törvényszék (Budapest-Capital Regional Court), Judgment of 23 September 2020, 4.P.22.219/2020/5; Fővárosi Ítélőtábla (Budapest-Capital Regional Court of Appeal), Judgment of 14 April 2021, 7.Pf.20.731/2020/25; Kúria, Order of 19 January 2022, Pfv.II.20.909/2021/9; Fővárosi Ítélőtábla (Budapest-Capital Regional Court of Appeal), Judgment of 21 September 2022, 7.Pf.20.130/2022/16; Kúria, Judgment of 22 February 2023, Pfv.VII.21.188/2022/8.

History of the Esterházy Treasures and the Decisions of Hungarian Courts in Relation to the Ownership Claim

Recent legal proceedings related to the Esterházy treasures clearly illustrate the significance of private international law related to ownership claims concerning collections. However, before addressing the private international law issues outlined above, it is worth presenting the factual background of the *Esterházy* case and the decisions of the Hungarian courts related to the ownership claim. The facts are described based on the court decisions analyzed below, highlighting those elements which are indispensable for understanding the private international law issues of the case. Similarly, insofar as concerns the rulings of courts of various instances, only those arguments will be addressed which are connected to private international law.

Facts of the case

At the end of the 17th century, Paul I, Prince Esterházy established a so-called *fideicommissum*, approved by Leopold I, King of Hungary. The legal institution of *fideicommissum* provided that the assets belonging to the former were bequeathed in a predetermined order to a single member of the family, the possessor of the *fideicommissum*, and excluded the sale of and testamentary disposition over the assets in order to prevent the dismemberment of the family patrimony.[15] It aimed at the preservation of the unity of the (primarily immovable) assets of aristocratic families supporting the ruling dynasty, and ensured their capacity to furnish military force linked to immovable property. The Esterházy *fideicommissum* covered the castle of Fraknó – which was at that time located on Hungarian territory (now: Forchtenstein in Austria) – as well as the jewels, clothes, paintings, goldsmith objects, and other rarities in the treasury cell and the armoury of the castle. The assets belonging to the *fideicommissum*, including the treasury, gradually grew in the subsequent centuries until some pieces had to be sold in the 19th century with royal consent. Amidst the political upheaval following the First World War, a Communist revolutionary government, the so-called Republic of Councils, took power in Hungary. In 1919, it decided on the "socialization" or, to put it more simply, on the confiscation of works of art in the private ownership of aristocratic families, including the collection in the castle of Fraknó. After the decision on socialization,

[15] See the contemporary legislation in Hungary: 1687. évi IX. törvénycikk a mágnások idősb fiainak az atyai rendelkezés szerint intézendő örökösödéséről [Act IX of 1687 on the Inheritance of Senior Sons of Magnates in Accordance with the Disposition of their Father] and 1723. évi L. törvénycikk az elsőszülöttségről és az 1687. évi IX. tc. magyarázatáról [Act L of 1723 on Primogeniture and the Explanation of Act IX of 1687]. On the definition of *fideicommissum* in Hungarian law from a historical perspective: Zs. Peres, *A magyar „hitbizományi jog" kezdetei* [The Beginnings of Hungarian "*Fideicommissum* Law"], doctoral thesis, University of Pécs, Pécs 2009, pp. 26-35.

a selected group of works of art were transported from the castle to the Museum of Applied Arts in Budapest. After the fall of the short-lived Republic of Councils, the nationalization measures were repealed, and the ownership of the original possessors was recognized; as a result, the restitution of the nationalized property was also ordered. However, the Esterházy family decided to leave their works of art in the museum and entered into a deposit contract with it. They did so because they were worried about the difficulties involved in the re-transportation of the objects, and the possibility that Fraknó would be annexed to Austria. These concerns were not ill-founded. At the end of the First World War the Austro-Hungarian Monarchy was dissolved, and Fraknó, together with the castle, which was originally located on Hungarian territory, was annexed to Austria as Forchtenstein. Since then, the castle has been situated on the state territory of Austria, around 20-30 km from the Hungarian border. With the exception of a short interruption, the works of art have remained in the Museum of Applied Arts then. However, after the Second World War the Communist Party came to power in Hungary, with the support of the Soviet Union. In 1949, the legislature provided for the termination of the institution of *fideicommissum*, and the assets belonging to any *fideicommissum* – including the Esterházy treasures – were (again) nationalized (Act VII of 1949 on the termination of *fideicommissa*). A few years later, the legal institution of *fideicommissum* was also terminated by legislation in Austria. However, in Austria, contrary to what happened in Hungary, the assets belonging to the *fideicommissum* were made the free property of the possessor of the assets concerned. In the present case, this was Prince Paul V Esterházy, who had fled Hungary in 1956 and moved to Switzerland. After his death, his wife created the Esterhazy Private Foundation (*Esterhazy-Privatstiftung*), and the castle, together with all its treasures, was transferred to the newly established Foundation.

After the change of the political system in 1991, Hungary enacted legislation on partial financial compensation for those whose property was nationalized since 1939.[16] Insofar as regarded nationalizations in the past, compensation could be claimed retroactively, as specified by the legislation. The system of compensation extended also to nationalizations which took place in connection with the termination of the legal institution of *fideicommissum*. The Esterházy family, however, did not submit a request for compensation under the legislative scheme.

In 2016, based on a decision of the Hungarian Government,[17] the works of art previously in the ownership of the Fraknó branch of the Esterházy family should

[16] 1991. évi XXV. törvény a tulajdonviszonyok rendezése érdekében, az állam által az állampolgárok tulajdonában igazságtalanul okozott károk részleges kárpótlásáról [Act XXV of 1991 on the Partial Compensation of Damage Wrongfully Caused by the State to the Property of Citizens to Settle Ownership Relations], Magyar Közlöny, 1991/77, 11 July 1991.

[17] 1919/2013. (XII. 11.) Korm. határozat a fertődi Esterházy-kastélyegyüttes hasznosításáról [Government Decree No. 1919/2013. (11 December) on the Use of the Esterházy-castle Ensemble], Magyar Közlöny, 2013/206, 11 December 2013.

have been transferred from the Museum of Applied Arts to Fertőd, where the Esterházy family had another castle (which is now in the ownership of the Hungarian state and managed by the Eszterháza Cultural, Research and Festival Centre ["Eszterháza Centre"]). This relocation started in 2016, notwithstanding the fact that the treasures were not connected to the Fertőd castle in terms of art history, and despite the opposition of museum experts, who were concerned about the proper storage conditions and the security of the collection after the relocation.

In order to hinder the relocation, the Esterhazy Private Foundation submitted a request to the minister heading the prime minister's office to recognize its ownership of the works of art in an administrative procedure.[18] This request was rejected. Thereafter, the Foundation submitted a claim before the Hungarian courts against the Hungarian state, the Eszterháza Centre, and the Museum of Applied Arts,[19] in order to establish that it was the owner of the works of art situated in Hungary. It is important to emphasize here that the Esterhazy Private Foundation recognized the close cultural link between the treasures and Hungary, and did not claim the physical restitution of the works of art but merely sought a court declaration concerning their right of ownership. In addition, the Foundation also claimed the return of the works of art to the Museum of Applied Arts from the Fertőd castle.

From a private international law point of view, the arguments of the Foundation are highly interesting. The Foundation argued that the centre of the collection was the castle in Fraknó, and the works of art in Hungary were accessories of the castle. As the castle is located in Austria, Austrian law should apply not only to the castle itself but also to the works of art located in Hungary, because they would constitute a unity. As under Austrian law the *fideicommissum* had been terminated, and the castle together with the assets belonging to it were passed to the ownership of Prince Paul V Esterházy, and then to his wife and the Foundation, their right of ownership extended also to the works of art situated in Hungary as accessories of the castle in Austria. Moreover, the nationalization that had taken place in Hungary following the Second World War did not have any effect on these objects, which were exclusively subject to Austrian law.

Decisions of Hungarian courts in the Esterházy case

In the first instance, the Budapest-Capital Regional Court rejected the claim.[20] It took the *lex rei sitae* principle as a point of departure and applied Hungari-

[18] For more concerning the administrative proceedings, see V. Vadász, V. Verebélyi, *At the Borderline of Public and Private Law: The Restitution of Cultural Property Held in Public Collections in Hungary*, "Santander Art and Culture Law Review" 2024, Vol. 2(10), pp. 199-205.

[19] The Ministry for Human Resources was also among the defendants, but in the course of the first instance procedure the process against it was terminated.

[20] Fővárosi Törvényszék (Budapest-Capital Regional Court), Judgment of 23 September 2020, 4.P.22.219/2020/5.

an law to decide whether the castle and the cultural objects in Hungary were in a main thing-accessory relationship. The plaintiff put forward various arguments to establish that the assets in Hungary constituted constituent parts or accessories of the castle. First, it asserted that the object of a *fideicommissum* could only be immovable; movables simply shared the legal status of the immovable where they were kept as constituent parts or accessories. Second, the establishment of a *fideicommissum* gave rise to a connection between the assets belonging to it. Third, it invoked the compilation of contemporary customary law – the *Tripartitum* by István Werbőczy published in 1514 – to demonstrate that a castle and its equipment are to be treated together.[21] Fourth, it argued that the castle and the treasures constituted an economic and functional unity. Finally, it submitted that by his testamentary dispositions the founder of the *fideicommissum* created a main thing-constituent part or accessory relationship between the immovable property and the movables. Although the court acknowledged that the proof of any of these arguments could establish a connection between the things, the plaintiff could not produce evidence regarding the grounds he relied on. The object of a *fideicommissum* could also be movable; the *fideicommissum* gave rise to an indivisible unity in terms of succession law but not property law; the invoked part of the *Tripartitum* did not address the main thing-accessory relationship between a castle and movables; the castle and the treasures did not constitute an economic or functional unity because a treasury cell was not a necessary part of castles and it did not serve a representative function (or at most only occasionally); such unity could not be deduced from the founder's will or an assessment of art history either; and the text of the founder's testamentary dispositions did not provide for the accessory character of the treasures. Consequently, it found that the works of art in Hungary could not be considered accessories of the castle in Austria.

Accepting that a real international element was present in the case, the court rejected the suggestion on the part of the defendants that the plaintiff's argumentation would constitute a *fraude à la loi* since the accessory character of the goods located in Hungary was subsequently asserted only artificially in order to circumvent the legal consequences of the nationalization. Due to the nationalization, the Hungarian state had acquired *ex lege* ownership over the cultural goods situated in Hungary. The Esterhazy Private Foundation appealed the decision.

The Budapest-Capital Regional Court of Appeal essentially confirmed the decision of the court of lower instance.[22] It addressed the main thing-accessory relationship, stating that even before the codification of Hungarian private law in 1959, a functional connection was necessary to establish that an object qualifies as a constituent part or accessory of a main thing. The court noted that the works of

[21] S. de Werbewcz, *Tripartitum Opus Iuris Consuetudinarii, Inclyti Regni Hungariae*, Vienna 1517.

[22] Fővárosi Ítélőtábla (Budapest-Capital Regional Court of Appeal), Judgment of 14 April 2021, 7.Pf.20.731/2020/25.

art were not the accessories of the castle in Austria, because they were not necessary for the use of the storage rooms of the castle. The works of art were physically separated from the castle in 1919 when they were transported to Budapest. Thus, the spatial connection between the castle and works of art ceased, and from the moment of separation the latter should have been considered independent movables, even if previously they had been accessories. This rendered possible separate ownership over the castle and the artefacts in Hungary. The socialization measures led exactly to this result. The secession from the complex of things became definite by the fact that the Esterházy family did not ask thereafter for the return of those works of art to the collection in the castle, even though they could have done so. The applicable law was to be determined in accordance with the location of the objects. Consequently, the artefacts located in Hungary were governed by Hungarian law. This also included the legislation that eliminated the institution of *fideicommissum* and established state ownership over the cultural goods concerned. The court added that in a civil procedure – here, a legal dispute concerning ownership – a public law measure such as the nationalization of works of art, could not be called into question. Moreover, after the change of the political system in 1989, the Esterházy family did not submit such a claim for compensation.

The Esterhazy Private Foundation turned thereafter to the Kúria, the supreme court of Hungary. Without deciding on the merits of the case, the Kúria established that the Regional Court of Appeal had committed a serious procedural error and ordered the court of second instance to conduct a new procedure.[23] This was because the Kúria found that the Regional Court of Appeal had not ruled on one part of the claim, namely concerning the so-called "treasures of Kapuvár". These treasures once belonged to the *fideicommissum*, having been found in a pigsty near Kapuvár, a town in West Hungary, after the Second World War. They were transported to the National Museum in Hungary, from which they were stolen in 1948, i.e. before the nationalization of the *fideicommissum*. The stolen items were later found in Austria, which returned them to Hungary in 1985.

After referring the case back to the Budapest-Capital Regional Court of Appeal, the latter held that whether an object constitutes an accessory does not depend on the value of the objects regarding the history of art or the will of the founder of the *fideicommissum*; instead, it is a category of property law.[24] It repeated that the accessory relationship could not be established because the storage rooms of the castle could be used for storing other objects, even after the removal of the works of art. It was then established that the Hungarian state had acquired ownership by the nationalization in 1949 of the works of art in Hungary, including those found in Kapuvár. The return of the stolen artefacts by Austria to the Hun-

[23] Kúria, Order of 19 January 2022, Pfv.II.20.909/2021/9.

[24] Fővárosi Ítélőtábla (Budapest-Capital Regional Court of Appeal), Judgment of 21 September 2022, 7.Pf.20.130/2022/16.

garian state involved the recognition of the ownership of the Hungarian state and constituted an admission that those objects were not transferred to the ownership of Prince Paul V Esterházy after the termination of the *fideicommissum* in Austria.

Upon the filing of a new appeal, the Kúria confirmed the outcome of the new procedure.[25] It was found that the main thing-accessory connection must be recognizable from the physical interdependence of the objects. Even if the will of the founder of the *fideicommissum* gave rise to a close connection between the immovable and movable objects (by introducing a prohibition of sale and testamentary disposition having effects in the law of obligations and succession law, respectively), no unity of property law had thereby been established. The treatment of the treasures of Kapuvár should be the same; that is, under the *lex rei sitae* principle they were also governed by Hungarian law. The Kúria stated that inasmuch as ownership of the Foundation could not be established over the objects located in Hungary, the claimant could not contest the ownership of the Hungarian state, and there was no need to rule on the impact of nationalization and the acquisition of ownership by the Hungarian state.

Establishing the Existence of a Connection between Things

In the *Esterházy* case, a decisive question was whether the treasures located in Hungary constituted accessories of the castle in Fraknó. The establishment of a main thing-accessory relationship is a substantive law question. It is, however, for private international law to ascertain under which law it is to be decided whether the objects concerned are indeed in some way interconnected, such as a universality of goods, or a main thing-component part or accessory relationship. The existence of a qualified connection between objects (component or accessory relationship) may become relevant both for the determination of the jurisdiction as well as the law applicable to the main question.[26] In the *Esterházy* case, this factor was decisive in terms of the governing law for the ownership claim.

Neither international conventions nor EU legislation regulates the law governing rights *in rem* in a general way. As such, no uniform rules are provided to determine the law applicable to establishing the existence of connections between things. This is left to the rules of autonomous private international law (in the given case Hungarian private international law). However, beyond property law, EU private international law sometimes recognizes the reality of a connection among objects. In particular, the EU Succession Regulation designates a single applicable law to the succession as a whole, which is, as a main rule, the law of the state of the

[25] Kúria, Judgment of 22 February 2023, Pfv.VII.21.188/2022/8.

[26] Regarding the establishment of the main thing-accessory relation, it can be noted that it is possible that the secondary qualification under the designated law deviates from the result of the primary qualification, which most often takes place in accordance with the *lex fori*.

habitual residence of the deceased person, even if the assets are located in another Member State or a third country.[27]

In the *Esterházy* case, without a deeper analysis the Hungarian courts applied Hungarian law to decide whether the castle in Austria and the objects in Hungary were in a main thing-accessory relationship. The Hungarian courts put more emphasis on the substantive law evaluation of the connection between the castle in Austria and the treasures in Hungary. In the literature on private international law, the dominant view is that whether an object constitutes a component or an accessory is to be determined by the *lex rei sitae*, more precisely by the law of the state of the location of the main thing.[28] If the object is moved to another state, the rules of this latter state regarding change in the applicable law (*Statutenwechsel*) decide whether the object continues to be considered an accessory or component, or is deemed an independent object.[29] The view has also appeared in the literature that despite the temporary transportation to and presence of an accessory in the territory of another state, the previous legal status of the object persists.[30] Accordingly, the rules of the new location on the determination of the connection between things will govern only if the location of the accessory changes definitively.[31]

In this context, the famous *Casenoves* case[32] is often referred to. In that case, the French Court of Cassation established that frescos removed from a church in France that were subsequently brought to Switzerland became movables under French law following the separation from the immovable they constituted part of, so the jurisdiction of the French courts could not be established. In the case in question, the plaintiffs argued that the frescos were component parts of the immovable in France. Even though the *Casenoves* case raised the issue of the qualification as immovable or movable, it inherently involved the question of whether the frescos thus removed continued to be a (component) part of the immovable.

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27 Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27.7.2012, p. 107, Art. 21(1).

28 P. Fisch, *Vorbemerkungen zu Art. 97-108*, in: H. Honsell et al. (eds.), *Basler Kommentar – Internationales Privatrecht*, 3rd ed., Helbing Lichtenhahn Verlag, Basel 2013, p. 777; idem, *Art. 97*, in: H. Honsell et al. (eds.), *Basler Kommentar – Internationales Privatrecht*, 3rd ed., Helbing Lichtenhahn Verlag, Basel 2013, p. 786.

29 P. Fisch, *Vorbemerkungen…*, p. 777; K. Kreuzer, *Art. 38 Anh. I*, in: K. Rebmann, F.J. Säcker, R. Rixecker (eds.), *Münchener Kommentar zum Bürgerlichen Gesetzbuch*, Vol. 10: *Einführungsgesetz zum Bürgerlichen Gesetzbuche (Art. 1–38) Internationales Privatrecht*, Beck, München 1998, p. 2162.

30 H. Stoll, *Sachrechtliche Fragen des Kulturgüterschutzes in Fällen mit Auslandsberührung*, in: R. Dolzer, E. Jayme, R. Mußgnug (eds.), *Rechtsfragen des internationalen Kulturgüterschutzes*, C.F. Müller, Heidelberg 1994, p. 57; idem, *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzten*, *Einführungsgesetz zum Bürgerlichen Gesetzbuch/IPR*, *Internationales Sachenrecht*, Sellier/De Gruyter, Berlin 1996, p. 79 (para. 144); D. Looschelders, *Internationales Privatrecht – Art. 3-46 EGBGB*, Springer, Heidelberg 2004, p. 638 (para. 26).

31 H. Stoll, *Sachrechtliche Fragen…*, p. 57.

32 Cour de cassation, 15 April 1988, No. 85-10.262, 85-11.198; see P. Fisch, *Vorbemerkungen…*, p. 777.

The Court addressed the qualification from the point of view of the law of the state of the location of the immovable (French law), but not from the perspective of the new *lex rei sitae* of the movables (Swiss law). It did not take the change of statute into account and did not examine whether Swiss law shares the same view on the qualification of the frescos as movable.[33] The decision was also criticized for not taking into account the interest of protecting cultural property in its entirety, as well as for ignoring the principle of protection as an ensemble.[34]

The establishment of the existence of connections between things requires, therefore, the determination of the law applicable to this issue. Although the courts in the *Esterházy* case only superficially addressed this issue, the application of Hungarian law to this question and the rejection of the main thing-accessory relationship largely influenced the law applicable to the main (ownership) claim and the outcome of the legal dispute.

The Law Applicable to the Ownership Claim

In terms of the applicable law, two key questions arose in the *Esterházy* case: first, the determination of the law applicable to the ownership claim related to cultural objects located in Hungary; and second, the applicability of nationalization measures as part of the governing law. In the *Esterházy* case, the *lex rei sitae* principle applied to the issue of ownership, and the cultural objects located in Hungary were accordingly subject to Hungarian law. Courts of lower instances also concluded that as part of Hungarian law, the nationalization measures had resulted in the acquisition of ownership by the Hungarian state.

Determination of the law applicable to the ownership claim

Hungarian private international law has traditionally followed the *lex rei sitae* principle concerning rights *in rem* as a main rule.[35] The *lex rei sitae* principle also prevails as a main rule in the Hungarian Private International Law Act in force regarding rights *in rem*.[36] It is worth mentioning that the application of the *lex rei sitae* principle

[33] G.A.L. Droz, *Cour de cassation (Ass. plén.). – 15 avril 1988*, "Revue critique de droit international privé" 1989, Vol. 78, p. 104.

[34] G. Reichelt, *Kulturgüterschutz und Internationales Verfahrensrecht*, "Praxis des Internationalen Privat- und Verfahrensrechts" 1989, Vol. 9, p. 255.

[35] In codified law, see 1979. évi 13. törvényerejű rendelet a nemzetközi magánjogról [Decree-Law 13 of 1979 on Private International Law], Magyar Közlöny, 1979/33, 31 May 1979, Art. 27; see also the draft private international law code of 1948, prepared by István Szászy, I. Szászy, *Magyar nemzetközi magánjog – Törvénytervezet és indokolás* [Hungarian Private International Law – Draft Law and Explanation], Egyetemi Nyomda, Budapest 1948, p. 15 (50. §) and p. 104; before the Second World War: I. Szászy, *Nemzetközi magánjog* [Private International Law], Sylvester, Budapest 1938, pp. 246-247.

[36] 2017. évi XXVIII. törvény a nemzetközi magánjogról [Act XXVIII of 2017 on Private International Law], Magyar Közlöny, 2017/54, 11 April 2017, Art. 39(1).

to assets belonging to a *fideicommissum* also gained recognition by the Kúria as early as in 1933. In a uniformity decision examining the impact of territorial changes and the termination of the legal institution of *fideicommissum* in one of the countries (Czechoslovakia) after the First World War on the assets of a *fideicommissum* which were located partly in Czechoslovakia and partly in Hungary, the Kúria confirmed that the *lex rei sitae* principle applies to movables and immovables alike.[37] It noted however that the legal faith of immovables is shared by those inventoried movables which have an accessory character, or which are otherwise to be treated uniformly with immovables. The Kúria recognized that a state in whose territory the assets are located is free to terminate the legal institution of *fideicommissum*; and that the application of the law of this state does not violate the *ordre public*. Those assets which came under the jurisdiction of a state which terminated this legal institution must be considered as seceded from the bounds of the *fideicommissum*. Referring back to this decision, the Budapest-Capital Regional Court held in the *Esterházy* case that in the absence of a main thing-accessory relationship between the castle and the treasures, the treasures located in Hungary were subject to Hungarian law.[38]

In the *Esterházy* case, after the Hungarian courts unanimously found that there was no main thing-accessory relationship between the castle in Austria and the works of art in Hungary, it is not surprising that Hungarian courts applied the law of the location of the goods, i.e. Hungarian law, to the cultural objects situated in Hungary.

However, it is worth pondering how the applicable law would have been determined if a component part or accessory-main thing connection between things could have been established. Once the existence of such an interconnection is established, this influences the process of determining the applicable law. The difficulty in determining the law applicable to collections has already been highlighted by Savigny,[39] who specifically addressed movable goods that have some purpose that links them to a permanent location. As an example, he mentions the movables of a house, a library, or an art collection located there; or the inventory of a country estate. The question of whether the *lex rei sitae* could be applied to such objects was answered by Savigny in the affirmative. Savigny argued that even though the items comprising these collections of goods could be taken elsewhere, such changes are typically accidental. In his view, such goods are to be treated in the same way as immovables, and the law applicable to them is to be determined in accordance with their actual location. Story, though taking as a general rule the view that mov-

[37] Private law decision no. 57 of the council for the uniformity of law of the Hungarian Royal Kúria, 17 June 1933.

[38] Fővárosi Törvényszék (Budapest-Capital Regional Court), Judgment of 23 September 2020, 4.P.22.219/2020/5, para. 800.

[39] F.C. von Savigny, *System des heutigen Römischen Rechts*, Vol. 8, Veit, Berlin 1849, § 366.

ables should be governed by the law of the owner's domicile, found that movables annexed to immovables for use or decoration share the fate of the immovables, and as such are governed by the law of the state of the location of the immovable.[40] In order to confirm this, he also referred to foreign laws where movables can become fixed to the immovable by virtue of law or the owner's will.

Although such provisions are rare, some private international law codifications determine which law governs in the event that a connection between things can be established. Article 87(2) of the Belgian Private International Law Act contains a rule on the law applicable to rights *in rem* concerning a conglomerate of goods (*ensemble de biens*).[41] As a main rule, the Belgian Private International Law Act follows the *lex rei sitae* principle.[42] If it relates to a patrimony composed of a set of goods assigned for a special purpose, such as business assets, it is considered to be located in the territory of the state with which the patrimony has the closest connection. It is also interesting to note here that the jurisdictional provisions of the Belgian Private International Law Act also refer to this rule when they determine jurisdiction regarding claims related to rights *in rem* over an object. Belgian courts can exercise jurisdiction if the object is located in Belgium, or if the object is deemed to be located there in accordance with Article 87(2) at the time of the submission of the claim.[43] Article 39(3) of the Hungarian Private International Law Act provides that "if a thing is a component part or accessory of another thing, the law of the place of the location of the main thing shall apply; regarding other connections between things or an aggregate of things, the law which is most closely connected to it shall apply".[44] The Belgian and the Hungarian provisions apply only if it is a patrimony consisting of a set of goods (Belgian Private International Law Act, Article 87(2)) or about a main thing-component part/accessory relation or other connection between things (Hungarian Private International Law Act, Article 39(3)), respectively. They do not clarify, however, under which law it can be ascertained whether such a connection exists. It must be noted that the aforementioned provision of the Hungarian Private International Law Act could not be applied in the *Esterházy* case, firstly because it was rejected that the cultural goods in Hungary were the accessories of the Fraknó castle; and secondly because this rule was enacted in 2017 and as such could not be applied to the facts of the case which emerged decades earlier.

Finally, it may be noted here that if a cultural object is stolen from a collection, that object is typically treated separately from the rest of the collection. The law

40 J. Story, *Commentaries on the Conflict of Laws*, Hilliard, Gray & Company, Boston 1834, pp. 314-315 (§ 382).

41 Loi portant le Code de droit international privé [Act Establishing the Code of Private International Law], Moniteur Belge, 27 July 2004, p. 57344.

42 Belgian Private International Law Act, Art. 87(1).

43 Belgian Private International Law Act, Art. 85.

44 Hungarian Private International Law Act, Art. 39(3).

applicable to the ownership of the stolen object has been traditionally determined in accordance with the *lex rei sitae* principle. Insofar as regards claims for the restitution of stolen objects and the return of illegally exported (cultural) objects, several authors,[45] as well as some private international law codifications,[46] endorse the application of the *lex originis* principle in a pure or combined form. Its application implies that if a cultural object forming part of a collection is stolen and brought to another state, the original owner can invoke the law of the country of origin in order to recover the object.[47] One possible answer to determine the country of origin, which appears in the legal literature, is the ascertainment of the nationality of the objects.[48] In this regard, it is also asserted that inclusion in a particular collection can be indicative for determining the nationality of the object(s).[49] In any case, the *lex originis* principle recognizes not only the connection of the object to the country of origin, but also expresses the link between the cultural object and the collection from which it was removed.

Impact of nationalization measures

In the *Esterházy* case, the other crucial issue was the impact of nationalization in terms of the determination of the applicable law. A logical corollary of the application of Hungarian law through the *lex rei sitae* rule is that the provisions on the termination of the legal institution of *fideicommissum*, as well as the acquisition of ownership by the Hungarian state over objects belonging to the *fideicommissum*, could be applied. The courts of lower instance found that due to the application of

[45] See, for example, D. Fincham, *How Adopting the* Lex Originis *Rule Can Impede the Flow of Illicit Cultural Property*, "Columbia Journal of Law & the Arts" 2008, Vol. 32, pp. 111-150; S. Symeonides, op. cit., p. 1183.

[46] For an overview of private international law codifications addressing stolen and illegally exported (cultural) goods, see T. Szabados, *In Search of the Holy Grail...*, pp. 335-337. See Belgian Private International Law Act, Arts. 90 and 92; Bulgaria: Kodeks na mežđunarodnoto častno pravo [Private International Law Code], D"ržaven vestnik, No. 42, 17 May 2005, Art. 70; Hungarian Private International Law Act, Arts. 46-47; Monaco: Loi n° 1.448 du 28 juin 2017 relative au droit international privé [Act No. 1.448 of 28 June 2017 on Private International Law], Journal de Monaco, No. 8337, 7 July 2017, Art. 94; Montenegro: Zakon o međunarodnom privatnom pravu [Private International Law Act], Službeni list Crne Gore, No. 1/2014, 6/2014, 11/2014, 14/2014 and 47/2015, Art. 33; Romania: Lege nr. 287/2009 din 17 iulie 2009 privind Codul civil [Act No. 287/2009 of 17 July 2009 on the Civil Code], Monitorul Oficial, No. 511, 24 July 2009, Art. 2.615.

[47] There might be instances though where the *lex originis* does not help the original owner if it recognizes the title of the actual possessor as a *bona fide* purchaser or as a result of the acquisition of ownership by acquisitive prescription, whereas the *lex rei sitae* does not. To avoid such issues, the private international law codifications mentioned in the previous footnote grant a choice for the claimant between the *lex furti* and the location of the object at the time of the submission or adjudication of the claim. See T. Szabados, *In Search of the Holy Grail...*, p. 328.

[48] E. Jayme, *Globalization in Art Law: Clash of Interests and International Tendencies*, "Vanderbilt Journal of Transnational Law" 2021, Vol. 38, pp. 934-935.

[49] M.M. Müller, *Cultural Heritage Protection: Legitimacy, Property, and Functionalism*, "International Journal of Cultural Property" 1998, Vol. 7, p. 401.

Hungarian law, the nationalization measures applied to the cultural objects located in Hungary, thus establishing the ownership of the Hungarian state. The Kúria, at the end of the repeated procedure, held, however, that the issues of nationalization and state ownership were not to be examined as the plaintiff could not prove its title. Although in terms of legal reasoning this approach may be acceptable, the Kúria left the paramount question open whether the Hungarian state may indeed be deemed to be the owner of the works of art located in Hungary.

Nationalization is a manifestation of sovereignty. It follows from the principle of territoriality that states can take measures regarding assets located in their territories (but not extraterritorially).[50] Taking of property by a state is not *a priori* prohibited under public international law. In the legal literature, it has been confirmed that the *lex rei sitae* principle also applies to the acquisition of ownership by a state through nationalization or expropriation, as well as any other way of acquiring ownership.[51] Provided that the object can be found in the territory of the nationalizing state at the relevant time, private law effects – including the loss of ownership by the original owner and acquisition of ownership by the state – are triggered[52] as part of the law of the state where the nationalized cultural objects were found. The recognition of the private law effects of foreign nationalization measures concerning cultural goods was adjudged by courts in the UK and the US in cases following the Russian Revolution. In these cases, the original owners' claims aimed at setting aside the effects of the nationalization of a foreign state. The courts refrained from calling into question the nationalization measures implemented by foreign sovereigns recognized by the forum state on their own territories.[53]

The *ordre public* exception is often mentioned as a limit on the recognition of foreign takings of property.[54] It constitutes a negative means of the protection of public policy: it can be invoked to disregard the otherwise applicable foreign law. A reliance on the *ordre public* exception would not have been successful in the *Esterházy* case. Because of the location of the goods, the law applicable to the issue of

[50] A. Briggs, *Private International Law in English Courts*, Oxford University Press, Oxford 2014, p. 749; see also G. Kegel, *Probleme des internationalen Enteignungs- und Währungsrechts*, Westdeutscher Verlag, Köln–Opladen 1956, pp. 7-13.

[51] A. Briggs, *The Conflict of Laws*, 3rd ed., Oxford University Press, Oxford 2013, p. 312; idem, *Private International Law…*, pp. 724 and 749; C.M.V. Clarkson, J. Hill, *The Conflict of Laws*, 4th ed., Oxford University Press, Oxford 2011, p. 486. The application of the *lex rei sitae* rule holds to the extent that both nationalization and expropriation involve taking property located in the territory of the state, notwithstanding the fact that the two terms are sometimes used interchangeably and sometimes they are distinguished, depending on the context, perspective (public international law, constitutional law, or private law), and translation, see UNCTAD, *Expropriation*, United Nations, New York–Geneva 2012, p. 5.

[52] C.M.V. Clarkson, J. Hill, op. cit., p. 486.

[53] *Princess Paley Olga v Weisz and Others* [1929] 1 K.B. 718; *Stroganoff-Scherbatoff v. Weldon*, 420 F. Supp. 18 (S.D.N.Y. 1976).

[54] *Dicey, Morris and Collins on the Conflict of Laws*, Vol. 2, 15th ed., Sweet & Maxwell, London 2012, p. 1386; C.M.V. Clarkson, J. Hill, op. cit., p. 486; G. Kegel, op. cit., p. 13.

ownership was Hungarian law, which could not be set aside on the grounds of the need to protect public policy within the meaning of private international law. It may be recalled here that although the Hungarian state had not provided for compensation in 1949 at the time of the termination and nationalization of the *fideicommissum*, after the change of the political system in 1989 it did introduce a partial system of financial compensation.[55] However, the Esterházy family did not avail itself of the possibility of compensation. These subsequent developments weaken any argument related to the absence of compensation at the time of the nationalization in order to disregard the acquisition of ownership by the state.

Jurisdiction

Jurisdiction was not debated by the parties in the *Esterházy* case, and the courts did not address it either. The issue of jurisdiction did not cause much difficulty, because the Esterhazy Private Foundation brought an action against the Hungarian state and other defendants in the courts of the domicile of the latter.[56] In this way, the jurisdiction of the Hungarian courts could easily be established.

Nevertheless, there are jurisdictional rules in domestic, international, and EU legal sources which are based on the location of goods. An illustration is the Swiss Private International Law Act, in which the location of the goods also establishes jurisdiction generally for claims regarding rights *in rem* over movable goods, and specifically for restitution claims concerning cultural goods.[57] A similar alternative ground of jurisdiction can be found in Article 8 of the 1995 UNIDROIT Convention[58] and Article 7(4) of the Brussels Ibis Regulation.

It may raise difficulties when jurisdiction must be established based on the location of the goods with respect to rights *in rem* claims over collections if the pieces of a collection are located in different countries. Neither of the above legal sources defines the terms "movable", "immovable", or "collection". They do not say

[55] 1991. évi XXV. törvény a tulajdonviszonyok rendezése érdekében, az állam által az állampolgárok tulajdonában igazságtalanul okozott károk részleges kárpótlásáról [Act XXV of 1991 on the Partial Compensation of Damage Wrongfully Caused by the State to the Property of Citizens to Settle Ownership Relations], Magyar Közlöny, 1991/77, 11 July 1991. It may be noted that the Fundamental Law of Hungary, which entered into force on 1 January 2012, states that no new title for (financial or other patrimonial) compensation can be established for those who suffered damage caused wrongfully by the state to their property, Magyarország Alaptörvénye [Fundamental Law of Hungary], Magyar Közlöny, 2011/43, 25 April 2011, Art. U(9).

[56] See Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20.12.2012, p. 1 ("Brussels Ibis Regulation"), Art. 4.

[57] Bundesgesetz über das Internationale Privatrecht (IPRG) vom 18. Dezember 1987 [Federal Act on Private International Law], AS 1988 1776, Arts. 98(2) and 98a.

[58] See T. Szabados, *Article 8 of the 1995 UNIDROIT Convention: Choice of Forum*, in: A.F. Vrdoljak, A. Jakubowski, A. Chechi (eds.), *The 1970 UNESCO and 1995 UNIDROIT Conventions on Stolen or Illegally Transferred Cultural Property*, Oxford University Press, Oxford 2024, pp. 632-645.

anything about how to determine jurisdiction if it is about a conglomerate or a collection of objects located in different states. The language of the above legal sources suggests that the location of any individual object establishes jurisdiction, since the texts use the singular noun forms (in the Swiss Private International Law Act: "*Ort der gelegenen Sache*"; "*Ort, an dem das Kulturgut sich befindet*"; in the UNIDROIT Convention: "where the cultural object is located"; in the Brussels Ibis Regulation: "the place where the cultural object is situated").

A first possibility is to consider the items separately; thus, the location of each object could establish jurisdiction parallelly. This multiplies the number of courts having jurisdiction. For a similar jurisdictional approach regarding the connection between immovables, the *Scherrens* judgment of the CJEU can be recalled, where in a case concerning a dispute regarding a lease contract related to a farm consisting of various immovables in two Member States, the CJEU held that the location of each immovable piece of property establishes jurisdiction under Article 16(1) of the Brussels Convention.[59] In exceptional cases, treating the property as a single unit to establish the exclusive jurisdiction of a single court is possible, in view of the CJEU, for example, if plots in the two Member States are adjacent and the property is almost exclusively located in the territory of one of the Member States.[60]

Another option is to treat the objects as a unity. In the context of EU law, in relation to Article 5(3) of the Brussels Ibis Proposal,[61] Franzina argued that following the *accessorium sequitur principale* principle, jurisdiction should be conferred regarding the universality of goods, including collections, upon the courts of the state "where the assets are principally located", or upon the courts of the state "with which the property in question is most closely linked".[62] Franzina's reasoning leads back to the *Shenavai* judgment of the CJEU, where in interpreting Article 5(1) of the Brussels Convention,[63] it ruled that when more than one obligation arising from the same contract constitutes the basis of the proceedings, in determining whether it can exercise jurisdiction, the court seized should be "guided by the maxim *accessorium sequitur principale*; in other words, where various obligations are at issue, it will be the principal obligation which will determine its jurisdiction".[64] However, those decisions of the CJEU seem more relevant for our purposes where jurisdiction had

[59] Case 158/87, *R. O. E. Scherrens v. M. G. Maenhout and others*, ECR, 1988, 3791, paras. 13 and 16.

[60] Ibidem, para. 14.

[61] European Commission, *Proposal for a Regulation of the European Parliament and of the Council on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast)*, 14 December 2010, COM(2010) 748 final.

[62] P. Franzina, *The Proposed New Rule of Special Jurisdiction Regarding Rights in rem in Moveable Property: A Good Option for a Reformed Brussels I Regulation*, "Diritto del Commerzio Internazionale" 2011, Vol. 25, p. 799.

[63] 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ L 299, 31.12.1972, p. 32.

[64] Case 266/85, *Hassan Shenavai v. Klaus Kreischer*, ECR, 1987, 239, para. 19.

to be established in cases in which there were more places of performance, and the latter were in different Member States. It cannot be ignored, however, that the CJEU case law on Article 7(1) of the Brussels Ibis Regulation related to places of performance in several Member States has been strongly criticized because of its inconsistency, thus compromising legal certainty. To address such situations, and also having regard to the nature of the underlying contractual obligations, the CJEU looked for the principal or main place of performance[65] to be determined based on (further unspecified) economic criteria;[66] and if the principal place of performance could not be established, it referred to the plaintiff's domicile (presuming a close connection between the domicile and the performance);[67] while in other cases it allowed a choice for the plaintiff between the different places of performance.[68] It is therefore not surprising that alternative solutions have been proposed in the legal literature, such as granting plaintiffs the right to choose among the courts of the states of the various places of performance instead of determining a single place of performance based on uncertain criteria,[69] or the application of the general rule of jurisdiction based on the defendant's domicile (Article 4 of the Brussels Ibis Regulation), thus setting aside Article 7(1) in the event of multiple places of performance in various Member States.[70]

Based on the above, the extent to which the existing jurisdictional rules are suitable for allocating jurisdiction if the matter concerns cultural objects that are connected but situated in different states may be called into question.

Conclusions

The application of the rules of private international law to collections is not always free from uncertainties. The *Esterházy* case demonstrates the private international law complications related to collections, in particular with respect to the determination of the law applicable to the establishment of a main thing-accessory relationship and an ownership claim. Even though the Hungarian court procedures confirmed that issues of private international law played a significant role and in-

[65] Case C-64/17, *Saey Home & Garden NV/SA v. Lusavouga-Máquinas e Acessórios Industriais SA*, ECLI:EU:C:2018:173, paras. 44-45.

[66] Case C-386/05, *Color Drack GmbH v. Lexx International Vertriebs GmbH*, ECR, 2007, I-3699, para. 40.

[67] Case C-19/09, *Wood Floor Solutions Andreas Domberger GmbH v. Silva Trade SA*, ECR, 2010, I-2121, paras. 40-42.

[68] Case C-386/05, *Color Drack*, ECR, 2007, I-3699, para. 42, where several places of performance were located in the same Member State; and C-204/08, *Peter Rehder v. Air Baltic Corporation*, ECR, 2009, I-6073, para. 44, where places of performance were in different countries.

[69] B.Ş. Köşgeroğlu, *Performance of Characteristic Obligation in Multiple Places under Brussels I Recast Article 7(1)(b): Legal Certainty and Predictability over "a Close Connection"*, "Annales de la Faculté de droit d'Istanbul" 2022, Vol. 71, p. 389.

[70] A. Poon, *Determining the Place of Performance under Article 7(1) of the Brussels I Recast*, "International & Comparative Law Quarterly" 2021, Vol. 70(3), pp. 635-663.

fluenced the outcome of the legal dispute, the private international law treatment of collections has not received much attention so far in domestic or international legal sources and in the legal literature.

Certain international, EU, and domestic legal sources of substantive law provide special rules for (public) collections in order to facilitate their protection in their entirety. However, the ownership dispute in the *Esterházy* case highlights that even if certain cultural goods once constituted a single collection, they do not necessarily preserve this quality later in the event of the removal of objects from the collection to the territory of another state. Collections are thus not necessarily associated with a single forum and single applicable law.

Right after the issuance of the first decision of the Budapest-Capital Regional Court of Appeal, the Esterhazy Private Foundation announced that it would turn not only to the Kúria but also to the Constitutional Court and, if necessary, to the European Court of Human Rights. Although, following the administrative proceedings not discussed here, the Foundation indeed turned to the Constitutional Court, this procedure has not altered the status of the treasures found in Hungary,[71] and we are not aware of the commencement of any procedure before the European Court of Human Rights regarding the rejection of the Foundation's ownership claim. Instead, the Foundation has indicated that it is continuing to work on the settlement of the matter by negotiations, having regard to the Kúria's judgment, which did not rule on the legality of the nationalization and the ownership of the Hungarian state.[72]

The storms of the 20th century have cast a long shadow that also affects the Esterházy treasures. Notwithstanding this, a great part of this collection survived the two World Wars, the Republic of Councils, and the decades-long Communist era. Historical changes, however, have not left unaffected the legal status of these cultural goods possessing outstanding historical and artistic significance.

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[71] Constitutional Court of Hungary, Decision no. 10/2023 (20 June).

[72] Esterhazy Betriebe, *A fraknói kincsek restitúciója* [Restitution of the Fraknó Treasures], https://esterhazy.at/hu/r%C3%B3lunk/restit%C3%BAci%C3%B3 [accessed: 01.12.2024].

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