

**DECISION 16 OF 1993: 12 MARCH 1993**  
**ON THE RESTITUTION OF JEWISH POSSESSIONS**

The petitioners sought determination of an unconstitutional omission on the part of successive governments in their failure to discharge their obligations under the Paris Peace Treaty 1947.

According to Decree 1600/1944 ME, the Jewish population of Hungary was required to register all its valuables above a certain figure. These registered items were to be placed under sealed custody in bank safes. The Minister of Finance was authorised to take an inventory of the contents of these safes and to take into custody cash and other paper assets as well as jewellery and valuables belonging to Jews.

This confiscation, extended by subsequent decrees, was to be remedied by Act XXV of 1946 on the Condemnation of the Persecution of Hungarian Jewry and the Mitigation of its Consequences. Section 2(1) provided that where the State had acquired or would acquire, because of the absence of heirs or beneficiaries, the inheritance of Jewish people who died as a result of persecution between 1941 and 1946, then this inheritance would be assigned to a separate fund. Section 2(3) stated that where confiscated property was returned from abroad and the "lawful owners" could not be determined, then this property would also go to the fund.

When the National Jewish Restitution Fund was established, the items under Decree 1600/1844 ME were outside its scope since they were still abroad, pending a decision on their return. Moreover although the process of returning confiscated assets was regulated, no

ministerial decree was ever issued to lay down the manner in which "lawful owners" under Act XXV of 1946, s.2(3) were to be determined.

Under the Paris Peace Treaty 1947, art.27(1), Hungary assumed the responsibility for restoring the possessions, legal rights and interests, or, if the restoration were impossible, the payment of appropriate compensation to the Jewish people affected by the confiscations. Article 27(2) provided that where no heir or beneficiary came forward within six months or no other claims were submitted, any such unclaimed assets were to be transferred by the Hungarian government, in effect, to the Fund. The Treaty became law by Act XVIII of 1947.

Nevertheless, Jewish assets returned from abroad and those without heirs or beneficiaries ultimately ended up in the possession of the State in the National Bank under the authority of the Ministry of Finance in what amounted to a *de facto* nationalisation.

The petitioners submitted *inter alia* that (a) Jewish property confiscated according to Decree 1600/1944 ME should have been returned to the original owners or their heirs and beneficiaries. In the absence of the latter, jewellery and valuables or the equivalent in compensation should have been distributed to the Fund. The failure by the State to enact a legal rule to discharge these obligations under Act XXV of 1946 and the 1947 Treaties gave rise to an unconstitutional omission to legislate; and since the injured parties claimed return of their valuables on the basis of the original custody or deposit agreement, Act XXIV of 1992 (the "Second Compensation Act"), ss.1 and 3 were therefore unconstitutional and contrary to the 1947 Treaty, and consequently ought to be annulled.

**Held**, allowing the petition in part:

(1) Following the enactment of the Second Compensation Act, the statutory provision of compensation to satisfy the claims arising from the compelled depositing, sealing and confiscation of valuables according to Decree 1600/1994 ME did not violate the Constitution or the Paris Peace Treaty. In the light of official state actions and legal rules in the late 1940s and early 1950s, the State had come to treat these valuables as its own property thereby injuring the proprietary rights of the former owners. Accordingly the State was burdened with the responsibility to make amends for the injuries thus inflicted not only according to art. 27 of the Treaty but also Act XXV of 1946, such responsibility being independent of whether or not the valuables became state property. "Payment of appropriate compensation" under the Treaty, art.27(1) did not necessarily mean full compensation but could also be satisfied by partial compensation provided that former owners received such compensation without being discriminated against. This formerly unperformed duty under domestic legislation had consequently been discharged with the coming into force of the said Compensation Act. In this respect, no constitutional omission of the duty to enact legislation existed (page 00, line 00 - page 00, line 00).

(2) However such a constitutional omission did exist in respect of the State's failure to issue or enact legal rules which would have given effect to the provisions of art.27(2). The State thereunder had been required to assume the duty of transferring to advocacy groups working on behalf of Jewish victims deprived of their property the claims of former owners without legal heirs or beneficiaries as well as all those inheritances and bequests of deceased individuals targeted by laws of racial persecution which, in the absence of heirs or beneficiaries, had been or would be passed onto the State. Although the still in force Act XXV of 1946, s.2(1)-(3)

contained provisions closely related to art. 27(2), the State failed to act upon them: it did not proceed with the probate procedures in s.2(1); the Ministry never issued the regulations under s.2(3) on the method of determining the "lawful owners" of the valuables; and the State did not transfer either probate estate (inheritance and bequests) or other valuables to the National Jewish Restitution Fund. Partly because of an omission to legislate and partly because of the executive's failure to act, the State did not fulfill the obligation imposed on it in respect of those legal persons (organisations) defined in art. 27 (page 00, line 00 - page 00, line 00).

(3) In rectifying this omission, the action to be taken by Parliament, *e.g.* enactment of a statute or negotiated settlement, had to remain in harmony with the founding principles of the previously-enacted Compensation Act. Thus provision by the State of partial compensation for the organisations in the same manner and to the same extent as the first two Compensation Acts would be constitutional. Although these Acts only extended to natural persons, the State had previously provided by statute the opportunity for legal redress for property damages to legal persons, *viz.* local governments and churches. The enactment of legal rules allowing redress were justified in the latter cases since it amounted to the realization of the opportunity to exercise a fundamental right guaranteed by the Constitution while in the case of Jewish advocacy and interest groups the basis for such rules was an international treaty. The differentiation in enacting legislation in favour of such groups, with respect to other persecuted persons, was not contrary to Art. 70/A and in fact amounted to a partial counterbalancing of previous negative discrimination suffered by Jewish people and their property: thus in its ultimate result it effectively amounted to a positive discrimination in favour of the members of such groups, whereas no ground existed to justify conferring positive discriminatory treatment on natural persons who had suffered

deprivation of property right on account of their Jewish religion or ancestry (page 00, line 00 - page 00, line 00).

IN THE NAME OF THE REPUBLIC OF HUNGARY!

In the matter of the petition seeking a *ex post facto* examination of the unconstitutionality of a legal rule, and a determination of an unconstitutional omission of the legislative duty of enactment ("unconstitutional omission"), the Constitutional Court has made the following

DECISION.

1. The Constitutional Court holds that an unconstitutional situations has arisen by Hungary's failure to comply with the provisions of art. 27(2) of the Paris Peace Treaty.

Accordingly, the Constitutional Court requests Parliament to undertake the necessary steps for the implementation of measures contained in the Peace Treaty by 31 December 1991.

2. The Constitutional Court rejects the citizen petition seeking a determination that Act XXIV of 1992 is in conflict with an international treaty. The Court conclusively determines that the challenged Act is not in conflict with any international treaty.

3. The Constitutional Court rejects the petition seeking a determination of unconstitutionality and declaration of nullification of ss. 1 and 3 of Act XXIV of 1992 and their supplementary regulations.

The Constitutional Court publishes its Decision in the *Hungarian Official Gazette*.

## REASONING

### I

According to the petitioners, the jewellery and gold valuables taken from the population of Jewish descent or religion by Decree 1600/1944 ME and kept in custody could not have become state property. Accordingly, the custodial property is to be returned to them or their heirs or beneficiaries. In case there are no heirs or beneficiaries, the jewellery and valuables, or the equivalent compensation, is to be distributed to the National Jewish Restitution Fund or its legal successor, in accordance with Act XXV of 1946 and the 1947 Paris Peace Treaty.

Petitioners assert a violation of their constitutional rights relating to property by the fact that although -- according to their knowledge -- the jewellery and valuables are in the possession of the Hungarian National Bank, they have not been returned to them to the present day, nor have they received the compensation to which they are entitled by the provisions of the Peace Treaty.

The National Jewish Restitution Fund, representing the interests of the legal successors of the victims, has not been compensated by the Hungarian State either.

It is petitioners' contention that this unconstitutional situation has arisen because of the failure of every Hungarian government to enact the legal rule required to discharge the obligations assumed by the Paris Peace Treaty and ratified by Act XXV of 1946 still in force.

Given that the injured parties claim the return of their valuables on the basis of the original custody or deposit agreement, they regard ss. 1 and 3, and the latter's supplemental

provisions, of Act XXIV of 1992 (hereinafter referred to as "the Second Compensation Act") as unconstitutional and contrary to the Peace Treaty. For this reason, one petitioner sought a determination of the unconstitutionality of these legal provisions, a declaration of their incompatibility with the Peace Treaty and their consequent nullification.

## II

The Constitutional Court held several sessions in this matter.

The Court heard testimony from the Minister of Finance and the President of the Hungarian National Bank. It acquired, examined and evaluated contemporary documents, inventory lists and notes (four volumes) made available by the Ministry of Finance, the inventory list of the valuables brought back from Paris (four volumes), the documentation of the inquiry conducted thus far by the Finance Institute Centre, the documents submitted by the Hungarian National Bank, minutes and notes of economic and political decisions, resolutions, decrees and other pertinent documentation made available by the National Archives' Contemporary Collection. The Court also processed the evidence unearthed by the petitioners and their experts, including correspondence and the result of their professional enquiries. The Court also utilized a few secondary sources related to the issue at hand.

Following this lengthy and comprehensive groundwork, utilizing only the documentary sources at its disposal and confining itself exclusively to the framework of the constitutional review of the issues, the Constitutional Court has made the following determinations:

1. On 16 April 1944 the Sztójay government issued Decree 1600/1944 ME "on the registration and placement under sealed custody of Jewish valuables."

The Decree stated that "every Jew living within the country's territory is required to register by 30 April 1944, all valuables he possesses at the time of this Decree entering into force."

Every article with market value in excess of 10,000 pengő was subject to the registration requirement.

"Registration is required by all those, Jewish and non-Jewish persons alike, who have in their possession Jewish valuables under any legal claim or title."

According to para. 5 of the Decree, pure platinum and platinum alloys, further pure gold and gold alloys -- including every type of gold coin and medallions -- broken gold and every type of gold scraps -- gold compounds and residues -- as well as objects, jewellery, precious stones and pearls made using platinum, gold or a combination of these precious metals also fell into the category subject to the registration and custody requirement.

At this time, exemption was granted to wedding and engagement rings except if a ring contained a precious stone or pearl. Banks were authorized to place the registered items in their safes.

Based on the registrations, the safety-deposit boxes rented by Jews were sealed by the Finance Institute. The Minister of Finance received authorization by the Decree to take an inventory of the content of these safes and to take into custody cash and other paper assets, as well as jewellery and valuables belonging to Jews.

The Jewish population was also required to register or deposit into a cheque or savings account at post offices, banks or other financial institutions all sums in excess of 3000 pengő.

Violation of the Decree was sanctioned with criminal liability. The article which led to the violation of the Decree was confiscated.



The registration and depositing into custody had to take place at "any finance institute belonging to the Finance Institute Centre, public cashiers or the cashier of the Hungarian Royal Postal Savings Bank".

2. On the basis of further Decrees in April 1944 (Decree 6138/1944 VI. BM and Decree 6163/1944 IV. BM) people of Jewish descent were settled in the ghetto and the confiscation of all their existing valuables was ordered.

The Hungarian Royal Supreme Comptroller ordered that all the gold, silver and platinum jewellery and other valuables taken from the Jewish population be located and collected. A government committee was formed for this purpose. During the summer of 1944, the agents of this commission placed all of the Jewish citizens' property (valuables, works of art, precious metals, furs, carpets, clothing) into the storage rooms of various finance institutes.

During July and August, in light of the military situation, the committee transferred the valuables from the threatened storage areas to the Central Institute of the Hungarian Royal Postal Savings Bank.

Part of the jewellery and other valuables taken from the Jewish population during the later period ended up, without receipts, at the city branches or local offices of the Arrow Cross Party.

During October, in light of the changing military situation, all these valuables, as well as those held at the Office of Finance Administration were transferred to the western part of the country pursuant to a separately issued Decree.

The making of an inventory of the valuables according to their content commenced at this location. In this process the labels identifying the owners of the valuables were removed.

On 30 March 1945 a freight wagon transport left Sopronkővesd for Hallein via Salzburg. In addition, two trucks loaded with the other part of the valuables had also left for that location.

In May 1945 the shipment was captured by French troops -- stationed in that part of occupied Austria -- and it was subsequently sent to Paris.

3. Simultaneously with these developments, the leadership of the Hungarian National Bank transported the complete gold and foreign exchange reserves of the Hungarian State held by the Bank, valuables held in their custody and other safety box contents, together with the so-called criminal custodial deposits and the deposits of certain Arrow Cross leaders and gendarme officers, as well as the Bank's records and personnel, to the environs of Sopron and, On 21 January 1945 -- because of the worsening military situation -- to Spital am Phyr (Upper Austria). The office of the Hungarian National Bank was opened here and internal banking matters were directed from here as well.

Upon the advancing of the Soviet troops even the Bank's remaining personnel followed those who had departed earlier. In this way the Hungarian National Bank attempted to secure its continued operation and rescue its assets.

Later, the whole of the Hungarian National Bank's assets at Spital am Phyrn was captured by the American armed forces -- as the place came under U.S. military occupation -- and it was then taken to Frankfurt am Main.

According to the available documents, neither the French nor the American capture amounted to a transfer of property rights over the valuables.

4. After the war, one of the first Decrees made by the new Hungarian government was Decree 200/1945 ME. This Decree invalidated the Decree 1600/1944 ME, along with all the Decrees discriminating against Jews. The Government assumed responsibility for settling the question of Jewish property within 30 days.

On 28 May 1946, Decree 5950/1946 ME "concerning Hungarian citizens' personal possessions taken abroad pursuant to legal rules discriminating against Jews" was proclaimed. On the basis of the Decree the government ordered the creation of a committee to investigate the personal property of Hungarian citizens taken abroad. The chairman of the committee was to be appointed by the Minister of Finance, chosen from the candidates recommended by the National Office of the Hungarian Israelites and the Central Office of the Hungarian Autonomous Orthodox Israelite Denomination.

The January 1946 international conference held in Paris discussed these captured valuables but no decision was made concerning their fate.

On 15 November 1946, Act XXV of 1946 entered into force, which remains in effect to the present, on the condemnation of the persecution of Hungarian Jewry and the mitigation of its consequences.

In this Act, the new regime declared that "the Hungarian nation does not subscribe to racial persecution" and that it desired to settle the issue of property damages.

According to s. 2:

1. All inheritance by people designated in subsection 2 below which, because of the absence of heirs or beneficiaries, have passed or will pass onto the State is assigned to a separate fund to be established in accordance with the regulations below.
2. The provisions of this section extend to inheritance, located either in the territory of Hungary or abroad, of persons who lost their lives between 26 June 1941 and 31 December 1946, from wounds, injuries, or deterioration of health arising from persecution they were subjected to on account of their Israelite (Jewish) religion or Jewish descent.
3. Those valuables brought back to the country from abroad which, as a result of the former regime's actions, had been taken unlawfully from the possession of people persecuted because of their Israelite (Jewish) religion or Jewish descent shall also be transferred to the Fund, provided that their lawful owners cannot be determined according to the regulations issued by the ministry.

The Fund is a legal person by law. Its task is "the support of people persecuted on account of their Israelite (Jewish) religion or Jewish descent, people in need because of that persecution, as well as institutions serving these ends."

Decree 3200/1947 ME, still in force, contains the detailed regulation of the Fund which is described by s. 2(6) of Act XXV of 1946. Its official name is the National Jewish Restitution Fund.

Decree 24,390/1946 ME contained the other executory provisions of Act XXV of 1946. This Decree regulated the process of returning of assets taken and captured abroad, or taken abroad but already brought back into the country.

But according to para. 6 of that legal rule, the provisions of this executory Decree (Decree 24,390/1946 ME) did not extend to articles within the scope of Decree 1600/1944 ME. The reason was evidently that at this time the valuables carried abroad by the so-called "golden train" were still under the control of French and U.S. troops respectively and no decision had as of then been made about their return.

But there was no executory Decree concerning s. 2(3) of Act XXV either, according to which a separate ministerial decree would have had to determine the manner of identifying "lawful owners", in whose absence the Restitution Fund was to become authorized to acquire the property.

The National Jewish Restitution Fund, created pursuant to the legal rule, approached the Hungarian National Bank as early as December 1947, to ask for the surrendering of the valuables taken away, as well as the transfer of the inventory list of valuables brought back into the country.

Subsequent to the signing of the Peace Treaty, both the Americans and the French, from Frankfurt am Main and Paris respectively, returned the valuables captured by them.

The members of the Restitution Fund finally received the records appended to the so-called "Frankfurt materials," but their request for the valuables was refused on grounds of the absence of legal regulation to that effect. However, the records transferred revealed only criminal custodial deposit (gold bars, coins and foreign exchange) and foreign exchange assets of "domestic firms and offices". In addition, under the heading of "miscellaneous deposits", the inventory contained the record of money confiscated from certain arrested individuals and prison camp gendarmes, designated as evidence of criminal activity, as well as gold and some articles of use. The latter inventory contained only names, without address, the designation of the items with only the type of criminal offence or the gendarme unit identified.

Accordingly, while it is likely that part of the inventory referred to Jewish property placed in bank safety-deposit boxes, and almost certainly the criminal custodial deposit of arrested people and Arrow Cross leaders contain Jewish valuables, the bulk of the "Frankfurt material" comprised state assets and other commercial deposits held by the Hungarian National Bank.

In addition to the valuables brought back into the country, the inventory of 30 June 1945 by the Hungarian National Bank also included property registered as abandoned. (At that time the registered articles were accompanied by information on the name, locality, name of the person registering the item and a description of the item, though there was no other identifying information.)

The shipment brought back from Paris -- which likely contained the compelled custodial deposits and confiscated Jewish gold and jewellery designated as criminal custodial deposits -- was accompanied by four thick volumes of inventory information. These no longer contained names, and listed the valuables only by bulk categories. Parts of the valuables ended up with the

Ministry of Justice and the Ministry of Interior but the vast part of it was deposited at the Hungarian National Bank, designated as a deposit by the Ministry of Finance.

The Ministry of Finance commenced processing the materials in 1949.

But the inventory designations of "A", "P", "8000" and "other unsorted deposits" were retained by the Hungarian National Bank in its designation of the Ministry of Finance deposit.

In addition to the Frankfurt and Paris shipments, the committee established for the recovery of Jewish property also succeeded in locating and bringing back some valuables taken abroad. The Bezdán, Tatabánya, Nagykorös and Buchenwald shipments were returned as a result. These also contained inventories with names and description of the items. The processing of these materials had already been commenced in 1948 by several committees -- the Ministry of Finance, the Hungarian National Bank as well as the National Jewish Restitution Fund -- and it was completed by other committees. (The first two volumes of records contain information on the representatives of the National Jewish Restitution Fund, while the latter volumes no longer refer to its participation.) Initially, these shipments received separate treatment. The objective was to treat these as individual deposits and to return them to their lawful owners. But the claims submitted for these deposits totalled a mere 120,000 forints. In some exceptional cases, monetary compensation was also given. But the opening of the individual deposits did not take place.

5. Because of the country's financial condition, especially for the normalization of its foreign exchange situation, Decree 4800/1946 ME was issued in 1946 with generally binding force -- that is without reference to the origin or descent of property owners -- ordering on pain of penal sanctions the surrender of gold and precious metals articles and gold and foreign currency reserves above a fixed value, as well as compelling owners to offer the State a right of purchase.

Concurrently, a separate Decree nationalized the assets of jewellers. Legal titles so acquired increased the deposits held by the Hungarian National Bank.

Economic as well as political considerations prompted the government in 1951 to order a review of gold and precious metals deposits. As a result, on 15 May 1951 the Ministry of Finance issued a circular for the uniform treatment of the deposits accumulated on the basis of various legal titles.

This move was prompted by previously-made political decisions. The Hungarian Workers' Party had decided in its various committees that the jewellery deposited as "abandoned", or on other basis, would not be returned; instead of providing individual compensation on the basis of claims already submitted, the National Jewish Restitution Fund was to be allocated a certain sum for this purpose. The party also decided to sell the jewels and valuables registered and to thereby terminate the discussion of the issue. (The political decisions were "legitimated" by the 18 November 1949 session of the Finance Board and, on 9 August 1949, by the National Economic Committee).

In order to sell the deposits on a large scale, a new inventory of the Ministry of Finance's accounts was carried out. The gold coins and bars were purchased by the Hungarian National Bank. The purchase price was deposited to a separate account opened for the Ministry of Finance. Among the gold articles, the broken gold was melted down, while the marketable items were sold, domestically through the Watch and Jewellery Trading Company, or abroad through the Artex trading corporation. (The documents examined reveal that instructions were given to transfer works of arts to museums. However, there is no information on the execution of these orders; neither the names of the museums, nor the inventory of such works has been found and hence it cannot even be determined whether the orders were actually carried out.) The

"marketing" of these items commenced on 15 September 1948 and proceeded continuously until 1981.

In response to the Constitutional Court's appeal -- made pursuant to its inquiry into this matter -- the Minister of Finance and the President of the Hungarian National Bank both submitted written responses stating unanimously that "the Hungarian National Bank at this time does not have in its possession precious metal articles, gold bars and broken gold or precious stones which were taken into custody pursuant to Decree 1600/1944 ME, or confiscated according to para. 17(3) thereof."

From the documents available, another fact which may be established is that neither legal regulation nor any other measure to effect a return of the valuables taken into custody by Decree 1600/1944 ME, or to offer compensation for them, had taken place until the enactment of the Second Compensation Act. (Act XXV of 1991 merely raised the possibility of compensation.) Only with respect to a handful of cases of the so-called Bezdán, Tatabánya, Nagykorös and Buchenwald shipments was there compensation paid out by the order of the Ministry of Finance. But since the individual deposits in these shipments were not opened they were also transferred to the Ministry of Finance's deposits in 1951.

### III

The Constitutional Court examined the available documents and other materials exclusively in terms of the issues raised by the petitions, in order to clarify the legal fate of the confiscated valuables hauled abroad and subsequently brought back into the country, and to



examine the constitutional connection between the legal rules currently in force regulating those valuables and the State's responsibility for them.

In the Constitutional Court's view, the documents indicate that the valuables placed under custody following Decree 1600/1944 ME were sorted by category with the identifying labels containing names removed and discarded already upon their shipment abroad. This is why when the shipment was returned from Paris in 1948 the accompanying inventory listed them by categories of melted down or processed materials. The possibility of identifying their owners no longer existed.

The shipment returned from Frankfurt am Main by the Americans is likely to have contained valuables confiscated from people persecuted on account of their Jewish religion or descent. These were primarily so-called criminal custodial deposits, as well as voluntarily deposited valuables in the safety-deposit boxes and the vault of the Hungarian National Bank, company and corporate assets, as well as items confiscated from the Jewish population by Arrow Cross or gendarme personnel. But given that the custodial deposits authorized by Decree 1600/1944 ME were entrusted to "any financial institute which is a member of the Finance Institute Centre" and not to the Hungarian National Bank, it is likely that the Frankfurt shipment did not contain deposits taken into custody pursuant to Decree 1600/1944 ME.

The Frankfurt shipment did contain an inventory of some articles with identifying names as well, but because of the melted down or processed state of the articles, their identification became impossible.

As a result, upon their recovery from abroad these valuables were placed in the possession of the Hungarian National Bank as the deposit by the Ministry of Finance with the right of disposal vested primarily in that Ministry.

Although by law and international treaty the Hungarian State assumed the responsibility for taking measures to determine the rights of the injured parties, in reality this duty was not discharged. By that time, after the processing had taken place, the recovery by the government of the confiscated valuables in their original form was no longer possible.

By the processing (melting down and sale) of the gold, silver and other valuables, the implementation of the uniform inventory system in 1951 and the political decisions made in 1948-49, the State came to treat these valuables as its own property. In light of this, the Constitutional Court holds that the former owners of the gold, jewellery and other valuables, whose possessions had been taken into custody and sealed by Decree 1600/1944 ME, confiscated or hauled off abroad and subsequently returned to the state, have suffered injury to their proprietary rights inflicted by the legal rules -- now invalidated -- and official actions of the Hungarian State.

Yet, for the same reason as noted above, the impossibility of returning the valuables in their original state applies once more. Accordingly, it is the Hungarian State which is burdened with the responsibility of making amends for the violations of property rights thus inflicted, especially as this duty is assumed by the Hungarian State not only by art. 27(2) of the Paris Peace Treaty, but also by Act XXV of 1946. The State's responsibility in this regard is independent of the question whether or not the valuables had become state property.

In relation to this matter, the Constitutional Court points to the following issues, emphasizing their fundamental importance:

During the past decades, millions of citizens suffered deprivation of their property rights, partly as a result of the State's nationalization of their possessions and partly due to its unlawful or unjust withdrawal of property rights. That in the latter case state ownership did not always and

necessarily follow was irrelevant for the former owners' grievances. Precisely because of this, the Compensation Acts enacted during 1991 and 1992 (Act XXV of 1991 and Act XXIV of 1992) ordered "the resolution of property relations by the partial compensation for the damages unjustly inflicted by the State on citizens' property." That is, these legal regulations did not necessarily focus on instances in which the State acquired property but addressed, in every case, the deprivation of property rights by the State.

The Constitutional Court has addressed in several of its decisions the issue of the harms inflicted by the State's nationalization of private property and its failure to provide compensation for it: *Dec. 21 of 1990 (X.4) AB* (MK 1990/98), *Dec. 16 of 1991 (IV.20) AB* (MK 1991/42), *Dec. 28 of 1991 (VI.3) AB* (MK 1991/59). The applicability of some of the principles derived in those cases reach beyond the sphere of nationalizations and are generally authoritative concerning compensation demands arising from the State's deprivation of property rights. Among other conclusions, the Constitutional Court also held that during the current economic transition, the State may also discharge its duty by ignoring the legal origin of individual proprietary harms and - in proportion to its capacity to carry the burden -- discharge its responsibility for these harms by providing compensation.

In the Constitutional Court's view, compensation is also the appropriate form of remedy for those people whose property had been taken away because of their Jewish religion or descent.

The Constitutional Court already held in its previous decisions on the connection between the Compensation Acts and nationalization that the reaffirmation or renewal of obligations burdening the State is constitutionally permissible. This novation is acceptable for all claims arising from the deprivation of property rights resulting from the execution of legal rules and

regulations issued by the State, irrespective of whether the deprivation of the property originally arose from property or contract law.

The Constitutional Court does not consider well founded those petitions which regard the use of compensation as an unconstitutional method of providing legal redress for the gold and other precious metals articles taken away. Accordingly, the Constitutional Court rejected the petitions challenging ss. 1 and 3 of the Second Compensation Act, as well as the supplementary provisions of the latter section.

In the Constitutional Court's view, the petition asserting the unconstitutionality of the challenged legal regulations in light of Art. 70/A of the Constitution is also without foundation. The Court has already stated in its previous decisions that a statutory determination of the extent of the damage and its compensation is not, *per se*, unconstitutional, being consistent with the concept of partial compensation.

What would raise the worrisome spectre of negative discrimination in violation of Art. 70/A of the Constitution is if the legal rules singled out by the petition currently being adjudicated upon were to give effect, in the absence of constitutional justification, either to full compensation or the application of a compensatory scheme based on different principles from those of other compensation methods.

Accordingly, the Constitutional Court also rejects the petitions in this regard.

Finally, pursuant to s. 21(3) of Act XXXII of 1989 on the Constitutional Court (hereinafter referred to as "the Constitutional Court Act"), the Constitutional Court rejects the citizen petition submitted on the question of conflict with an international treaty for the petitioner's lack of standing.

#### IV

The Constitutional Court did examine *ex officio* the compatibility of the legal regulations in force with the Paris Peace Treaty and the corresponding question of the possibility of a constitutional omission of legislative duty to enact legislation.

According to the petitioners, it is both unconstitutional and a violation of the Paris Peace Treaty that the provisions of s. 2(2) and (3) of Act XXV of 1946 concerning the rights of the National Jewish Restitution Fund have not been carried out.

The Constitutional Court had already referred to, and addressed in its previous decisions, that a petition for the determination of a conflict or incompatibility with an international treaty may only be submitted by parties and institutions authorized pursuant to s. 21(3) of the Constitutional Court Act. The individuals submitting this petition do not belong to this group. Accordingly, the court rejected the citizen petition for lack of standing.

However, s. 44 of the Constitutional Court Act confers on the Constitutional Court the authority to initiate *ex officio* an examination of the possible conflict between a legal rule and an international treaty.

Pursuant to the exercise of this right, the Constitutional Court holds that in art. 27(1) of the Paris Peace Treaty, Hungary had assumed the responsibility for "restoring the possessions, legal rights and interests, or if restoration is impossible, the payment of appropriate compensation" concerning the issue under examination.

The Constitutional Court's position, expounded in this Decision and already described in detail in a prior Decision (*Dec. 15 of 1993 (III.12) AB (MK 1993/29)*), is that the "appropriate" compensation referred to in the international treaty need not necessarily mean full compensation

but may also be satisfied by "partial compensation measured according to the country's ability to pay, provided that the people who have suffered deprivation of their possessions and violations of their legal rights and lawful interests receive such compensation without being discriminated against."

For this reason, in the Constitutional Court's view, the statutory provision of compensation for settling the claims arising from the compelled custodial depositing and sealing and confiscation of valuables arising from the Decree 1600/1944 ME violates neither the Constitution nor the provisions of the international treaty.

Thus, concerning the citizens' personal grievances, the duty which the State had assumed through the international treaty and domestic legislation still in force, but which for decades remained unperformed, has now been finally discharged with the enactment of the Second Compensation Act.

With this action, the decades old violation of constitutional law and international treaty has now been rectified. Thus, no unconstitutional omission of the duty to enact laws exists.

Accordingly, the Constitutional Court rejects the petitions in this regard.

The situation is different concerning the assumption of the duty according to which the claims of former owners without legal heirs or beneficiaries are transferred by the State to the advocacy groups working on behalf of victims deprived of their property, as well as the transfer to those groups all those inheritances and bequests of deceased individuals targeted by laws of racial persecution which, in the absence of heirs or beneficiaries, has been or will pass onto the State.

According to art. 27(2) of the Paris Peace Treaty, promulgated by Act XVIII of 1947:

All rights, possessions and interests of all individuals, organizations or communities located in the territory of Hungary which individually or collectively were subjected to harassing legal regulation of a fascist spirit on account of racial, religious or any other reasons, if within six months of this Agreement having entered into force are not claimed by an heir or beneficiary and if no other claims has been submitted, shall be transferred by the Hungarian government to the organizations representing such individuals, organizations or communities. The possessions thus transferred shall be used by these organizations for the support and restitution of the surviving members of the aforementioned groups, organizations and communities. These transfers must be carried out within twelve months of this Agreement having entered into force, and they include the rights, possessions and interests to be returned in accordance with section one of this article.

Neither the Hungarian government nor the Hungarian legislature ever issued or enacted legal regulations to carry out the provisions cited above from the Peace Treaty.

It is undoubtedly true that s. 2(1)-(3) of Act XXV of 1946, which remains in force to the present day, contained provisions whose content was closely related to art. 27(2) of the Peace Treaty. But these provisions were never acted upon because:

- the State did not proceed with the probate procedures contained in s. 2(1) of Act XXV of 1946;

- the Ministry never issued the regulation mentioned in s. 2(3) concerning the method of determining the "lawful owners" of the valuables;

- the State did not transfer either probate estate (inheritance and bequests) or other valuables to the National Jewish Restitution Fund.

Partly because of an omission of the legislative duty to enact laws and partly because of the executive's failure to act, the result was an unconstitutional situation in which the Hungarian State did not fulfill the obligation imposed upon it to those legal persons defined in art. 27(2) of the Paris Peace Treaty, and because of the changing historical circumstances, it is no longer able to discharge it in the manner defined by Act XXV of 1946.

According to Art. 7(1) of the Constitution, the legal system of the Republic of Hungary guarantees the compatibility of internationally assumed legal obligations and the internal system of laws. What follows from this constitutional provision is not simply a legislative duty to ensure that the legal regulations of the internal system of law do not contradict international law obligations, but also the duty to issue those legal regulations which are indispensable for the realization of such international legal obligations.

In the case at hand, Parliament discharged its obligation toward natural persons with the enactment of the Second Compensation Act. What is missing, however, is the legal regulation concerning the organizations defined in art. 27(2) of the Paris Peace Treaty, and the Constitutional Court determines the existence of an unconstitutional omission of legislative duty in this regard. The actions taken for the termination of this situation must be in harmony with the founding principles of the previously-enacted Compensation Acts.

Parliament may satisfy the Constitutional Court's request contained in its holding, directed at the rectification of the unconstitutional situation manifested in the omission, in a number of ways -- such as by the enactment of an Act, or by authorizing the Government to terminate the unconstitutional situation through a negotiated settlement. With respect to these possible solutions, the Constitutional Court points to the following issues:

(a) Everything that has been stated by the reasoning of this decision in connection with the "appropriate" compensation of natural persons amounting to partial compensation necessarily applies for the compensation of organizations as well. Therefore, it is not unconstitutional if the State provides for the compensation of the organizations in the same manner and to the same extent as has been done in the First and Second Compensation Acts.



(b) Although the ambit of the Compensation Acts extends only to natural persons, this does not mean that the State *a priori* deprives legal persons of the opportunity of seeking redress from the State -- depending upon its ability to pay -- for at least a partial compensation of the damage inflicted on their ownership rights. Such legal redress has been implemented, for instance -- although it did not proceed under the title of compensation -- by Act LXV of 1990 on Local Government, or Act XXXII of 1991 on the Disposition of formerly Church-owned Real Estates, while the provision of redress for property damages inflicted on other types of legal persons are in the process of statutory drafting and preparation. Accordingly, there can be no question that the resolution of the claims of Jewish advocacy and interest groups do not give rise to a discriminatory situation, either with respect to these organizations or in connection with all other legal persons. In the cases of the church and local governments, it was the realization of the opportunity to exercise a fundamental right guaranteed by the Constitution, while in the case of the Jewish organizations it is an international treaty, which justifies the issue of legal regulations related to and seeking redress for the grievances. In making its decision the Constitutional Court also considered the following: Although Jews were not the only people persecuted for racial, religious or national reasons and subjected to various legal discrimination, as a result of the mass destruction of their members they have suffered more grievous harm than other groups. Hence, if the Hungarian State complies with the Paris Peace Treaty and carries out its provisions concerning the Jewish advocacy and interest groups, this would amount to such a differentiation with respect to other persecuted groups of people which is not merely not contrary to the provisions of Art. 70/A of the Constitution but would amount to a partial counterbalancing of previous negative discrimination. There is no logical contradiction in the Constitutional Court's position on the method and extent of compensation, stating that while the Constitutional Court

has found no constitutional justification to confer positive discriminatory treatment on natural persons who had suffered deprivation of property rights on account of their Jewish religion or ancestry, such a discrimination is constitutionally permitted with respect to the compensation of Jewish advocacy and interest groups. The explanation is that although organizations are the ones entitled to the compensation, they -- in accordance with the provisions of the Peace Treaty -- use those funds for the support of surviving members and the persecuted group and its communities. Thus, in the case at hand, the positive discrimination in favour of the organization is tantamount, in terms of its final result, to a positive discrimination in favour of the members of this group of people subjected to grave persecution, and it was in light of this fact that the Constitutional Court did not deem constitutionally permissible the double-edged positive discrimination, favouring both the advocacy and special interest organizations and the individual members of the community.

(c) Upon undertaking the measures indicated in the Constitutional Court's holding, Parliament shall not merely discharge an international legal obligation, but shall concurrently give effect to the will of Hungary's democratically-elected People's Assembly, manifested in s. 2(1) of Act XXV of 1946.