3 Lessons of *Sevso* Case

Restitution Challenges of the Illegally Exported Cultural Property

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The Sevso Treasure,[1] which is now the second largest[2] listed former late antiquity collection, is not only unique in terms of archaeological discovery. The modern history of the Silver is a good example of the global art market's anomalies, as well as the problems caused by different legal solutions of every nation regulating the area of cultural goods.

This article is dedicated to present the *Sevso* case, giving the Reader an overview until the 4th century find of the Treasure to its contemporary lessons. The first section (3.1) is to present a treasure trove, detailing its characteristics, value and archaeological significance. In the second part (3.2), I try to uncover the story of the Treasure, focusing on the details of the 1993 New York City trial. This section will explain the possible origin of the Treasure, itemizing the – at least in the view of Hungary – convincing evidences which Hungarian party wanted to present at the hearing, the trial's process and its outcome. I present the Hungarian party's further efforts made to obtain the treasure, as well as the present status of the coveted recovery. After the description of the case, the third part (3.3) is to demonstrate the different interests influencing the fate of cultural property, and the regulatory and conservation efforts which was created along these interests. This section deals with one of the central issue in the litigation related to cultural goods, the position of the bona fide purchaser. The fourth and final part (3.4) shows the possible ultimate outcome of the *Sevso* case – hoped by Hungary – and the regulatory challenges in the areas of previously presented in the field of restitution of cultural property.

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1 The treasure in the world of science means a collective of precious metal objects, which were hidden in the ground, watercourse, or in a natural, or man-made hole, if the finder is different from the hiding person. After the hide the chain of ownership breaks. Nagy Mihály, Lelőhely nélküli lelet? – Meddig ül még átok a Seuso-kincsen? 1. rész (Nagy$_1$) www.magyarszemle.hu/cikk/lelohely_nelkuli_lelet_meddig_ul_meg_atok_a_seuso_kincsen_1_resz (visited: 26 April 2016).

2 The largest listed find from the Roman Empire's late period is the Hoxne Treasure, which was discovered by amateur treasure hunters with metal detectors in 1992 in a little English village 170 kilometers from London. Its value, measured in gold, is higher than the Sevso Treasure's, but the composition of the find is wholly different. It mostly includes coins contrary to Sevso Treasure, which can be listed as the greatest silver find of the Roman Emperors' age. *See*: M. Guggisberg, The Hoxne treasure, *Journal of Roman Archaeology*, Vol. 25, 2012, pp. 804-808.

3.1 Objects of the Sevso Treasure

As we know it today,[3] the assemblage originally used to function as a dining and bathing kit, and includes fourteen silver objects and one copper cauldron, which was used as a hiding place for the silver set.[4] The objects were first publicized in the Sotheby's auction house's 1990 catalog.[5] The various pieces of the treasure were probably not made in the same workshop, but were used as a kit, and were hidden together later.[6]

The most important element of a treasure trove is the *Hunting Plate*, also known as the *Sevso Plate*. The significance come from, first of all, it's labeling, from which we can infer the original owner of the Treasure, and on the other hand, only increases the importance of the plate the other labeling can be found on its surface: researchers deduct from it the hypothetic place of origin.

This huge serving dish, with its diameter of 70.5 cm and heaviness of 8.8 kg is the eponymous piece of the treasure trove.[7] Its edges are decorated with convex pearls, and in the middle there is a circular ornament depicting hunting scenes. The scene is surrounded by a ring-shaped subtitle:[8] Haec Seuso Tibi Durent Per Saecula Multa / Posteris Ut Prosint Vascula Digna Tuis ("May these, O Sevso, yours for many ages be, small vessels fit to serve your offspring worthily").[9] Similar Roman artifacts usually named after their discovery site, but in this case, lack of knowledge of the items' discovery place, British researchers who first examined the treasure, gave them a person's name found on the plate. Sevso, the presumed original owner of the object could be a high-ranking Roman officials.[10]

In addition to the text referring to the owner, another subtitle needs attention: next to the water-illustration located in the medallion of the plate, 'PELSO' title appears. It's a

3 Similar stocks used to include further elements like cutleries, coins. The estimated size of the original set range from 40 to 200 objects. *See*: Hajdú É., A Seuso-kincs: A történelem nagy rejtélyei, Kossuth Kiadó, 2014.

4 *See*: Description by the Museum of Fine Arts (a továbbiakban: Description) www.szepmuveszeti.hu/data/cikk/1323/cikk_1323/Seuso_szakmai_hatter_vegleges.pdf (visited: 26 April 2016).

5 M.M. Mango & A. Bennett, The Seuso Treasure Part I., *Journal of Roman Archaeology*, Supplementary Series No. 12, Part 1, Ann Arbor, 1994.

6 É. Hajdú (Hajdú), The Sevso Treasure and Hungary, *in* Zs. Mráv (Ed.), *The Sevso Treasure and Pannonia. Scientific contributions to the Sevso Treasure from Hungary*, Vol. I, Pécs, 2012, p. 23.

7 The official description of the objects by the Museum of Fine Arts: www.szepmuveszeti.hu/data/cikk/1323/cikk_1323/Seuso-kincs_mUtargyak_leirasa.pdf (visited: 26 April 2016).

8 According to E. Tóth the set certainly was a marriage gift to the former owner, because the special label mentions his offspring. *See*: E. Tóth, The Sevso Treasure: A Silver Hoard from Northern Pannonia, *in* Zs. Mráv (ed.), *The Sevso Treasure and Pannonia. Scientific contributions to the Sevso Treasure from Hungary*, Vol. I, Pécs, 2012, p. 66.

9 N. Brodie, Thinking Some More about the Sevso Treasure, *Journal of Art Crime*, Vol. 3, 2014, p. 4.

10 "Seuso…could not be anyone, because the symbols can be found on the objects pattern imperial diadems, which could use only by very influential people." Nagy M., Smirglivel karistolták össze a Seuso-kincset, *HVG*, 2014. www.hvg.hu/kultura/20140327_Seuso_video (visited: 26 April 2016) [*HVG* (2014$_1$)].

well-known fact, that Pelso is the Latin name of Lake Balaton[11] – so from this scene a deduction can be done to the original owner's living space – as well as the treasure trove's original geographic location.

Like the Hunting Plate, the *Geometric Plate* had been used to serve up dishes. It took its name from the symmetrical trim samples on its surface. The bowl was made in a specific style, which was spread in the western part of the Roman Empire. This specialty can be said about the *Animal Ewer*, the two *Geometric Ewers*, and the *Basin*, too.[12]

The *Achilles Plate* is the heaviest piece of the treasure with its 11,786 grams. According to its weight, this plate is the second heaviest artifact from the Roman imperial period we know.[13] This vessel is likely to function as a decorative item, just like the richly decorated *Meleager Plate*.[14]

It is suspected, that the other part of the Treasure, the *Amphora*, the *Dionysiac Ever*, the two *Situlas Hippolytus*, the *Hippolytus Ewer* and *Toilet Casket* served as a bathing kit.[15]

The *Copper Cauldron* is only attached to the Treasure because of the context of its hiding.[16] From the scratches discovered on the silver objects, we can conclude that they have been stored for extended periods of time hidden in the Cauldron. The reason of a sudden hide is certainly the offence of barbarian tribes, dated to the end of the 4th century AD. Despite its simple design, the cauldron has a particular importance for Hungary. Because of its form and the typical way of preparation, this object was certainly forged in Pannonia, near to Lake Balaton. Because of its simplicity, similar cauldrons were almost worthless, so their delivery from the place of the preparation to distant markets is really unlikely. Thus, we can conclude that the hiding place of the treasure is likely the same as the latter discovery site.[17]

The value of the objects, despite their enormous size and huge silver content, not granted on the basis of their metal content. The rarity and uniqueness of objects, as well as the objects make a set, multiplying the market value of the find.[18]

Eight of these objects were returned to Hungary in the spring of 2014,[19] including the most significant ones: Sevso Plate and the Cauldron.

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11 Description *infra* p. 2.

12 Zs. Visy, The known objects of the Sevso Treasure, *in* Zs. Mráv (Ed.), *The Sevso Treasure and Pannonia. Scientific contributions to the Sevso Treasure from Hungary*, Vol. I, Pécs, 2012, pp. 7-12.

13 M. Nagy, Connections of the Sevso Treasure to Pannonia, *in* Zs. Mráv (Ed.), *The Sevso Treasure and Pannonia. Scientific contributions to the Sevso Treasure from Hungary*, Vol. I, Pécs, 2012 (Nagy$_2$) p. 53.

14 Mráv Zs. & Dági M. (Mráv$_2$), Az ezüst bűvöletében – A Seuso-kincs, *Magyar Régészet Online Magazin*, Summer of 2014, p. 2.

15 Mráv$_2$ *infra* p. 2.

16 The treasure is supposed to be hidden in the palace's heating tunnel because of the barbarian attacks.

17 Nagy$_2$ *infra* pp. 58-60.

18 Nagy$_1$ *infra.*

19 The eight objects are the Hunting Plate, the Geometric Plate, the Dionysiac Ewer, the Geometric Ewers, the Basin, the Toiler Casket and the Copper Cauldron.

3.2 The Story of the Sevso Treasure

The *Sevso* case makes a good example for the fate of the illegally excavated and transported archaeological, historical finds. The story detailed below, begins with the forging of ornate silver kit, sprinkled with good wishes from the 4th century AD, and after a few hundred years it ends up bloody human disasters; legal battles between museums, art dealers, auction houses and countries for the past's noble piece's – or, from a different perspective, of this great investment's – valid title of property rights.

To identify the place of origin (and if the Hungarian legislation is taken into account – see below – the owner's identity), it is necessary to examine three questions: a location of manufacture, a location of use and a location of discovery. The circumstances of hiding taken into account, it can be stated, that in the case of the Sevso Treasure the last two terms are the same scene.[20]

3.2.1 Story of the Hide

The place and the time of manufacture can be determined by the style, size, and decoration of the vessels, and by a comparison with other ancient finds.[21] We know that the pieces of the treasure are probably not made in the same workshop, but all of them were forged in the 4th century AD, in the territory of the Roman Empire.[22] If we are looking after the location of the hide, a simple copper cauldron is the most revealing clue. This tool for hiding the silver treasure is assembled in a special way – used by the roman blacksmiths only in Pannonia. Vessels were found in the vicinity of Lake Balaton.[23] After the age of objects and the location of use have been identified, it can assumed, that the apropos of the hide were the barbarian invasion of Pannonia at the end of the 4th century AD.

The archaeological arguments convincingly prove the location of use, and so the analogous location of hide of the treasure in the Transdanubium of Hungary.[24] Finally, thinking of the circumstances of the hide, location of hide was probably the same as the location of discovery.

20 Tóth *infra* p. 64.
21 Nagy$_2$ *infra* pp. 50-53.
22 Visy *infra* p. 21.
23 Nagy$_2$ *infra* pp. 58-60.
24 Tóth *infra* pp. 71-73.

3.2.2 From the Presumed Discovery to the New York Trial

The objects' modern-day history is still unclear, but was presumably began in the 1970s, near to the city of Polgárdi, Hungary. The Balaton region, as an inheritance left by the Roman Empire, is rich in coins and other antiques, so it was a popular place among the self-styled treasure seekers. The possible finder of the Sevso Treasure is the amateur treasure hunter from Polgárdi in his twenties, József Sümegh, who was famous about – according to friends' admission – his antiquities businesses, and whose Treasure-related, mysterious death is investigated by the police for over twenty years now.[25] It is assumed that Sümegh stumbled upon the treasure hiding copper cauldron in 1978, at one of his amateur excavations. After that, he tried to sell the object one-by-one on the black market.[26] According to contemporary witnesses, the original find consisted forty pieces of silver ware, but some experts suggest, mentioned above, that the actual size of the Treasure could reach two hundred and fifty pieces.[27]

The objects were never owned by the Hungarian state.[28] The Treasure's path – we can only guess the details[29] – led from Polgárdi to a Lebanese merchant in Vienna, then to London and California, finally in the early 1980s, David Douglas Spencer Compton, the seventh Marquess of Northampton purchased them with fake Lebanese documents of origin. The objects got so far from their country of origin without pure documentation, that it's nearly impossible to learn their place of discovery. This method, established by the black market, works in a simple way: transfer the artifact as fast as they can, through as many countries as possible, to make the provenance unsubstantiated, causing inestimable damage regarding to the objects' archaeological importance. The find, separated from its original site – and in some cases from some of its components, losing valuable information about the original use, environment and relationship with the other finds, instead it becomes profitable financial investment in the hands of art market players. Regarding to his own admission[30] to exploit the investment, Northampton offered the Sevso Treasure to the Los Angeles J. Paul Getty Museum in the 1980s. The Museum stopped the acquisition because of the suspicion of false papers of origin.[31] After the incident the Marquess and his

25 The investigation started only 10 years after Sümegh's death, restricting its effectiveness.

26 P. Landesman, The Curse of the Sevso Silver, *The Atlantic*, 2001, p. 66.

27 Fekete Gy. A., Ezüsttálak véres titkai – a Seuso-kincsek, *Népszabadság Online*, 2013. http://nol.hu/belfold/20131214-ezusttalak_veres_titkai-1432513 (visited: 26 April 2016).

28 *HVG* (2014_1) *infra.*

29 It is assumed that Lebanese Halim Korban and Yugoslavian Anton Tkalec played role in the illegal export of the objects. For the whole story *see*: Landesman *infra.*

30 "[… Northampton] testified to this effect at the New York trial when he said that he viewed the silver as an investment vehicle." Kurzweil *et al*: 'The trial of the Sevso Treasure', *in* K.F. Gibbon (ed.): Who Owns the Past? Cultural Policy, Cultural Property and the Law, Rutgers University Press, New Brunswick, 2005, p. 84.

31 Sotheby's Request Denied in Case of Ancient Silver. *The New York Times*, 1992.

investment group allegedly made contact with the Lebanese authorities, presented photos of the Treasure, and successfully purchased new, and finally credible export license.[32]

3.2.3 *The New York Trial*

Northampton's further attempt to sell the Treasure to museum remained without success – in spite of the new papers of origin the objects were surrounded by mistrust. Seeking new opportunities, Northampton decided to sale them through an auction house. The Treasure appeared on the international stage in 1990, when Sotheby's auction house of New York, commissioned by Northampton, announced the private auction. The estimated value of the 67 kg, 98 percent legitimate silver finds is hundreds of millions of British pounds, the starting price at the auction was seventy million pounds.[33] Based on the value, it became clear that the Sevso Treasure, even in incomplete state, is the most valuable preserved late Roman silver dish treasure trove.[34] The Sotheby's – following the expected due diligence practice of auction houses[35] – due to the find's Roman origin, sent away images and descriptions of the objects for the 29 countries located in the former Roman Empire's territory in order to highlight any outstanding claims.[36] On 15 February of 1990 the objects have been physically resided in New York,[37] when the Republic of Lebanon turned to New York Supreme Court[38] to determine whether the objects were illegally

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www.nytimes.com/1992/12/19/arts/sotheby-s-request-denied-in-case-of-ancient-silver.html (visited 26 April 2016).

32 D. D'Arcy, The Sevso melodrama: who did what and to whom, *The Art Newspaper*, 1993. http://theartnewspaper.com/news/archeology/from-the-archive-the-sevso-melodrama-who-did-what-and-to-whom/ (visited: 26 April 2016).

33 D'Arcy *infra.*

34 Mráv Zs. (Mráv), Seuso ezüstjei Székesfehérváron, http://szikmblog.wordpress.com/2014/10/06/seuso-ezustjei-szekesfehervaron/ (visited: 26 April 2016).

35 According to ethical standards already in place in museums and auction houses, if an object's illegal provenance is suspected, the institution is obliged to do every possible step to find out the details of origin. This practice is just as much comforting to institutions as the states, since the purchase of a work of art means a hefty expense to the institution, which purchase can fail if unexpected announcement of the ownership claims appears. P. Boylan, Treasure trove with strings attached: As long as its origin is unclear, the Sevso silver hoard is of dubious value, says Patrick Boylan, *Independent*, 1993. www.independent.co.uk/voices/treasure-trove-with-strings-attached-as-long-as-its-origin-is-unclear-the-sevso-silver-hoard-is-of-1503087.html (visited: 26 April 2016).

36 Ancient Roman Silver to Be Sold. *The New York Times*, 1990. www.nytimes.com/1990/02/10/arts/ancient-roman-silver-to-be-sold.html (visited: 26 April 2016).

37 The court applied the law of the residence of the objects (lex situs rule).

38 In recovery cases US Courts base their jurisdiction on the expropriation exception of Foreign Sovereign Immunities Act (FSIA) 1976, which guarantees general immunity of jurisdiction for foreign states with few defined exceptions. The relevant exception reads as follows: "A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case… in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by

exported from the territory of the state.[39] On March 15 the Socialist Federal Republic of Yugoslavia and Croatia have joined Lebanon and reported their ownership claims,[40] jointly preventing the planned sale of the objects.[41] In addition to Lord Northampton, originally Sotheby's auction house was filled the defendant's position in the lawsuit, but the court ruled out its participation in 1992.[42] Hungary, on the basis of the relevant ministries and authorities unanimous opinion also joined to the trial a year late, in 1991.[43] The negotiations began in the fall of 1993 and held for seven weeks. The court had to decide in the questions of origin of the objects and the determination of their unlawful export from a state's territory.

The Court stated that the Lebanese documentation of origin was forged[44] – and the forged papers are the real proof of the objects were illegally removed from the territory of the country of origin. Since the excavation was not done according to the laws, a fair documentation of it does not exist, so this could not be used as an evidence during the trial.

Hungary has indirect arguments regarding the origin, but these arguments are making a convincing system if we examine them as a whole. However, Hungary failed to explicate them this way during the trial.

Hungary's claim regarding to the treasures was based on its national property law regulation.[45]

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the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States." [FSIA 1605 (a) (3)]
For the jurisdiction tendencies of litigation regarding to restitution of cultural goods *see*: Szabó S., Állami immunitás és joghatóság a kisajátított műkincsekkel kapcsolatos amerikai perekben, *Magyar Jog*, Vol. 58, No. 8, 2011. and Szabó S., Elkobzott műalkotások és állami immunitás az amerikai bíróságok előtt, *in* Csehi Z. & Raffai K. (Ed.), Állam és Magánjog – Törekvések és eredmények az Európai Unió joga, a nemzetközi magánjog, polgári jog és polgári eljárásjog keresztmetszetében, Pázmány Press, Budapest, 2014.

39 L. M. Kaye, The Recovery of Stolen Cultural Property: A Practitioner's View-War Stories and Morality Tales, *Villanova Sports & Entertainment Law Journal*, Vol. 5, No. 1, 1998, p. 13.

40 The states have submitted an application for interim relief to ensure that the objects remain in the United States, while their ownership situation is unresolved – thus preventing their proposed removal to a private auction to Switzerland by the Sotheby's. *See*: Sotheby's is Restrained from Exporting Silver. *The New York Times*, 1990. www.nytimes.com/1990/05/07/arts/sotheby-s-is-restrained-from-exporting-silver.html (visited: 26 April 2016).

41 K.F. Gibbon, Who Owns the Past?: Cultural Policy, Cultural Property, and the Law, Rutgers University Press, New Brunswick and London, 2005, p. 85.

42 D'Arcy *infra.*

43 Hungary's claim for the Treasure was based on its national property law regulation: "If a person finds a valuable thing which has been hidden by unknown persons or the ownership of which has otherwise been forgotten, he shall be obliged offer it to the state." Act IV of 1959 on the Civil Code of the Republic of Hungary para. 132. section 1.

44 *HVG* 29 March 2014. www.hvg.hu/kultura/20140329_Magyarorszagon_is_rejtozhet_meg_Seusokin (visited: 26 April 2016) [*HVG* (2014_2)].

45 The national protection system of cultural heritage is realized through the export control acts and the in rem rules regarding to the objects. The national ownership law is particularly important, because, as detailed below, "… national ownership laws constitute a more severe restraint because antiquities taken in violation

The relevant rules of finding at the time of the assumable finding of treasures could be find in Sections 129-132 of the former Civil Code[46] of Hungary. According to the regulations the principle was: no one can acquire title by finding. In the case of finding chattels presumably owned by others, the finder had to do every possible step to return the object to the original owner. Only in this case, if other conditions are met,[47] could the finder acquire good title. Acquisition of ownership was impossible in the case of treasure finds, however the finder shall be entitled to "a reasonable finder's fee", if he attested the behavior required by law. If the finder had not acquired ownership over the object for some reason, this right shall be transferred to the state.

Finally, 'Section 132 about the treasure finding' regulated the finding of non-possessed properties:

> (1) If a person finds a valuable thing which has been hidden by unknown persons or the ownership of which has otherwise been forgotten, he shall be obliged offer it to the state.
> (2) If the state does not claim the thing, it shall become the property of the finder; otherwise the finder shall be entitled to a finder's fee proportionate to the value of the thing.
> (3) If the found thing described in Subsection (1) is a museum piece or a historical relic, its ownership may be claimed by the state. The rules of procedure related to the finding of such objects and the extent of the finder's fee shall be determined in a separate legal regulation.

Thus hidden things, and whose ownership otherwise been forgotten counts as non-possessed properties according to Hungarian legal system. Subsection (1) refers to 'precious things', which objects do not necessarily fall within the scope of cultural goods. In this case, if the state does not acquire ownership, it falls to the finder. If the state acquire ownership, the finder shall be entitled to a "finder's fee proportionates to the value of the thing".

The objects' legal fate developed differently, if they were categorized as "museum piece or a historical relic". In this case the finder shall not acquire ownership, that automatically fell to the state. However, the finder was also entitled to a finder's fee in this case, which incented the surrender of such chattels.

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of national ownership laws are stolen property in market nations, as well as in the country of origin." P. Gerstenblith (Gerstenblith), Controlling the International Market in Antiquities: Reducing the Harm, Preserving the Past, *Chicago Journal of International Law*, Vol. 8, No. 1, 2007-2008, p. 174.

46 Act IV of 1959 on the Civil Code of the Republic of Hungary.

47 The Act mentioned as other condition that "the owner has not come forward to take possession of the thing within one year of the day on which it was found." Nonetheless, finders still shall not acquire ownership if the objects were found in offices, companies, or other buildings or rooms open to the public or on the vehicles of a public transportation company.

According to the actual Civil Code[48] in force, finding is still a form of acquisition by the state. The corresponding rule is laid down in Section 5:64 of 'Treasure finds'. Subsections (1) and (2) are identical to the text of the former Code, however, the text relevant to the *Sevso* case in Subsection (3) amended as follows: "(3) If the found thing described in Subsection (1) is classified as protected cultural goods, its ownership may be claimed by the State."

The current legislation uses the term 'cultural goods', when it settles down the ownership conditions of treasure finds. The aim of the change in terminology is to clarify the scope of the regulated objects,[49] also to create consistency with other national rules concerned with cultural goods.

The ownership situation of the treasure finds was clearly regulated in the national legal system at the assumed 1970s discovery of the Sevso treasures. According to the national property law, these objects are owned by the state, therefore their hide or theft violates the national legal system.

The national rules thus laid the basis of the claim of the Hungarian state for the ownership of the assemblages. The legitimacy of this kind of demands of the states had been established in the US case law. In the high-impact *United States v. McClain* case the Court asserted: The National Stolen Property Act[50] "protects foreign ownership derived from foreign legislative pronouncements, even though the owned objects have never been reduced to possession by the foreign government."[51]

However, to bring the fore-mentioned arguments to Court, it was necessary to prove the Hungarian origin.

48 Act V of 2013 on the Civil Code.

49 Within the national legal system Act LXIV of 2001 on Protection of Cultural Heritage includes the determination governing the concept of 'cultural goods'. According to the Explanatory provisions (Art. 7, Subsection 4): "Cultural assets: outstanding and typical objects, images, sound recordings and written memories and other proof of the origin and development of lifeless and live nature, mankind, the Hungarian nation and the history of Hungary, as well as pieces of arts." This definition is being used in a slightly different content, or specified form by the subsystems of national heritage protection law.

50 National Stolen Property Act of 1934 (enacted May 22, 1934) is applicable to transportation of stolen goods, wares, merchandise, securities or money within the U.S. territory. The Court first applied the NSPA to cultural property in 1974 in the case of *United States v. Hollinshead*, than in 2003 the New York Court showed its willingness to fight back the illicit trade of cultural property with false provenance in *United States v. Schultz* case, by interiorize the NSPA's 'broad purpose'. By this interpretation of NSPA the Court declared that the definition of 'stolen' property expands not only to objects that were taken from a person, but to properties stolen from a government never truly owned them. See: Laura M. Siegle, United States v. Schultz: Putting Cultural Property in Its Place, *Temple International and Comparative Law Journal*, 2004.

51 *United States v. McClain*, 551 F.2d 52 (5th Cir. 1977), cited by J.H. Merryman, Albert Edward Elsen, Law, Ethics, and the Visual Arts, Kluwer Law International, The Netherlands, 2002, p. 231.

3.2.4 *Verification of Origin*

The verification of origin divided into three phases: evidence by witnesses, art historical evidence, and soil sample analysis.[52]

Hungary's four citizens' testimony did not convince the court, because of the controversial nature of it. The panel also drew its conclusions from the following facts: 1. Sümegh's living family members refused to participate in the US trial, 2. the family members did not mention that they had ever seen the silver objects in their former testimony in Hungary. In the absence of sufficient proof, the court prohibited to bring up Sümegh's death in the context of litigation.[53]

In the further stages of the verification Hungary placed the archaeological evidences in the forefront. In addition to the label 'PELSO' in the Hunting Plate, one magnificent find from 1878 provided convincing argument: a comparative analysis with the Quadripus of Polgárdi.[54] This four-legged stand, originally part of a food serving kit, was stored in the Hungarian National Museum more than a hundred years ago when the Seuso Treasure appeared. Hungarian archeologists suppose that the two finds belong together on the grounds of their identical style and decoration, the same date of manufacture, the fitting size (the Sevso Treasure's vast vessels of silver can be easily fitted to the stand's handles), and not least the assumed identity of the manufacturing site.[55] However, the court has not taken into account the reasoning because of the late submission of the expert judgement.[56]

The soil surveys on the objects were taken favorable results to Hungary, but also for formal reasons, the relevant documents were not taken into account by the court.[57]

Regarding the position of Lord Northampton, it can be stated that he testified satisfactorily that he was unaware of the illegal nature of the origin of the treasure. It was said as a fact in front of the court witness, that the Treasure's valid ownership rights belong to Northampton and his investment group – Hungary has not had the opportunity to explain its arguments relating to the acquisition of stolen property.[58]

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52 Gibbon *infra* p. 87.

53 It is assumed that Sümegh hid the items in a basement nearby Polgárdi. One day he showed the Treasure to foreigner art dealers who killed the boy for the objects, then made the circumstances to show their act as a suicide.

54 *See*: T. Bruder K., Mráv Zs., Veres K., Az elrejtett quadripus. A polgárdi ezüstlelet újraértelmezése, *Műtárgyvédelem*, 2002, pp. 49-63.

55 Zs. Mráv: The Late Roman Silver Folding Stand from Polgárdi and the Sevso Treasure, *in* Zs. Mráv (ed.), *The Sevso Treasure and Pannonia. Scientific contributions to the Sevso Treasure from Hungary*, Vol. I, Pécs, 2012, pp. 80-101.

56 Hajdú *infra* p. 29.

57 N. Mealy, Mediation's Potential Role in International Cultural Property Disputes, *Ohio State Journal on Dispute Resolution*, 2011, p. 186.

58 Hajdú *infra* p. 27.

Judge Justice Beatrice Shainswit, after more than three years of litigation, concluded[59] that Hungary's claim for the silver kit does not have evidentiary legal basis, their wrongful removal from the country can not be established.[60] According to the judgement, Hungary as a losing party had to pay Lord Northampton three million dollars of compensation. The treasure, in absence of the determination of the place of origin, stayed in the hands of the acquirer Northampton, who was not able to prove a valid title of ownership.[61] In the absence of sufficient evidence so far, the Hungarian party has not initiated a review of the decision.

3.2.5 Situation of the Treasure after the Trial

After the trial there was a deadlock regarding the fate of the Treasure. In spite of being the prevailing party, Northampton had not been in a favorable position. The Court could not unravel the origin of the objects and it did not remain hidden – high number of press reports detailed the problem of the Treasure, so it became clear that difficulties will find him if he tries to sell the find.[62] The artifacts were physically returned to England, and did not become available to the public. In 2006 there were a few days long exhibition in the Bonham's auction house in London, after this they disappeared from sight again.[63] Hungary adhered to its position, according to the objects belong to the country under its domestic law, and stated that it will continue to take all possible legal steps in the case.[64] To obtain new evidence were impractical for the Hungarian side, because the absence of opportunity of the examination of objects.[65] However, Hungary has not given up the fight to regain its artifacts.[66] In 1997, the Ministry of National Cultural Heritage appointed a Ministerial Commissioner to coordinate the recovery,[67] and the negotiations begun about the transfer

59 Decs.: *Republic of Lebanon v. Sotheby's and the Trustee of the Marquess of Northampton Settlement and the Socialist Federal Republic of Yugoslavia*, 167 A.D.2d 142, 561 N.Y.S.2d 566 (N.Y. Sup. Ct. 1990); *Republic of Croatia v. The Trustee of the Marquess of Northampton 1987 Settlement*, 203 A.D.2d 167 (1994).

60 The same judgement was born against Croatia as well. Court Rules that Silver May Go Back to Owner, *The New York Times*, 1994. www.nytimes.com/1994/04/22/arts/court-rules-that-silver-may-go-back-to-owner.html (visited: 26 April 2016).

61 It's an open question, that in the absence of proof who should be considered as an owner. A. Carleton, Piracy in the Modern Age: Reviewing the Mechanisms Which Combat Pillage, *Macquarie Journal of International and Comparative Environmental Law*, Vol. 4, 2007, p. 39.

62 Boylan *infra.*

63 J.H. Merryman (Merryman), Thinking about the Sevso Treasure. Stanford Public Law and Legal Theory Working Paper Series, 2008, p. 2.

64 A. Riding, 14 Roman Treasures, on View and Debated, *The New York Times*, 2006. www.nytimes.com/2006/10/25/arts/design/25sevs.html?pagewanted=2&_r=0&ref=arts (visited: 26 April 2016).

65 *HVG* (2014_2) *infra.*

66 *See*: M. Bailey: Hungary keen to acquire Lord Northampton's half of Sevso silver, *The Art Newspaper*, No. 257, 2014. http://old.theartnewspaper.com/articles/Hungary%20keen%20to%20acquire%20Lord%20Northampton's%20half%20of%20Sevso%20silver/32437 (visited: 26 April 2016).

67 Fekete *infra.*

of possession of the treasures. To subserve the turn up of further evidence, the government offered HUF 10 million reward to anyone who provides an object that proves to be part of the Sevso set, this way helps to find the site of other pieces of the treasure trove, indirectly proving the origin of the silver.[68] This initiative remained unsuccessful to date, but it shows the government's efforts to recover the objects.[69]

In March of 2014 the news of return of the Treasure flooded the press.[70] Hungary recovered eight pieces[71] of the unmarketable objects for 15 million euros compensation fee.[72, 73] The items were shipped to the country by the special unit of the Counter Terrorism Centre. The return is extremely important step in the procession of clarifying the ownership rights of the objects: now there is no obstacle to the necessary – but not provided in the New York lawsuit – scientific research studies of origin. The Treasure had been placed for a period of three months in the Parliament after their return, to ensure access for the public.[74] Then, for another a few months it was exhibited in the Saint Stephen King Museum in Székesfehérvár, near to Lake Balaton. After the Székesfehérvár exhibition the scientific studies began, and they are still in progress. According to plan, after the three-month research period the Treasure will be exhibited in the Hungarian National Museum.[75] The research group of the Treasure worked out a five-year research program to accomplish a full examination of the objects, which contains the re-examination of fundamental issues, such as the mere fact of hiding in the cauldron, or the interdependence of the different components of the Treasure, and also contains some conclusive issues, like finding out the location of discovery by the use of material samples.[76]

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68 The 'Pelso' script and particularly similar four-legged stand stored in the Hungarian National Museum, as detailed below, does not make clear evidence of origin.

69 *HVG*, 23 June 2014. www.hvg.hu/kultura/20140623_Szukul_a_kor_a_Seusogyilkosok_korul (visited: 26 April 2016) [*HVG* (2014_3)].

70 *E.g.* J. Pes & J. Michalska, New twist in Sevso silver saga. Hungary buys seven pieces from controversial Roman hoard, *The Art Newspaper*, 2014. http://old.theartnewspaper.com/articles/New%20twist%20in%20Sevso%20silver%20saga/32282 (visited: 26 April 2016).

71 *HVG* 15 April 2014. www.hvg.hu/kultura/20140415_Meg_lehet_nezni_a_Seusokincseket_csak_ne (visited: 26 April 2016).

72 The fee compensates the former expenses of the acquirer.

73 C. Renfrew, Shame still hangs over the Sevso hoard, *The Art Newspaper*, No. 257, 2014. http://old.theart-newspaper.com/articles/Shame%20still%20hangs%20over%20the%20Sevso%20hoard/32545 (visited: 26 April 2016).

74 *HVG* (2014_3) *infra.*

75 Mráv *infra.*

76 Mráv Zs., A Seuso kincs mostantól a tudomány fókuszában, *Muzeumcafé*, Vol. 42, No. 8, No. 4, 2014, p. 41.

3.3 The Ownership Issues of the Cultural Goods

3.3.1 Competing Interests

The value of a work of art, in addition to its individual characteristics, is affected by its marketability. The story outlined above shows that an artifact with dubious origin, surrounded by unproven claims of ownership – despite its incredible significance – is not a vendible one: neither the museum nor the individual customers would not be happy to see them in their collections. Such an art is a 'timed bomb', that can any time hang a costly, protracted lawsuit around the purchaser's neck.

The actors come into contact with works of art represent different interests. The countries of origin (art-rich countries, from which the items are typically got exported) can be identified one of this actors, such as importing countries[77] (countries with high propensity of importing art), museums, auction houses, antiquities dealers, archaeologists and art collectors. The countries of origin try to preserve their cultural goods, usually with strict export regulations, by measures that prevent the outflow of artifacts of the country's territory.[78] As it can be seen from the increasing number of restitution cases,[79] they are also trying to recover the cultural goods found in their territory than unlawfully removed in the past. The importing countries are interested in the streaming of property because of their economic benefits[80] of it, and thus museums, auction houses, antiquities dealers and art collectors can be classified into the same interest group. Of course, the picture is more nuanced: in the 1970s appeared the pursuit[81] of the museums and auction houses to

77 In 2013 there were 50,000,000 transactions in the field of art works trade [Data ©Arts Economics 2014]. The participation of the global art market was the following in 2013: the USA leads with 38%, followed by China with 24%, and the United Kingdom takes the third place with 20%. www.theguardian.com/culture-professionals-network/culture-professionals-blog/2014/mar/19/international-art-market-2013-facts-figures (visited: 26 April 2016).

78 Gerstenblith settled the derogatory consequences of illegal excavation as follows: 1) the loss of society to understand its past 2) the buyers' incent to buy undocumented artifacts is enhance the appearance of forged objects in the market – demand is growing, but the supply is not. This demand can not be satisfied with the manufacture of 'new items' (unless they are fakes) due to the unique, historic character of cultural goods. *See* Gerstenblith *infra* pp. 170-174.

79 One of the most famous and successful cases is the Elgin marbles'. *See*: M.J. Kelly, Conflicting Trends in the Flourishing International Trade of Art and Antiquities: Restitutio in Integrum and Possessio animo Ferundi/Lucrandi, *Penn State International Law Review*, Vol. 14, 1995, pp. 34-37.

80 According to the British Department for Culture, Media, and Sport, the flow of cultural goods worth £76.9 billion in a year to the UK economy. *Heritage Update*, 23 January 2015. www.theheritagealliance.org.uk/update/creative-industries-worth-8-8-million-an-hour-to-uk-economy/ (visited: 26 April 2016).

81 About the 1970 threshold, *see*: UK Department for Culture, Media and Sport Cultural Property Unit: Combating Illicit Trade: Due diligence guidelines for museums, libraries and archives on collecting and borrowing cultural material, p. 4. http://old.culture.gov.uk/images/publications/Combating_Illicit_Trade05.pdf (visited: 26 April 2016).

practice 'due diligence' in the acquisition process, and make satisfactory efforts to explore the objects' origin. The reason for the practice is the above-mentioned fear of possible claims of ownership, and the more and more obvious, growing damage caused by the black market of artifacts. The interest of archeologists is the professional exploration of artifacts, finding opportunities to study them in their original state. Another approach appears here, held by museums beside archeologists: the public's right to get to know the past, so get access of their – properly investigated[82] – cultural goods.

The represented interests on the one hand serve the acknowledge of cultural heritage, and on the other hand the commercial benefits can be exploited by the cross-border movement of the works of art.

The tragedy of the Sevso Treasure is caused by the – still unresolved – collision of this interests: illegal excavations led to their discovery, which inherently deprived archaeologists – and of course the whole mankind – to get that information about the treasure trove, which can only be established in professional excavation; the decade-long trip in the black trade's various depths perhaps permanently took the possibility to clarify the origin, based on the deposition originally covered the objects. During and after the court proceeding, the opportunity of study by experts passed again, considering that the defendant did not show willingness to disclose the items for the necessary tests. This situation changed with the return of the objects, the commencement of the tests, which results are still unpredictable, but hopefully serve convincing proof of origin, and this way its future fate.

It's worth reviewing the current status of reconciliation of interests by countries of origin and art-hungry nations in the international regulatory arena.

Lessons learned from World War II, the Convention for the Protection of Cultural Property in the Event of Armed Conflict was created.[83] The Convention was the first international agreement relating specifically for cultural goods. The idea was great, but the Convention did not become successful since the market countries joined late (China in 2000, Japan in 2007, the USA in 2009), or not at all (the United Kingdom). After a big breathing space was born the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property[84] in 1970, the first international regulation which comprehensively deals with the protection of cultural property. The most important provisions of the tool are the requirement of the artifact-protecting institutions, and the obligation of restitution of stolen cultural goods in the relation of contracting states. The UNESCO Convention was complemented by the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, creating rules of procedure of the stolen works of art. The efficiency of these tools, just like in the

82 To place the objects in a specific age and time, their scientific examination is needed. An average person can only understand the real significance of the find.

83 The Convention was created by the United Nations on 14 May 1954.

84 United Nations Educational, Scientific and Cultural Organization, Paris, 14 November 1970.

case of the Hague Convention, is restricted: states with great art market were reluctant to put them into their legal systems, or it took extremely long time.[85] On the other hand, countries of origin do not refer to these tools in their restitution procedures, but rather apply their own domestic rules.[86]

The world-wide defense system makes varied picture. It's a slow and halting process, and we can say at the present point, that nations with great market place their economic interests ahead,[87] rather than take an active part in the development of preventing regulations against the huge and still developing black art market.

3.3.2 Issue of the Good Faith Purchaser

The other reason of the regulatory diversity in the field of the restitution of cultural property is the different attitudes to the bona fide purchaser. The actors of recovery cases are the original owner, who wants to reclaim his stolen or misappropriated object, and the buyer, who possesses the object. The purchaser, in many cases, is in good faith about to the origin of the object. Systems of law are different about the extension of wariness expected from the purchaser of a work of art, but it should be noted, that 80-90 percent of the objects in the art market have unidentified origin,[88] thus the expected inquiry should not require the circuitous – and certainly expensive – clarification of the object's antecedents.[89]

The original owner, whether private party or the state, is a victim of a crime, who tries to reclaim his stolen object in a civil proceeding.[90] Expectations against the original owner could contain precautions to prevent theft crimes, also if it happens, the report of the theft and tracing after the object's location.[91]

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85 The UNESCO Convention was ratified by Germany in 2007, Great-Britain and Japan in 2002, while the UNIDROIT Convention has not been ratified neither by the United States nor Great Britain.

86 Kelly *infra* p. 45.

87 Ultimately, it is the interest of the market states too, to discourage the purchase of undocumented artifacts. In newer counterfeiting cases, the method is used by criminals is the fabrication of fake origin papers of the objects, then sell them easily on the market. If buyers would be encouraged to make a more thorough inquiry of the origin of the items, or if they would not buy the items with incomplete documentation, this lucrative form of crime would disappear. *See* P. Gerstenblith, Keynote 1: Getting Real: Cultural, Aesthetic and Legal Perspectives on the Meaning of Authenticity of Art Works, *Columbia Journal of Law & the Arts*, Vol. 35, No. 3, 2012.

88 Gerstenblith *infra* p. 178.

89 Schwartz and Scott found in their comparative economic analysis that "it is less costly for a buyer to establish his good faith than it is for him to inquire optimally into the theft possibility". Schwartz and Scott p. 10.

90 Usually in replevin or conversion in the United States.

91 The objective standard of expected reasonable diligence has not developed yet, as the contradictory American judgements show. In *De Weerth v. Baldinger* the Court ruled that "DeWeerth's efforts were insufficient to constitute the requisite due diligence that a person whoclaims ownership of stolen personal property must establish in a suitagainst the good faith purchaser. […] The appellate court concluded that DeWeerth's "minimal investigation" combined with her failure to utilize several mechanisms to locatestolen art after World War II and her failure to publicize her loss did not constitute due diligence and thus ruled in favor

On the other half of the field there is a good faith purchaser.[92] The big issue of unoriginal artifacts in the market starts the following way: entering through illegal excavations, or a legally excavated finding – such as legally purchased pictures, sculptures or other works of art – got stolen, then after a while, sold to another continent. In several cases this object will be bought by a purchaser acting in good faith. As it was written above, that's exactly what happened in the case of Sevso Treasure: in the absence of legitimate documentation of origin, proven illegally excavated artifacts were sold to Northampton, who has the ownership rights of the Treasure and whose good faith was settled by the New York Court, by art dealers. Here we find a classic property law issue: acquisition of stolen goods, which is regulated differently by the Anglo-Saxon and continental legal systems.

The 'nemo plus juris' principle with the exception of bona fide purchaser is applied by both of legal systems, the view become variant when the loss of ownership rights are caused by crime. According to the common law system, in this case the transfer of ownership is not an option,[93] contrary to the civil law countries, where the transfer is possible – under certain conditions.[94] Under these laws following the "Market Overt doctrine" a good faith purchaser prevails the original owner – no matter how diligent he was.[95] So it can be stated that the common law system – in the case of proven crime – favors the original owner in disputes between the original owner and the *bona fide* purchaser of the cultural property (often mentioned as "theft rule"), while the continental system grants greater protection to the bona fide buyer. However, the situation is more nuanced.

In common law countries, temper the exclusion of the acquisition of stolen property, the outcome of the litigation involving works of art often depends on the rules of procedure.

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of Baldinger." (Mary K. Devereaux, Battle over a Monet: The Requirement of Due Diligence in the Lawsuit by the Owner against a Good Faith Purchaser and Possessor, *Loyola of Los Angeles Entertainment Law Review*, 1989 p. 61). Conversely in *Solomon R. Guggenheim Found v. Lubell* the "New York Court of Appeals found for the Museum as original owner, holding, contrary to *DeWeerth*, that New York's statute of limitations does not require the victim to search diligently for stolen property." (Alan Schwartz and Robert E. Scott, Rethinking the laws of good faith purchase, Columbia University School of Law, Columbia Law and Economics Working Paper No. 398, 2011, p. 4.).

92 The definition of 'good faith' is not harmonized internationally: some legal systems take for subjective (did not know), some of them require objective (did not know/ not to have known) attitude, also there is a convergence in the burden of proof. *See* Giuseppe Dari-Mattiacci and Carmine Guerriero, Law and Culture: A Theory of Comparative Variation in Bona Fide Purchase Rules, Amsterdam Center for Law & Economic Working Paper, Paper No. 2014-04.

93 According to the 'nemo dat qui non habet' principle, goods' ownership can not be transported, if the seller did not have valid title. P. J. O'Keefe, Provenance and Trade in Cultural Heritage, *U.B.C. Law Review*, 1995.

94 The Hungarian regulation reads as follows: Section 5:39 of the Civil Code regulates the acquisition of ownership from a person other than the owner. In principle the ownership by transfer may be acquired only from the owner of the thing. However, where ownership is acquired in good faith, in the course of trade for consideration, the transferee shall acquire ownership by way of transfer even if the transferor was not the owner. In this case the rights of the third party on the thing arising before the time of transfer shall cease, in connection with which the party acquiring ownership acted in good faith.

95 Schwartz and Scott *infra* p. 4.

For example, the UCC provides the valid title of ownership for the original owner of the object as long as one of the limitation doctrines is applied.[96]

The significant question here is the time when the statute of limitations begins to run. The first major event is the stealing of the object. If the limitation period would start to flow at the time of the theft, the original owner would be placed to an unfair position. The feature of the art black trade, as had already been mentioned, that the items are delivered as quickly and as far as possible from the original site, to make it impossible, after a period of time, to trace back their origin. The original owner usually has a little chance of finding his unlawfully removed objects within a few years of statute of limitation.

If we take a look at the location of the Sevso trial, in the United States regulation currently contains two types of statute of limitation: the discovery rule and the 'demand and refusal' rule. If the deadline expires, the claim will not be able to validate.

Initially, courts applied the construction of adverse possession to restitution cases involving cultural goods, which was originally developed to deal with real property.[97] Since in common law system a good title can not be acquired from a thief, it appears as an alternative way of acquire ownership on stolen property. In case of adverse possession, the holder of the object acquire ownership after a definite period of time, thus eliminating the unsettled legal situation, also the uncertainty evolved on the market. When this original mode of acquisition occurs, the original owner's rights in relation the personalty get ceased. According to the function of adverse possession, it occurs after a decent period of time,[98] which gives the opportunity to the original owner to live with his legal assets to protect his ownership, and at the same time it must eliminate the duality of the actual situation caused by the behavior of the non-caring owner and the caring (investor) possessor. Between remaining in possession for a statutory prescribed period, the courts have required the following conditions to establish adverse possession: the possession has to be actual, open and notorious, exclusive, continuous and hostile under a claim of right.[99] The above-mentioned, basically real property-specific provisions has been applied in the lawsuits related to chattels, with the difference of a shorter statutory period.

The New Jersey Court abrogated the application of adverse possession to chattels in the *O'Keeffe v. Snyder* case.[100] The Court enunciated inapplicable the requirement of 'visible holding' to declare adverse possession in cases relating to cultural property, considering that in cases involving artifacts, this kind of holding can be determined in the rarest cases,

96 S. Bibas, *The Case Against Statutes of Limitations for Stolen Art*, Faculty Scholarship, Paper 827, 1994, p. 2440.

97 *See Redmond v. New Jersey Historical Society* 132 N.J. Eq. 464, 28 A.2d 189 (1942) and *Joseph v. Lesnevich* 56 N.J. Super. 340, 153 A.2d 349 (App. Div. 1959) in Paula A. Franzese, "Georgia on my mind" – Reflections on O'Keeffe v. Snyder, *Seton Hall Law Review*, 1989 pp. 4-7.

98 This period of time is usually between 10 and 30 years.

99 Franzese *infra* p. 2.

100 *O'Keeffe v. Snyder*, 83 N.J. 478, 416 A.2d 862 (1980).

giving no chance to the original owner to get knowledge of his object's whereabouts.[101] In the name of "equity and justice", the Court took into account the time of discovery as the starting date of the limitation period. This 'discovery rule' provides the exclusion of the flow of statute of limitation, if the original owner practices due diligence,[102] but still not able to find the removed artifact: it

> provides that, in appropriate case, a cause of action will not accrue until the injured party discovers, or by exercise of reasonable diligence and intelligence should have discovered, facts which form the basis of a cause of action […].[103]

Dealing with the issue of the time of beginning of limitation period, New York State evolved the 'demand and refusal' rule, which favors the good faith purchaser.[104] Based on this rule, the original owner must claim the subject from a bona fide purchaser, who can only be prosecuted after the denial of restitution.[105] This rule makes the bona fide purchaser's title valid, until the mentioned refusal occurs.[106] The limitation period begins to run at the time of the refusal, however, according to the judicial practice,[107] the original owner must show 'reasonable diligence' to discover the whereabouts of his object.

According to the different systems of law, the good faith purchaser can acquire good title by the tools of substantive law, or by procedural legal assets. Legal systems strengthen the status of the good faith purchasers should count with the phenomena of stolen goods flowing to their country's territory. The most radical legislation was introduced in Italy,

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101 Franzese *infra* p. 13.

102 For details of the true owner's due diligence *see*: P.Y. Reyhan, A Chaotic Palette: Conflict of Laws in Litigation between Original Owners and Good-Faith Purchasers of Stolen Art, *Duke Law Journal*, Vol. 50, No. 4, 2001, pp. 985-988. Furthermore, the UNIDROIT Convention's Art. 4, Subsection (4) suggests the following points of view to establish the original owner's due diligence: "In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances."

103 J.H. Merryman, S.K. Urice, A.E. Elsen, *Law, Ethics and the Visual Arts*, Kluwer Law International, The Netherlands, 2007, p. 996.

104 Bibas *infra* pp. 2444-2446.

105 "The legal principle underlying the [demand and refusal rule] … is that the bona fide purchaser's possession is initially lawful, and only becomes unlawful once he has refused, upon demand, to return the property to the true owner." Kaye *infra* p. 6.

106 "… the purpose of the 'demand and refusal rule' is to give the the good faith possessor an opportunity to relinquish the property once informed of the claimant's rights, a failure to turn over the property constitutes a refusal." P. Gerstenblith, International Art and Cultural Heritage, The International Lawyer, 2011, p. 404.

107 See *DeWeerth v. Baldinger*, 658 F. Supp. 688 (S.D.N.Y. 1987) and *Guggenheim Foundation v. Lubell* 77 N.Y.2d 311, 567 N.Y.S.2d 623 (1991).

where the bona fide buyer becomes owner, in absence of any further requirement.[108] Solutions provide extreme protection to the original owner – like the United States – in turn creates iniquitous situation to the buyer who is reliant on his contract. The challenge is to strike a balance between the two interests ('property-contract balance'[109]), to which the aforementioned UNIDROIT Convention offers a reasonable solution: in case of recovery, the court should order the payment of "fair and reasonable compensation" for the benefit of the good faith purchaser. By this way of compensate the buyer in good faith offers a fair solution to the states: by judging the object's ownership to the original owner it makes a deterrent effect in relation to the purchase of chattels with dubious origin, also provides compensation for the buyer, who trusted his contract. In addition, putting the burden of compensation to the person transferring the goods does not bring the original owner in an unfair situation in which he has to 'pay for his chattels twice'.[110]

It can be seen that regulations regarding to the position of a bona fide purchaser is not harmonized either internationally, but nor within the United States.[111] In the *Sevso* case, *inter alia*, the Hungarian party failed to show that the treasure was taken away from its territory illegally, thus their own national (continental) rules were unable to call[112] for establishing its claim.[113] The bona fide purchaser's and the original owner's position can be very different in lawsuits involving cultural property, according to the different solutions of applicable national laws, thereby undermining the predictable jurisdiction, the legal certainty, also causing the damaging phenomenon of forum shopping. The elimination of this situation can be achieved by standardizing national laws, in which the 1995 UNIDROIT Convention could serve as a possible starting point.

3.4 Conclusion

The infamous *Sevso* case is still not closed up in the view of Hungary. Eight pieces of the set is currently studied by the Sevso Working Committee – the aim of the research is the discovery of any new information which might assist the return of the treasure's other half as soon as possible. What does the Hungary counting on, what will be the result of this insistent inquiry?

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108 Italian Civil Code 1153. cited by J. H. Merryman (Merryman$_2$), Thinking about the Elgin Marbles: Critical Essays on Cultural Property, Art and Law, Kluwer Law International, 2009, p. 523.

109 Dari-Mattiacci and Guerriero *infra* p. 2.

110 For the compensation system of the good faith purchaser in variant countries, *see* Merryman$_2$ *infra.*

111 Schwartz and Scott *infra*, pp. 6-7.

112 Kaye *infra* p. 14.

113 The United States stated the principle in the case United States *v.* McClain which declares that a sovereign country can rely on its own national law in property related cases, if the property was found on its own territory. L.M. Kaye, The Future of the Past: Recovering Cultural Property, *Cardozo Journal of International and Comparative Law*, Vol. 4, No. 1, 1996, p. 32.

In the case of acquisition of geological evidence, Hungary could try to enforce its claim in another restitution suit, or the objects acquired so far – and the evidence obtained by their study – instead of the protracted and costly legal proceeding, would certainly provide a better negotiating position for the Hungarian state, which can help the return of the other seven pieces.

The story above shows the artifacts' possible significance for the owner – who can be an individual, an institution, or even the state itself – often inestimable, so their loss can cause irreplaceable damage for the affected ones. The unpredictable litigation related to cultural goods, the lack of uniform regulation often makes it impossible for countries of origin with weaker financial backgrounds to regain their illegally exported objects.[114]

Illegal market of cultural goods is growing fast in parallel – the value of the trade is estimated in the billions annually, and in terms of revenue only exceeded by international drug trafficking.[115] The reason for this is the profitability nature of the illegal excavation and export, and the fine transportability of objects across national borders, where their origin will not be established anymore.

The sad fact is that the rate of return of stolen works of art is extremely low.[116] Regulating the protection of cultural property, therefore, is definitely an area of law that needs a reform. Managing the shortcomings of international uniform regulation on the movement of cultural goods mainly depends on the willingness of states to strike a compromise – a strong, unified will must appear to prevent artifacts' illegal cross-border trade, or else way, the efficiency of international tools remains very limited.

114 *See* Libanon's case in the *Sevso* trial.

115 S.C. Symeonides, A Choice-of-Law Rule for Conflicts Involving Stolen Cultural Property, *Vanderbilt Journal of Transnational Law*, Vol. 38, 2005, p. 1178.

116 N.R. Lenzner, The Illicit International Trade in Cultural Property: Does the UNIDROIT Convention Provide an Effective Remedy for the Shortcomings of the UNESCO Convention?, *University of Pennsylvania Journal of International Law*, 1994-1995, pp. 471-472.