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Safeguarding public collections: A new approach to the recovery of cultural objects unlawfully removed from state ownership

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Abstract

In this study, we argue that uncovering losses from public collections and making efforts to recover them is of fundamental importance concerning the responsible management of state assets and the maintenance of the cultural public interest. In recent times, the perception of museums has been in a constant state of flux, with international expectations associated with them sometimes appearing to be contradictory. While much attention has been paid to the diligence of care, museums must exercise in areas such as acquisition, deaccessioning policies, repatriation, and decolonization, an equally important function – but one less discussed in the international literature – which is the duty of public collections to safeguard and manage state-owned assets. In 2023, the Hungarian National Museum implemented a new initiative aimed at recovering cultural property that had disappeared from public collections under unknown circumstances. This procedure has already generated numerous insights that the current study analyzes, ranging from the difficulty of shedding light on decades-long ownership chains to the challenges of acquisition and the effectiveness of dispute resolution. The Hungarian initiative represents an additional approach to the protection of cultural property, addressing a significant gap in the Hungarian heritage protection system that has received less attention.

Keywords: public collections; protection of national treasures; museum procedures; Hungarian cultural property law framework; recovery of state ownership

The changing role of museums: Ethical guardians or custodians of collections?

As Woodhead pointed out as early as 2015 while analyzing the role of UK museums, in today's world, museums seek to function as ethical guardians rather than merely the owners of their collections.¹ Much has been said about the diligence of care that museums must exercise,²

¹ Woodhead 2015, 229.

² For early diligence practices, see Hoover 1990, 41–50. Regarding American museums, see Pinkerton 1998. For discussions on the legal and ethical responsibilities of museums in acquisitions, see Kaye 2009. For challenges of the modern era, see Stamatoudi 2023. A comprehensive analysis of due diligence requirements: Fincham 2010. The development of self-regulation – best practices and guidelines – in the area is significant; see International Council of Museums 2019; Council of Australasian Museum Directors et al. 2014; Yeide, Akinsha, and Walsh 2001; “Provenienzforschung” of Kunst Historisches Museum (Wien), available at www.khm.at/de/erfahren/forschung/provenienzforschung/

considerations concerning the acquisition of objects,³ deaccessioning policies,⁴ and repatriation,⁵ and – quite rightly – the discourse is centered on decolonization.⁶ Another very important function that is less discussed in the international literature is the duty of public collections to safeguard and manage state-owned assets. This essential task is underpinned by high-level legal norms, that is, provisions found in international legal sources and constitutional provisions in domestic law.

The unresolved debate surrounding the identity and role of museums regarding public collections sometimes demands action from these institutions that is contradictory in nature. The latter are expected to be careful custodians, enhancers, and preservers of their collections while prioritizing considerations of historical justice.⁷ This dilemma rightly reminds us of the debate concerning the very nature of cultural property itself. Cultural property is part of heritage, which is owned as property.⁸ The definition of cultural property is associated with contention and two primary but opposing viewpoints: One argues that cultural property – or at least certain categories of it – should be treated in a special manner due to its intrinsic value,⁹ while the other suggests that cultural property should be treated by law in the same way as any other valuable movable asset.¹⁰ Regardless of how we perceive cultural property, the new Hungarian procedure developed by public collections, as presented in this study, protects cultural property “in all its meanings.” It safeguards property that can be bought and sold while also protecting elements of cultural heritage to ensure the public’s right to access and enjoy it.

This study addresses the obligation of public collections to recover cultural property that has been unlawfully removed from their possession. First, we outline the responsibilities of museums toward the public concerning the care and accessibility of their collections, examining the issue from both human rights and commercial law perspectives. Thereafter, the article explores the newly established Hungarian procedure aimed at mitigating losses from public collections. After presenting the legal context, the analysis examines the framework of the procedure developed at the Hungarian National Museum (HNM). The analysis addresses the doctrinal issues that have emerged during the procedures carried out thus far. These include an examination of the provenance of these cultural objects, questions surrounding the acquisition of ownership, and methods of dispute resolution. In addition to the theoretical exploration of dogmatic legal issues, the study highlights the practical lessons emerging during the initiative, illustrating them with examples and demonstrating how the process could be made even more effective.

³ On museum acquisition policies and their role in preventing the illicit trade of cultural objects, see Winter and Dietrich 2023; on the legal and ethical aspects of museum acquisitions, see Cuno 2001.

⁴ A comprehensive analysis of the nature of various deaccessioning practices is given in Gerstenblith 2003. On public interest in collection management and a framework for deaccessioning policy, see Fincham 2011a. On the challenges arising from the absence of legally enforceable deaccessioning standards, see Lyubomudrova 2021. For an overview of the traditional American approach, see Goldstein 1997.

⁵ Weiss 2007, 841–844, 865–874. Gill 2018, 284–288. Case law: Gill and Chippindale 2006, Gill and Chippindale 2007. Museums and state policies: Tsirogiannis 2016, Frigo 2023. Soft law instruments: Arts Council of England 2023; Ministry of Culture, France 2018.

⁶ Kamardeen and Beurden 2022. The following study addresses all the references related to museums listed previously: Gerstenblith 2006.

⁷ Gerstenblith’s study indicates that although at first glance the restitution and the due diligence requirements expected of museums may seem to contradict its fiduciary obligations, the two can be balanced by implementing appropriate policies. Gerstenblith 2003, 411. Graefe arrives at the same conclusion; see Graefe 2010. It should be noted, however, that the Hungarian legal framework provides different avenues than those discussed in the studies.

⁸ Fincham 2011b, 644.

⁹ Prott and O’Keefe 1992, 309–312, 319; Blake 2000, 83–85; Shyllon 2003, 520–521.

¹⁰ See, e.g., Posner 2007.

The Duty of Care for Public Collections

Many unresolved ownership issues are linked to the movement of works of art. They include challenges in private law and private international law related to claims concerning unlawfully taken cultural property¹¹ as well as the matter of orphan objects in museums.¹² One aspect of this “movement” remains less explored: whether the state has an obligation to address the situation of cultural property that has left public collections by unknown means. In the following, we argue that this obligation is legally justified.

The human rights law context

The obligations of museums regarding the care and accessibility of the artworks in their collections can be approached from multiple angles. On the one hand, the international legal framework is shaped by the obligations related to cultural rights established in international conventions. The active obligations of the state and public museums can be derived from these instruments.

The “cultural heritage right” (a term used interchangeably with “cultural right” in this text) refers to the entitlement of individuals, communities, nations, and the public to appreciate the intangible value of cultural heritage.¹³ Cultural heritage is closely tied to human dignity and identity. The ability to access and appreciate cultural heritage is a vital aspect of belonging to a community, being a citizen, and, more broadly, participating in society. The right to access and enjoy cultural heritage forms part of international human rights law,¹⁴ and ensuring this access is a fundamental function of public collections.

Cultural heritage has been conceptualized within the framework of human rights since the birth of the first international human rights conventions in the postwar period. Article 27(1) of the Universal Declaration of Human Rights (1948) states that everyone has the right to freely participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits. In 1966, with the creation of the International Covenant on Economic, Social and Cultural Rights, the states parties recognized with binding force the right of individuals to participate in cultural life.¹⁵ The term used in international documents is multifaceted: It encompasses various specific rights, such as the right to access, protect, or enjoy cultural heritage.¹⁶

As stated in General Comment No. 21 on Article 15 ICESCR, in order for the right to take part in cultural life to be ensured, positive action from the state party is required. It is the state’s obligation to ensure the preconditions for participation, to facilitate and promote

¹¹ Merryman, Urice, and Elsen 2007, 113–177; Symeonides 2014, Wantuch-Thole 2015, 117–159, 228–273; Reyhan 2001; Gerstenblith 2011, 403–404; Hawkins, Rothman, and Goldstein 1995; Szabados 2020.

¹² The category of orphan objects encompasses cultural property for which legal title is uncertain. The obligations of museum management concerning such objects are examined in Ulph 2017.

¹³ Guangyu 2023, 187.

¹⁴ As can be read in the 2011 Report of the UN Human Rights Council, “[c]onsidering access to and enjoyment of cultural heritage as a human right is a necessary and complementary approach to the preservation/safeguard of cultural heritage.” Shaheed 2011, 3.

¹⁵ 1966 International Covenant on Economic, Social and Cultural Rights, available at <https://www.ohchr.org/sites/default/files/cesr.pdf> Article 15 (1) a)

¹⁶ Therefore, the scope of this right is closely shaped by the specific context of each case in which an individual seeks legal protection for their interests. Bieczński 2019, 114.

cultural life, and to provide access to and the preservation of cultural goods.¹⁷ Since the document locates the obligation to ensure access to the enjoyment of cultural goods in museums and states,¹⁸ it is also justified to implement protective measures if the risk of access is threatened.^{19,20}

The limits of commercial interests

The tension between free markets and a state's obligation to safeguard its heritage by imposing trade restrictions has been acknowledged in international conventions.²¹ These conventions promote the free trade of cultural goods while also permitting exceptions for objects classified as national treasures.

The first international trade agreement to include an exception for cultural objects in relation to the free trade of goods was the General Agreement on Tariffs and Trade of 1947 (GATT), followed by the 1994 WTO Agreement.²² Paragraph (f) of Article XX of the latter also accommodates state regulations established for the protection of national treasures of artistic, historic, or archaeological significance. The Treaty on the Functioning of the European Union employs the same terminology in permitting national restrictions on the free trade of goods to safeguard important public interests – in this case, the protection of national treasures possessing artistic, historic, or archaeological value.²³

Treasures that are crucial to the identity of states appear in commercial law as a “core” element that resists commercial considerations. Safeguarding them is both a matter of public interest and a national duty. In this area, states enjoy relatively wide latitude: The definition of national treasures, the objects of protection, falls within their own jurisdiction. These objects are typically categorized based on their cultural significance and are subject to varying degrees of protective measures.²⁴ The method and extent of protection vary from

¹⁷ The right to take part in cultural life encompasses both the state's passive obligations and its duty to take positive action. See UN Economic and Social Council, Committee on Economic, Social and Cultural Rights, 21 December 2009, E/C.12/GC/21.6, available at <https://www.refworld.org/legal/general/cescr/2009/en/83710.1>.

¹⁸ UN Economic and Social Council, Committee on Economic, Social and Cultural Rights, 21 December 2009 E/C.12/GC/21, available at <https://www.refworld.org/legal/general/cescr/2009/en/83710.16>. (a), (c).

¹⁹ Same argument: Kuzelewska and Tomaszuk 2022.

²⁰ Additionally, it is important to note the interdependent nature of cultural rights. As Hausler emphasised in a lecture, these rights are often referred to as the Cinderella of human rights, because their enforcement is frequently tied to other human rights. Kristin Hausler, “Cultural Heritage as a Global Concept,” British Institute of International and Comparative Law short course: International Cultural Heritage Law, 23 September 2024. A good example of this is that although the right to culture is not explicitly stated in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the European Court of Human Rights (ECtHR) has developed a significant body of case law in this area. Cultural rights have most often been discussed in the forum in connection with the right to property. See more at Jakubowski 2016, Michl 2018.

²¹ Vigneron 2014, 118.

²² Hungary's role in international trade is fundamentally shaped by its membership in the European Union. Consequently, the most important international laws originate from the EU. However, it is essential to acknowledge that the country has been a part of the General Agreement on Tariffs and Trade for over 50 years. For Hungary, when operating as part of the socialist bloc, this was a significant step that greatly influenced the country's trade policy.

²³ Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AAOJ.C_2012.326.01.0001.01.ENG, Article 36.

²⁴ Proposal for a Directive of the European Parliament and of the Council on the return of cultural objects unlawfully removed from the territory of a Member State (Recast), Brussels, 30.5.2013 COM(2013) 311 final 2013/0162 (COD), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2013:0311:FIN.1>.

state to state.²⁵ Broadly speaking, certain categories of cultural property are universally afforded a distinct legal status.²⁶

In general, the protection of cultural assets is not only an option for the state but also a responsibility outlined in internal constitutional-level regulations. Notable works of visual art or archaeological artefacts of a specific age, held in museums, are usually under protection.²⁷ Therefore, public collections that manage national treasures play an essential role in fulfilling this so-called responsibility, not solely through heritage protection regulations but also by invoking private law – and, where applicable, criminal law – frameworks.

A recent Hungarian solution for the protection of public collections: legal framework

The largest and most significant museums in Hungary are state institutions tightly bound by legal frameworks in both their financing and operations. This legal approach differs significantly from that of countries with a common law system. However, the underlying logic behind museum regulation is similar in that museums are state-supported institutions with important responsibilities – and thus accountability – toward the public.²⁸

The Hungarian regulatory framework is heavily influenced by the legal environment of the European Union. Although the EU's founding treaties require that all activities related to culture, including cultural policy and the protection of cultural heritage, align with the values they set forth, the union has never been assigned direct competences in the field of culture.²⁹ Culture is classified under the union's "supporting competencies," where its actions are restricted to supporting, coordinating, or complementing the cultural legislation of its members.³⁰ National regulations of the member states play a prominent role in the field of cultural administration.

The state's explicit obligation to protect cultural assets is enshrined in the Fundamental Law of Hungary.³¹ Article P (1) states that "[n]atural resources, in particular ... cultural artefacts, shall form the common heritage of the nation[.]; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations."³² It is important to note that, in addition to the shared responsibility for protection between the state and others, the Hungarian Constitutional Court's (CC) practice indicates that the state bears primary responsibility for the realization of this requirement. The CC's 2019 decision asserts that the state is expected to clearly define all legal obligations that both the state and private parties must adhere to ensure the effective protection of the values specified in Article P (1).³³

²⁵ Weller identified the lack of harmonization in the definition of cultural property as one of the main reasons for the insufficiently effective legal framework of the European Union concerning the protection of cultural goods. See Weller 2018.

²⁶ Such is the category of cultural property most essential to the identity of states, which is based on their self-definition. This regime is also reaffirmed in the European Court of Human Rights' recent ruling in *Getty v. Italy*. See *The J Paul Getty Trust and Others v Italy*, no. 35271/19, ECHR 2024-V.

²⁷ In the context of the European Union, for example, of which Hungary is a member state, the Treaty on the Functioning of the European Union provides for this possibility, and the member states duly exercise this right. See Graziadei and Pasa 2019, 94.

²⁸ See Ulph 2015, 181.

²⁹ Hausler 2019, 368.

³⁰ See Cassan 2021, 1274.

³¹ The Fundamental Law of Hungary of 2011.

³² It should be noted that the referenced paragraph of the Fundamental Law introduced a significant change in the Hungarian legal system in 2011 regarding the constitutional foundations of the regulatory framework for cultural property. From this point onward, the protection, preservation, and safeguarding of cultural values for future generations became a shared obligation of citizens, civil society, and the state, enshrined at the level of fundamental rights. The Fundamental Law thus broadened the scope of duty-bearers.

³³ Decision no. 3071/2019 (IV.10.) of the CC

The Fundamental Law also guarantees the right to education for every Hungarian citizen. This right also obliges the state to take proactive measures: to fulfil its constitutional responsibilities, it is essential to establish a modern legislative framework and legal institutions, as well as to create and maintain an organizational system that enables it to carry out its duties.

At the lower levels of the legal hierarchy, regulations concerning cultural property are found across multiple legislative instruments. At the statutory level, the following key regulations should be highlighted: those defining the ownership structure of public collections, those outlining the general framework of public law provisions on cultural heritage, and those establishing the state's obligations concerning public collections.

Regarding ownership relations, the assets of public collections are governed by the National Asset Act.³⁴ According to Section 1(g) of this act, cultural assets recorded in the inventory of public collections maintained by state or local government are mostly considered state property.³⁵ The manner and organization of exercising ownership rights over state assets are regulated by the State Property Act.³⁶ Under this law, ownership rights over entrusted state assets are exercised by the Hungarian National Asset Management Inc. (HNAM), operating as an exclusively state-owned company. Public collections hold the cultural assets entrusted to them and are accountable for them based on individual asset management contracts concluded with the designated state asset management authority (which is currently represented by the HNAM).

The scope of protected cultural property – which corresponds to the concept of national treasures under EU regulations – is determined by the Cultural Heritage Act (CHA) in national legislation.³⁷ Items held in the core inventories of museum institutions, as well as those preserved in public collections and registered in their records, are protected under CHA.³⁸ These objects are subject to special regulations, even from a civil law perspective.

According to the CHA, a public collection is a library, archive, museum, or image or sound archive operated or established by the state, local government, national minority government, public body, or public foundation.³⁹ The specific regulatory framework for public collections is established by separate sectoral legal sources. The Cultural Act⁴⁰ emphasizes that “the key custodians of the objectives related to the protection of cultural goods are museums.”⁴¹ Among other responsibilities, museums are tasked with ensuring access to cultural property and extending basic cultural services, which include preserving, caring for, and exhibiting the collection of these goods.⁴² Additionally, museums have an explicit obligation to protect the holdings of cultural goods within the scope of their collection. Cultural property listed in the inventory of a museum is subject to limited circulation; its deaccessioning or alienation require the permission of the minister responsible for culture.⁴³

The state's obligations concerning public collections arise not only from the Cultural Act but also from the provisions of Act LXVI of 1995 on Public Records, Public Archives, and the

³⁴ Act CXCVI of 2011 on National Assets

³⁵ The inventory items of state-maintained public collections constitute state property, whereas the situation is less clear in the case of public collections maintained by local governments. Some of these manage collections that include state-owned assets, while others oversee collections consisting solely of local government property.

³⁶ Act CVI of 2007 on State Assets.

³⁷ Act LXIV of 2001 on the Protection of Cultural Heritage, Chapter 3.

³⁸ CHA Section 46.

³⁹ CHA Section 4(2).

⁴⁰ Act CXL of 1997 on Museums, Public Library Services, and Community Education.

⁴¹ Cultural Act Section 37/A(1).

⁴² Cultural Act Section 37/A(4) a).

⁴³ Cultural Act Section 38.

Protection of Private Archival Material. Under the provisions of this act, an inalienability restriction applies to public records and archival materials held in public archives that do not qualify as public records.⁴⁴

At the lowest level of the legal hierarchy, at the regulatory level, the obligation to maintain records of public collection objects is established. These regulations require a comprehensive, certified, and detailed inventory that ensures proper identification. The explicit purpose of the registry is defined as the protection of the property and ownership rights of the preserved items.⁴⁵ The legal framework governing museums, libraries, and archives treats the accession of items into public collections as a one-way process. Removal from collections is permitted only in exceptional cases – such as exchange or deaccessioning – subject to prior approval from the maintaining authority and the competent sectoral minister and must be properly documented.

An initiative for identifying and recovering losses from public collections

In the spring of 2023, a groundbreaking and unique initiative was launched within the Hungarian public collections, under the auspices of the HNM, with the aim of identifying and recovering losses from public collections.

Before this paper introduces the new operational framework, two key preliminary considerations will be set out. The initiative is not yet operating in an institutionalized form. The development of its methodology and structure is linked to Péter Buzinkay, who for decades led the state authority responsible for the supervision of cultural goods. This state body was responsible for procedures related to the protection of cultural objects, for the issuance of export licences for such items, and for restitution and cooperating with criminal investigations. It should also be noted that, on a case-by-case basis, various state authorities, including the cultural heritage authority and other governmental bodies (such as the Ministry of Foreign Affairs and the Hungarian National Asset Protection Agency), have contributed to the successful resolution of certain cases involving the recovery of cultural property that had disappeared from public collections or state ownership in the past. However, these efforts have not resulted in an institutionalized, organized, and legally regulated central mechanism under which the state can act as the injured owner.

Turning to the procedure, in the first phase the focus is on identifying losses of cultural objects incurred by the state. The loss of an object refers to an inventory shortage resulting from unlawful appropriation, war, or other wrongful act.⁴⁶ This encompasses all items in public collections affected by unlawful acts, even in cases in which the law enforcement authorities are unaware of a criminal offence and no criminal proceedings have been initiated. This is because unlawfulness is established by the unauthorized and permanent alteration of the designated storage location of a public collection item in bad faith, irrespective of whether there are formal legal proceedings that aim to establish the unlawful change of possession.

⁴⁴ Section 5(1) of the Act.

⁴⁵ See, e.g., Decree No. 20/2002 (X. 4.) of the Ministry of National Cultural Heritage on the Registration Regulations of Museum Institutions, Section 2.

⁴⁶ It is important to clarify that this category includes cultural objects affected by unlawful acts even if the law enforcement agencies are unaware of a reported crime and no proceedings have been initiated. According to the Hungarian legal framework, unlawfulness is established just by a permanent change to the storage location of a cultural object without the appropriate procedures or authorization, if that change is intended to be final. As previously noted, the state property embodied in a cultural object is generally inalienable, and the object cannot be removed from the management of a public collection. In this regard, the regulations governing public collections have been consistent since the 1950s.

If a collection item is stolen from a public collection, a formal police report must follow. However, decades of experience in the management of public collections indicate that law enforcement agencies, when relying solely on standard investigative methods, are not sufficiently effective in addressing cases of art theft. This is evidenced by the fact that stolen collection items are rarely recovered. This is hardly surprising, as the primary mandate of these authorities is not the recovery of lost items but rather the investigation of crimes, the prosecution of perpetrators, and the prevention of further offences. Consequently, in more than 90 percent of cases that follow the recovery process within the museum framework outlined here, the primary objective is reclaiming ownership and the associated right of possession.

For practical reasons, the process only addresses losses occurring after 1945. The research to be conducted is primarily limited to losses from the past 70 or 80 years, because it was during this period that the foundational conditions for the management of public collections began to take shape and function systematically. From 1945 onward, public collections became purely state property, and the institutional framework for today's public collections was established. It was also at this time that comprehensive inventory records meeting the standards associated with contemporary professional (and property law) expectations were initiated. Collectively, these factors have resulted in the ability to substantiate, with documentation, any instances of theft from the 1950s onward (and to identify the affected collection items), thereby legitimating the operational efforts aimed at the reclamation of lost cultural objects.

Based on wide-ranging research conducted in the archival materials and related data sources of the HNM, over 100 incidents of theft and disappearance from the collections of the HNM occurred during the period of examination.⁴⁷ More than 7,000 collection items went missing during these incidents. The recovery rate for these losses is below 10 percent.⁴⁸ This represents a painful loss of cultural heritage, but it also signifies that there has been a considerable depreciation in the value of state property. We are also aware of other data compilations that do not rely on targeted and comprehensive data and archival research but are instead primarily based on reports submitted to the cultural heritage authority for the database of stolen and missing artefacts, as well as research conducted in press archives and academic literature. Based on this information, there are records of approximately 300 additional thefts and disappearances of objects from Hungarian public collections, primarily over the past 20 to 30 years, resulting in the loss of at least 6,000 more artefacts from the Hungarian state's cultural heritage assets. Considering the history and records of domestic public collections, the total loss can be estimated at tens of thousands of collection items.⁴⁹ Despite the extent of the losses, no general state action had previously been taken. The restoration of losses by public collections thus emerges as a legitimate objective.

Regarding the procedure, the first step in reclaiming property is to identify it. The state and public collections can obviously only reclaim their own objects – that is, state-owned items that have been unlawfully removed. The research in question must involve establishing data regarding the origin of the state's ownership, evidence confirming the object's existence, and evidence concerning the unlawful circumstances of its disappearance. This matter will be examined in greater depth in the following sections.⁵⁰ From this perspective, it is essential to emphasise the necessity of collaboration between scientific fields: Alongside

⁴⁷ Buzinkay, 251–253.

⁴⁸ Buzinkay, 253.

⁴⁹ This phenomenon is by no means unique to Hungary; recent high-profile cases, such as the 2023 incident at the British Museum or the museum theft in the Netherlands in January 2025, serve as striking examples. As these cases demonstrate, such occurrences may involve both external perpetrators and individuals within the institution.

⁵⁰ See Section V.

legal expertise, historical and art historical knowledge is required for the interpretation of documents and is also necessary for the proper conduct of exhaustive research. Thus, the first important lesson is the need for interdisciplinarity.

If the missing cultural property has been located and its unlawful removal from the public collection can be proved, the procedure for reclaiming it will be initiated. However, as legal practice in this area is not yet well-established, this complex issue can currently be addressed in various ways. The means of recovery available to the museum ranges from negotiated settlement to the application of various civil law instruments, such as instigating the protection of possession or a lawsuit for the establishment of ownership rights. Criminal law measures may also be considered, such as seizure or requests for the return of seized objects. Additionally, administrative law may be used, as the CHA allows for procedures aimed at returning missing cultural property.⁵¹ The key lesson from the cases that have been resolved so far is that the mere existence of a reclaiming procedure and the initiation of negotiations serve as powerful instruments in achieving the return of cultural assets.

Focal points of the procedure

In the following, we will use the lessons learned from the cases resolved so far to highlight some doctrinal problems, while also illustrating those problems with real examples. Some of these issues arise from the historical characteristics of Central and Eastern Europe, while others are related to the status of cultural assets as a form of special moveable property. By incorporating real-life examples, we aim to provide insights into the evolving structure of reclamation procedures and their effectiveness to date.

Challenges with tracing provenance

Uncovering the provenance of cultural property is always a challenging task. It is a well-known fact that the more time that has passed since the disappearance of an object, the more difficult it becomes to trace its provenance. The procedure established by the HNM occasionally extends as far back as the aftermath of World War II. After the war, many Central and Eastern European countries, including Hungary, became part of the Soviet bloc. The successive occupations of the country, followed by the introduction of the communist legal system, naturally had an impact on ownership rights related to cultural property.⁵² A large proportion of privately owned cultural goods were nationalized. Many of these assets ended up in state museums on a legal basis that was often unclear. Some of the objects became part of public collections, while others were deposited in these institutions, sometimes on behalf of their owners.

After the fall of the Iron Curtain in 1989, the post-Soviet bloc states faced the challenge of returning unlawfully seized assets, and this included determining the ownership status of cultural property. The issue of restitution was tackled by the Restitution Act in 1991,⁵³ which sought to resolve property claims. Rather than compensation based on civil law, the legislation established compensation as a political decision, reflecting the state's political responsibility. As a result, the process did not consist of full property restitution but focused

⁵¹ CHA Section 53/A.–53/B.

⁵² In connection with World War II, the following study examines the property reallocation caused by both Nazi looting and Russian aggression: Bandle and Contel 2014.

⁵³ Act XXV of 1991 on partial compensation, in the interest of settling ownership, for damages unlawfully caused by the state.

on offering partial redress for unjustly inflicted damage.⁵⁴ The legal status of assets that had been transferred to state ownership under the guise of nationalization also remained unchanged.⁵⁵ On the one hand, this means that, under Hungarian law, original owners, except the state, have no legal grounds to reclaim ownership of cultural property affected by nationalization. Therefore, if it can be established that an artwork was affected by nationalization, it is considered state property under the current Hungarian legal framework.⁵⁶ On the other hand, the state retains the right to reclaim items that were unlawfully removed from public collections, reversing the situation with the same principle in mind.

When it comes to uncovering the chain of ownership, a full investigation of the historical facts requires expertise not only in general history but also in cultural, institutional, legal, and legal-historical fields. The identification and extraction of legally relevant facts in matters concerning cultural property, for which the factual background may span several centuries, requires the ongoing collaboration of specialists from various disciplines. Experience shows that contemporary records and inscriptions often contain conflicting information regarding the acquisition of objects by collections. Consequently, investigating the history of an object is a particularly crucial aspect of the procedure.

This is exemplified by the successful return case, concluded in June 2024, that involved an antique medical book. The artefact resurfaced at a Budapest auction in December 2022. While browsing the auction catalogue, the librarian of the HNM Semmelweis Museum of Medical History noticed that the title page of the volume still bore the museum's stamps and inscriptions. She cross-referenced these marks with the museum's internal records, confirmed that the volume belonged to the collection, and subsequently reported the matter to the cultural authority responsible for the protection of cultural goods not held in public collections.

The authority initiated a protection procedure and simultaneously forwarded the museum's report to the auction house. As a result, the book was withdrawn from the auction. During the official proceedings, the museum was given the opportunity to contact the individual who had consigned the book for sale (the possessor). He stated that he had purchased the volume 30 years earlier and considered it his own property. At the same time, he indicated his willingness to sell it to the museum at its auction price. At this point, the case reached an impasse as conventional approaches proved ineffective. Consequently, this became one of the first cases handled under the HNM's initiative.

The first step of the procedure was to establish the facts and trace the chain of ownership. The history of the volume extends several centuries into the past. Following its publication in Amsterdam in the seventeenth century, it came into the possession of a Viennese physician at around the end of the eighteenth century. In 1840, he offered his personal

⁵⁴ As the CC stated in its Decision no. 15/1993 (III. 12.), "[t]he Constitution does not imply a requirement that the state must return property expropriated under previous regimes, which, judged by the standards of the new constitutional democracy, was seized in violation of the Constitution, to the original owners. Similarly, the Constitution does not demand that the state provide full compensation or restitution for such grievances. Finally, the Constitution does not impose an obligation on the state to retroactively amend or grant exceptions to the general rules of civil law, administrative law, or procedural law in order to ensure that former owners regain their property or receive full compensation." Although the issue was legally considered closed, the Fundamental Law of 2011 definitively settled the matter in response to the political debate that was periodically rekindled. Article U (9) of the Fundamental Law states: "No law may establish new legal grounds for compensation providing financial or any other pecuniary payment to individuals who were unlawfully deprived of their lives or freedom for political reasons and who suffered undue property damage by the State ... before 2 May 1990."

⁵⁵ For details, see Vadász and Verebélyi 2024.

⁵⁶ The prominent and ongoing Esterházy case revolves around this issue. According to Hungarian law, the assets of the Esterházy Trust were automatically transferred to state ownership on 2 April 1949 as a result of nationalization. Supreme Court (Hungary), Decision no. Pfv.II.20.909/2021/9.

library, comprising approximately 3,500 volumes, as a donation to the newly established Royal Hungarian Medical Society of Budapest. This donation formed the foundation and core collection of the society's library, which operated as an independent association until 1946, when it was dissolved by the Ministry of Internal Affairs. In 1952, the society's collection was placed under the administration of the National Medical History Library by a decision of the sectoral governing body, the Ministry of Health. It was at this time that the volume in question was formally incorporated into the holdings of the newly established Medical History Library. In 1969, an overall inventory review was conducted at the library, during which the disappearance of the book was recorded. In accordance with the prevailing practice at the time, the library initiated a request to its supervising authority for the removal of the missing item from the inventory records.

From 1952 to the present day, the library has operated as a publicly accessible specialist library. Through legal succession and name changes, it is now known as the HNM Semmelweis Museum of Medical History. A certain physician, who was also a private collector and a regular contributor to medical history studies, had been a registered reader of the library since 1985. In the early 1990s, he acquired the book from a professional Hungarian antiquarian bookseller for his private collection and later sought to sell it at the 2022 auction.

In this case, no records or evidence indicated that a police report had been filed following the book's disappearance. However, based on the available data and the library sector regulations in force at the time, the possibility that the volume was lawfully removed from the library can be definitively ruled out. Tracing the chain of ownership in this case required an interdisciplinary approach. The inscriptions and stamp imprints on the title page of the volume provided crucial evidence for drawing conclusions regarding its ownership history. In addition to legal expertise, historical knowledge was essential for a thorough analysis of the ownership rights.

The acquisition of ownership

The fundamental situation examined in the procedure is how the cultural object missing from the public collection has been acquired by its current possessor. This raises the question of whether the possessor may have legally obtained ownership of the object.

The acquisition of the ownership of cultural property that has been illegally taken is addressed in different ways in common law and civil law systems. While both legal traditions apply the *nemo plus iuris* principle, except as regards a good faith purchaser, they diverge in their treatment of property obtained through criminal acts.⁵⁷ Under the substantive rules of common law systems, with rigorous exceptions, ownership is not transferred in such cases. In contrast, countries with civil law systems generally allow for the acquisition of ownership, provided certain conditions are met.⁵⁸ A fundamental premise of these systems is that a good faith purchaser may obtain legal title, thereby causing the original owner to lose their rights to the object.

The Hungarian civil law framework, in a way that is characteristic of continental legal systems, permits the good faith acquisition of ownership even from a non-owner. The issue is regulated by Sections 5:39 and 5:40 of the Civil Code.⁵⁹ Following the general rule on the

⁵⁷ Such inconsistencies have been exploited by fraudsters and criminals engaged in "artwork laundering." The recognition of this issue led to the creation of harmonized regulations regarding the position of the good faith purchaser in the 1995 UNIDROIT Convention. Graziadei and Pasa 2019, 81.

⁵⁸ Wantuch-Thole 2015, 230.

⁵⁹ Act V of 2013 on the Civil Code.

acquisition of ownership from the original owner,⁶⁰ the exceptions concerning acquisition from non-owners are outlined. The Hungarian legal framework encompasses two such scenarios: first, the acquisition of moveable property by a good faith purchaser in the course of commercial transactions and in exchange for consideration; and, second, an exception regarding the transfer of money and securities by a non-owner. The exception for good faith purchasers is articulated as follows: “A person who acquires a moveable thing in a commercial transaction in good faith and for consideration shall acquire ownership by transfer, even if the transferor was not the owner.”⁶¹

In the reclamation procedure conducted by the public collection, it is essential in every case to examine the circumstances surrounding the acquisition in order to determine whether this exception, which aims to ensure the security of transactions, is applicable. The fulfilment of three conjunctive conditions set forth in the Civil Code must be examined: (1) whether the acquisition occurred in the course of a commercial transaction, (2) whether the acquisition was by transfer, and (3) whether the acquisition was carried out in good faith. Since all three conditions must be satisfied simultaneously, a negative result for any one of them excludes the application of the rule.

In Hungarian civil law, the standard for determining an acquirer’s good faith is an objective, flexible criterion. As a starting point, it can be stated that “a purchaser is considered to be acting in good faith if they were unaware, and had no reason to be aware, of the fact that the transferring trader was not the owner and did not possess the authority to exercise rights over the sold item in their own name”.⁶² The legal practitioner must evaluate the acquirer’s conduct in each specific case.

The Civil Code does not afford particular attention to the potentially stolen or illegally taken status of moveable property; rather, this issue is handled in the same manner as other subcategories of transfers made by non-owners. The presence of a criminal act in the factual scenario is relevant to another mode of acquisition: the rules governing acquisitive prescription. Section 5:44(1) of the Civil Code, regarding the conditions and legal consequences of acquisitive prescription, states that a person who has possessed a thing as their own without interruption for ten years (in the case of moveable property) shall acquire ownership of it by way of acquisitive prescription. However, a person who has acquired possession of a thing through a criminal offence or by other violent or deceitful means shall not acquire ownership.⁶³ The civil law provisions referenced herein were formulated in a similar way in Hungary’s first codified Civil Code, Act IV of 1959. Consequently, they may appropriately be applied to the factual scenarios under consideration regarding losses from public collections, which span several decades.

In addition to the general rules of civil law, there is a particularly important aspect of ownership acquisition that applies specifically to public collections.

The significance of public collection inventories and records is indisputable, and accordingly, their regulation is a well-defined and detailed part of Hungarian law, as previously discussed. Just as it is crucial to ensure the traceability and identification of objects within a collection, it is equally important to facilitate the searchability and identification of lost public collection items.⁶⁴ However, Hungarian practice in this regard remains underdeveloped. At

⁶⁰ “Ownership can be acquired by way of transfer only from the owner of the thing.” Civil Code Section 5:39(1).

⁶¹ Civil Code Section 5:39(2).

⁶² Vékás 2013, 392.

⁶³ Civil Code Section 5:47(1).

⁶⁴ A publicly authenticated registry for cultural property is currently available only for protected and provisionally protected (under protection proceedings) objects. Moreover, the authority has the legal right to restrict access to certain data within the registry in accordance with applicable regulations (CHA Section 72(1)). A database of stolen cultural objects also exists, serving as a public law-based intermediary platform that records information on stolen cultural goods reported by individuals and subsequently verified by the police.

present, only a case registry exists. A dedicated and publicly authenticated database of artefacts stolen from museums would also be necessary to facilitate the identification and removal of such objects from the art market.⁶⁵

From the perspective of establishing and proving ownership rights, the importance of database development is evident.⁶⁶ The success of the HNM initiative thus depends to a large extent on the willingness of legislators to support the creation of a publicly accessible, searchable, and authenticated State Database of Cultural Object Losses.

An effective approach to dispute resolution

The final step in the procedure is the pursuit of claims. In this context, the museum is not constrained to a particular method of enforcing its claim, thereby granting it the discretion to determine the most appropriate means of asserting its justified claim for the restitution of the cultural object in question. As Strother puts it, “cultural property disputes demonstrate that legal rules impact bargaining less in the potential for their enforcement, and more in how they shape the discourse of the dispute resolution process.”⁶⁷ Experience with successfully resolved cases is aligned with perspectives in the legal literature and various legal sources that emphasize the option of alternative forms of dispute resolution.⁶⁸

In this instance, we are dealing with a delicate issue where reaching a compromise is challenging. It is imperative to select a method of dispute resolution that is both cost-effective and time-efficient. It has previously been stated, regarding international legal disputes concerning cultural goods, that alternative means of dispute resolution offer the requisite flexibility and creativity for resolving disputes related to cultural heritage.⁶⁹ Among these alternative means, direct negotiation is the primary mechanism in legal disputes involving cultural property.⁷⁰ Negotiation tends to be most successful when one party possesses incontrovertible evidence that would assist their case should the proceedings escalate to litigation. In the case discussed previously, the public collection held such evidence. Therefore, in this context, it was in the interest of both parties to resolve the dispute swiftly.

⁶⁵ This database would also serve as a cornerstone for the effective operation of procedures under Article 7(b)(i) of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and Article 8 of Directive 2014/60/EU of the European Parliament and of the Council on the return of cultural objects unlawfully removed from the territory of a Member State.

⁶⁶ With regard to stolen artworks, their records are currently maintained – albeit partially – within two state registries, exclusively for heritage protection and criminal investigation purposes. These registries are not comprehensive and are not specifically designed to facilitate the recovery of lost state-owned or public collection assets.

⁶⁷ Strother 2012, 335.

⁶⁸ See, e.g., Chechi 2014; Campfens 2015; and Special Issue of IJCP: Alternative Dispute Resolution in Cultural Property Disputes: Merging Theory and Practice, 2016. The Washington Conference Principles on Nazi-Confiscated Art, which assert the moral obligation to restore artworks looted by the Nazis, specifically call upon states to develop suitable alternative dispute resolution mechanisms to address the ownership issues surrounding confiscated cultural property (paragraph 11). This is connected to the closing document of the Terezin Conference, held under the auspices of the European Union, which addressed issues related to Holocaust-era assets: the Terezin Declaration, signed by 46 states, including Hungary, in 2009. Regarding artworks confiscated by the Nazis, the Declaration references the Washington Declaration, reaffirms its contents, and urges states to facilitate alternative dispute resolution where appropriate under the law. Furthermore, the European Council’s Resolution 1205 of 1999 concerning cultural goods plundered from Jews draws the attention of European Jewish communities and intergovernmental organizations to the utilization and development of out-of-court forms of dispute resolution.

⁶⁹ Chechi 2014, 307.

⁷⁰ Stamatoudi 2016, 439.

The first step in the HNM's procedure involved conducting extensive archival and literature research across various relevant databases and institutions, including the HNM Semmelweis Museum of Medical History, the Budapest City Archives, and the National Archives of Hungary. Based on the data collected and the subsequent analysis, a detailed legal opinion was prepared.⁷¹ This opinion provided a comprehensive analysis of the key events and the resulting legal situation. It further outlined, as a decision-making proposal, the available avenues for reclaiming the book, presenting their respective advantages and drawbacks. In the next step, this opinion was formally delivered to the book's possessor, together with an official institutional notice and a deadline for return. As a result, the possessor reconsidered his previous position and ultimately decided to return the book unconditionally and free of charge to its rightful owner, the HNM Semmelweis Museum of Medical History.

The role of the communications by a museum regarding cultural property that has been removed from its collection and then discovered can be regarded as important. Generally, an initial, detailed statement sent as a request has proved to be sufficient for the restoration of the possession of the missing item.

Conclusions

Since museums are repositories of the tangible remains of the past, and present centers for education and scientific advancement,⁷² the establishment of a procedure within the Hungarian legal system concerning the unlawful removal of cultural property from public collections is of paramount importance. The issues presented here are not novel; in fact, they are aligned with other legal efforts aimed at the protection of cultural property. However, the current study addresses an aspect of the latter that is less commonly discussed: How should the fate of items missing or stolen from public collections be managed?

Museums have an obligation to protect and preserve the assets entrusted to their care. In the past two years, the HNM has initiated the establishment of a procedure that fulfils this obligation in a proactive manner.

Several lessons have already crystallized during the course of operations. While the unlawful removal from state ownership and the sale of a cultural asset are relatively easy – given that these goods are “mobile,”⁷³ small in size, and difficult to recognize (or at least their identification requires expertise) – their recovery is a significant challenge. Creating an effective method for the latter necessitates the coordinated, collaborative efforts of multiple stakeholders. Interdisciplinarity is key: the combined expertise of historians, legal scholars, and art historians must be harnessed.

The Hungarian National Museum is the most prominent museum in Hungary, with a history spanning more than 220 years. This historically significant institution has a major influence on Hungary's cultural identity and the shaping of its cultural policy. The new initiative aimed at recovering cultural property that had disappeared or been unlawfully

⁷¹ In brief, the ownership of the book was transferred to the Hungarian State in 1946 upon the dissolution of the Society's library. It subsequently became part of the collection of the state library in 1952 but was unlawfully removed from the library's possession prior to 1969. Around 1993, the book was purchased by the collector from an antiquarian bookshop in Budapest; however, from the circumstances of the acquisition, the possibility that the buyer acquired legal ownership of the book can be excluded.

⁷² Gerstenblith 2006, 442.

⁷³ As Vrdoljak articulates, this mobility is what distinguishes cultural property from other forms of cultural heritage, making it susceptible to possession, transfer, removal, theft, and restitution. Vrdoljak 2024, 3.

removed from public collections under unknown circumstances was begun by the institution in 2023.

It is noteworthy that, concerning the HNM, data from a year of research on documents and records indicates that thousands of cultural objects have been unlawfully removed from collections in the past eight decades. However, it must also be noted that, since no public register is currently available, the precise extent of such losses remains unknown. A publicly authenticated registry, along with open access to its data, would create opportunities for the identification, tracking, and potential recovery of a broad range of lost objects, whether they have surfaced in the art trade, in private collections, or even in other public collections.

It is important to highlight that no authority has yet addressed the issue of uncovering these losses,⁷⁴ which is unfortunate, as the situation may effectively become permanent over time. Accessing evidence will become increasingly difficult, and the possibility of reclaiming goods unlawfully removed from public collections through the application of the exceptions provided by civil law is fading. Until the losses of public collections are made known, art dealers and buyers have no opportunity to identify the relevant objects in a comprehensive database before they acquire them. As a result, due diligence and care cannot be reasonably expected, and good faith remains largely unrestricted – in practice granting all auctions and retail buyers the presumption of good faith by default.

The data uncovered and the procedures conducted have clearly demonstrated that records of losses suffered by Hungarian public collections, along with supporting documentary evidence, can be systematically collected and organized into a searchable database. Such a database would enable the identification and filtering of lost objects from the art market and facilitate their successful reclamation upon discovery.

Beyond these immediate benefits, insights gained from past thefts and disappearances can also be reintegrated into daily institutional practices. On the one hand, this knowledge can enhance asset protection and loss prevention measures. On the other, recognizing that no security system can ever provide absolute protection, it allows for the development of improved strategies for managing future cases more effectively.

Experience also shows that if a well-developed argument can establish state ownership of a particular piece of property, it is possible to achieve its restitution through an agreement with the possessor. The initiative underway at the HNM has not yet been formalized within an institutional framework. However, for the procedure to be effective in both newly emerging and long-standing cases, establishing an institutionalized, organized, and legally regulated central framework for accomplishing the task is essential.

The Hungarian initiative represents yet another approach to protecting cultural property. Through the continued refinement of its methodologies, we hope it will serve the public interest over time.

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⁷⁴ No procedural framework has been established for the identification and recovery of these objects within law enforcement, by the authorities for the protection of state property, or in the field of cultural administration.

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