

# **GOVERNMENT OF HUNGARY**

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on the amendment of certain laws related to the return of cultural assets held in public  
collections whose ownership status is disputed

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**Act No. .... of 2013**

**on the amendment of certain laws related to the return of cultural assets held in public collections whose ownership status is disputed**

**1. The amendment of Act No. XCIII on Duty Stamps**

**1. §**

16. § (1) of Act No. XCIII on Duty Stamps shall be supplemented by the following point e):

*(Exempt from inheritance tax:)*

“e) the inheritance related to any assets returned to the former owner’s heir from state or local government-run public collections, in a procedure specified in the regulations concerning cultural assets, where the inheritance takes effect prior to the date of the return:”

**2. The amendment of Act No. CXL of 1997 on Museum Institutions, Public Library Services and Public Education**

**2. §**

The Basic Principles subtitle of Act No. CXL of 1997 on Museum Institutions, Public Library Services and Public Education (hereinafter referred to Kultv.) shall be supplemented by the following 4/A §:

“4/A § Cultural assets held in state or local government-run public collections whose ownership by the state cannot be verified beyond reasonable doubt shall be handed over, in a procedure regulated by a government decree issued under the authority of this Act, and free of charge, to the person who makes a prima facie case of his/her title to the particular cultural asset in question.”

(2) 100. § of the Kultv. shall be supplemented by the following point m):

*(The Government receives authorization to regulate the following issues as part of the implementation of the Act)*

“m) the restitution scheme pertaining to cultural assets held in state or local government-run public collections whose ownership by the state cannot be verified beyond reasonable doubt.”

**3. Amendment of Act No. XLV of 2008 on Certain Non-contentious Notarial Proceedings**

**3. §**

27/A. § of Act No. XLV of 2008 on Certain Non-contentious Notarial Proceedings shall be supplemented by the following subtitle and 27/B-27/G §§:

“Procedure to verify the probable inheritance title to the assets placed in public collections

27/B. § (1) In the event that the organization exercising the state's ownership rights (hereinafter referred to as the person exercising the state's ownership rights) determines in a special procedure for the release of the asset that an asset or a group of assets (hereinafter referred to as an asset) classified as a cultural asset and a state-owned property held in a state or local government-run public collection (hereinafter referred to as a public collection) is suitable to be released, but the person who requests the release is unable to verify his/her status as an heir by a final probate order or inheritance certificate, he/she shall be entitled to request the public notary to conduct a procedure for the verification of the probable inheritance title to the asset, and to issue the probable heir certificate.

(2) For the purposes of this subtitle a testator shall be the last known owner of the asset placed in public collections.

(3) The notary at the place where the asset is located shall have competence over the procedure. In the event that the application concerns multiple assets located in various locations, then the proceeding notary shall be the one chosen by the applicant. In case multiple notaries operate in one seat – or in one operational area in the capital – the proceeding notary shall be the one chosen by the applicant.

27/C. § (1) The filing of the application shall be subject to a fee as provided by the ministerial decree on notarial tariffs, payable simultaneously with the filing of the application. Additional fees, reimbursement and duties – not including the fees of the appeal procedure – cannot be charged in the process.

(2) The application shall also include the following:

*a)* that the applicant requests the probable heir certificate for the reasons specified in 27/B. § (1);

*b)* the personal data (first and last name, date and place of birth, mother's maiden surname and first name), as well as the location and date of death of the testator as regards whose legacy the applicant is seeking certification of the probable inheritance title;

*c)* whether the testator left a will;

*d)* whether the applicant

*da)* is the testator's intestate heir, or

*db)* testamentary heir;

*e)* in case of testate or intestate disposition, the applicant's statement as to the intestate inheritance;

*f)* in case of testate or intestate disposition, the testamentary heirs' personal data (the natural person's – and, in the case of a natural person who does not have full legal capacity, the natural person's lawful representative's – name and surname, date and place of birth, mother's maiden name and surname and address; in the case legal persons or organizations with civil law legal capacity having no legal personality, the name, corporate seat, court registration

number or registration number and the name of the lawful representative);

*g)* the applicant's statement indicating his/her inability to verify the title of inheritance with a final probate order or inheritance certificate;

*h)* the applicant's statement to the effect that he/she not initiate proceedings before another notary on the same grounds in connection with the testator and the property specified in the application;

*i)* the applicant's statement to the effect that he/she is aware that a person who participates in issuing a public deed containing false data, facts or statements in connection with the existence, change or termination of rights or obligations commits a crime, and the applicant's statement that the content of the application is true;

*j)* the explicit request to the notary to declare that, based on the information submitted, the applicant

*ja)* is or may be the intestate heir, or

*jb)* may be the testamentary heir

of the testator.

(3) The original or notarized copies of the following documents shall be attached to the application:

*a)* the testator's death certificate

*b)* the decision of the person exercising the ownership rights of the state passed in a separate procedure for the return of the property as to the possibility of returning the asset to the applicant, and

*c)* the will.

27/D. § (1) Within 30 days of the receipt of the application – if the deficiencies of the application are required to be remedied, then 30 days within remedying such deficiencies –, the notary shall

*a)* in a separate order, issue a probable heir certificate in which it certifies that, pursuant to the application, the applicant may be the testate or intestate heir of the testator regarding the asset indicated in the application, or

*b)* refuse to issue a probable heir certificate if the application is partly or in whole unfounded on its face.

(2) The probable heir certificate cannot deviate from the application.

(3) If the applicant does not remedy the deficiencies of the application – including his/her failure to pay the notary fee – within the deadline set in the order calling for remedying the deficiencies, the application shall be rejected without examination.

27/E. § (1) The probable heir certificate can be used solely in the procedure for the restitution of the asset conducted by the public collection holding the particular asset. This provision shall be indicated in the probable heir certificate.

(2) A probable heir certificate shall be published by the notary on the website of the National Chamber of Notaries for 15 days.

(3) A person who disputes the applicant's status as probable heir under the probable heir certificate shall be entitled within 15 days from the last date of the publication deadline to file an objection against the probable heir certificate to the notary public hearing the case.

(4) In the objection it is sufficient to state that the person filing the objection does not agree with the content of the probable heir certificate; the objection does not need to contain any more detail or reasoning. Every complaint against the probable heir certificate within the deadline specified in paragraph (3) shall be considered an objection.

(5) The objection does not have to be communicated to the applicant.

(6) In case of a timely objection, the notary shall determine the probable heir certificate ineffective. The order establishing the ineffectiveness of the probable heir certificate shall be delivered to the person who filed the objection, but the person who filed the objection shall not be entitled to appeal the order.

(7) A late objection shall be dismissed by the notary without examination. The order shall be delivered to the applicant who may file an appeal against the order.

(8) In the event that an objection has been made against the probable heir certificate within the period specified in paragraph (3), it shall be delivered to the applicant. The copy of the probable heir certificate delivered to the applicant shall indicate that during the deadline no objection was submitted to the notary against the probable heir certificate.

(9) No appeal may be made against the probable heir certificate. After the deadline specified in paragraph (3) has elapsed, a person who disputes the content of the probable heir certificate may assert his/her claim against the adverse party only in court.

27/F. § (1) In the proceedings

a) certificate and evidence shall not be admissible,

b) 132. § of the Code on Civil Procedure shall not be applicable,

c) the appeal does not need to be delivered to the parties for comments.

(2) The provisions of the Code on Civil Procedure applicable to delivery agents shall be applied in the proceedings, subject, however to the deviation that the notary shall – without calling on the party to supply the missing documents – reject the application and the objection if the applicant has failed to duly designate his/her delivery agent and to submit the service agreement concluded with the delivery agent simultaneously with filing the application / objection.

(3) In the event of the party's failure to duly designate a delivery agent – including the case where the obligation to designate a delivery agent arose after the filing of the application or objection, and the party failed without prior notice to designate his/her delivery agent and to submit the service agreement concluded with the delivery agent simultaneously with the occurrence of the circumstance which gave rise to the obligation to designate a delivery agent – or the documents cannot be delivered to the delivery agent, the notary shall deliver the documents by way of public notice. The notice shall not be posted; it shall be published only on the national chamber's website by properly applying the rules of publication of the Code on Civil Procedure regarding the publication of announcements on the central website of courts.

(4) The notary shall also deliver the document in a manner described above by way of public notice to the party to whom the document could not be delivered due to the fact that, according to the post office, the person was not identifiable at the designated address, or the person moved to an unknown location from such an address, or, according to the post office, the delivery was hindered due to the non-existence of a letterbox.

27/G. § The notary shall deliver to the applicant a receipt showing the amount of the application fee paid simultaneously with the delivery of the probable heir certificate or the order determining the ineffectiveness thereof. The fee shall be borne by the state. The fee shall be reimbursed to the applicant by the person exercising the ownership right of the state, based on the receipt.”

#### **4. Amendment of Act No. CXCVI of 2011 on National Wealth**

##### **4. §**

1. § (2) g) of Act No. CXCVI of 2011 on National Wealth shall be replaced by the following:

*(The following shall constitute national wealth:)*

“g) cultural assets recorded in state or local government-run public collections (museum institutions, archives, video and audio archives and libraries functioning as public collections, libraries), unless the lawful establishment of state or local government ownership cannot be proven unequivocally, and someone else proves, or, in a procedure specified in the legislation on cultural assets, establishes a prima facie case for, his/her ownership right to the property.”

#### **5. Closing Provisions**

##### **5. §**

This Act shall take effect on the 15<sup>th</sup> day following its publication.

##### **6. §**

Under Article 38 (1) and (2) of the Basic Law, 4. § shall qualify as pivotal law.

## REASONING

### GENERAL REASONING

After the Second World War, a large number of different works of art, or collections thereof, made their way into public collections. It is doubtful whether some of these works of art are indeed in the lawful property of the state. In the decades before the change of regime, it was considered natural that cultural goods held in public collections were in the public domain, regardless of whether the state actually acquired lawful title to these assets, or whether this was merely a presumption based on the location of the safekeeping and the records. Thus, in many cases, cultural goods were treated as public property even when such goods were held as so-called museum bailments. Given that there are as many as tens of thousands of cultural goods held in public collections, the ownership situation of a significant portion of these goods is still unclear and undocumented.

After the political transition, the original owners, or their heirs, initiated a number of lawsuits for the return of their highly valueable cultural goods, or collections thereof, held in public collections, with varying success. In this, the misconceived professional attitude of public collections and the organizations exercising the ownership rights of the state both played a role. As a result, public authorities and institutions were not guided by the genuine intention to clarify the legal situation, but rather by the intention of retaining the state's ownership of the assets.

In a previous study, the National Audit Office found that “in light of the legislation in force, in addition to, or in place of, judicial proceedings, there was no properly constructed procedural policy. There were also no detailed legal provisions as to the types of organs that were entitled, or obligated, to proceed and decide such matters, the kind of procedure to be conducted, or the kind of data and documents eligible to be used (...) This decision-making power which lacks institutional control is not a satisfactory solution for the protection of state property”.

In view of all this, a fundamental change of attitude is needed as well as appropriate new legislation. A democratic state which declares the right to property to be a fundamental right in its Basic Law cannot act like its dictatorial predecessor in treating the property of its citizens arbitrarily. Therefore, a solution is needed which, on the one hand, respects and enforces the right of ownership and does not force the legitimate claimants to participate in lengthy – sometimes decade-long – litigation, while, on the other hand, also provides a safe and guaranteed opportunity for the state organization in charge of exercising state property rights to make restitution legally possible.

The most important guarantee of this could be that in case an ownership claim arises in connection with such assets, then primarily the existence of state ownership should be examined, and if there is any doubt as to the existence of state ownership, then this would have to result in an obligation to retribute the assets to the original owners. It is therefore a change of fundamental importance that the acquisition of ownership by the state must be proven beyond reasonable doubt by the one who alleges this. The Proposal promotes the restitution of property in that if the state ownership of assets, or collections thereof, qualifying as cultural goods and held in public collections cannot be verified unambiguously, then the person exercising state property rights should be entitled to determine the lack of state

ownership, and, in view of this, release (return) the assets to the person who sufficiently proves his/her status as an owner.

The procedure to be conducted in case of a claim for the return of the property by public collections and the organization exercising state ownership rights, as well as the duties and responsibilities of these entities, must be regulated by the Government on the basis of the authorization of the Proposal.

The Proposal introduces a special notarial, non-contentious procedure in connection with the procedure regulated in the government decree in the context of making a prima facie case of one's status as owner. This procedure serves to demonstrate the probable heir status in connection with the original owner of the asset in the event that the applicant does not possess a probate order or inheritance certificate.

## **DETAILED REASONING**

### **Re 1. §**

By amending the Act on Duty Stamps, the Proposal classifies as exempt from the obligation to pay duty stamps the inheritance related to any asset returned to the former owner's heir in a procedure specified in the regulations concerning cultural assets, where the inheritance takes effect prior to the date of the return. This exemption applies only to inheritance that takes place before the return of the property, but not to inheritance following the return of the property.

### **Re 2. §**

By supplementing Act No. CXL of 1997 on Museum Institutions, Public Library Services and Public Education, the Proposal creates an obligation for public collections to release any cultural goods held by them in the event that the ownership by the state of these goods cannot be verified unambiguously, and the applicant succeeds in making a prima facie case of his/her ownership. The Proposal also provides the necessary authorization to the Government to regulate in detail the procedure conducted by the organization exercising the ownership rights of the state and the public collections process.

### **Re 3. §**

Any cultural goods (works of art) shall be released primarily to the original owner, or to those who prove their status as owners by a probate order or certificate of inheritance. In absence of these, however, release may still be appropriate, as in many cases the rightful applicants were not in a position to properly document the origin of their ownership. Therefore, the Proposal creates a new non-contentious procedure, and supplements Act No. XLV of 2008 on Certain Non-contentious Notarial Proceedings accordingly. During the non-contentious procedure, the person who claims ownership makes a prima facie case of his/her legal tie to the original owner of the asset claimed in case the organization exercising the ownership rights of the state determines in a special procedure designed to release the asset that the asset can be released but the person involved does not possess a probate order or inheritance certificate. The purpose of the procedure may be summarized in that if the applicant is unable to demonstrate by a probate order of inheritance certificate that he/she is the heir of the deceased person designated as the owner of the work of art, then such person should be able to demonstrate in



a special, simplified non-contentious proceeding no serious doubt exists as to his/her capacity as heir. In the order closing the proceedings, the notary public determines that in the procedure it was not in dispute that the applicant was a person who qualified as an heir under the rules of the Civil Code. This order is applicable only in the procedure for the release (return) of the work of art vis-à-vis the public collection holding the asset; the procedure does not affect any lawsuit initiated in connection with the right of ownership, it is intended only to release any non-state-owned property from state possession, and return such asset to the person who is able to make a prima facie case of ownership over the asset.

Under the Proposal, the request for conducting the proceedings must be submitted by the person requesting the release of the work of art in the event that the organization exercising the ownership rights of the state determined in the relevant proceedings that the work of art could be released, but the person requesting the release was unable in the procedure conducted by the organization exercising the ownership rights of the state to demonstrate by a probate order of inheritance certificate that he/she was the heir of the original owner. As a main rule, the application must be submitted to the notary having jurisdiction at the place (location) where the public collection holding the work of art is located. In certain cases – for example, if the application concerns a number of works of art whose locations are different –, the Proposal allows applicants the option to choose where to initiate proceedings.

The application must contain all the data and all the declarations by the applicant based on which a prima facie case can be established that the applicant is the potential testate or intestate heir of the original owner, and be accompanied by the documents specified in the Proposal.

The notary public shall decide the application within 30 days of receipt of the application, and must pass an order either issuing the probable heir certificate, or refusing to do so if the application is unfounded on its face. If the notary issues the probable heir certificate, it must be published on the internet for a period of 15 days so that anyone who denies the applicant's status as possible heir be able to file an objection against the probable heir certificate. In case of a timely objection, the probable heir certificate must be deemed ineffective as a result of which it will be unsuitable for use. In case no objection is received, then the certificate must be delivered to the applicant. In the proceedings for the release of the work of art, the applicant is entitled to present the certificate to the public collection holding the work of art.

#### **Re 4. §**

By amending the Act on National Wealth, the Proposal makes it clear that the mere fact that a certain asset is included in the records of a state or local government public collection is not in itself sufficient to classify such asset as part of the national wealth. Consequently, in case the lawful establishment of state or local government ownership cannot be established unequivocally and someone else proves, or makes a prima facie case of his/her ownership in the procedure specified in the regulations concerning cultural assets, such assets must be excluded from the scope of state property.

#### **Re 5. §**

These articles state the effective date of the act and the pivotal nature of 4. § of the Act on National Wealth.