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## Case Sevso Treasure – Lebanon et al. v. Marquess of Northampton

*Lebanon/Liban – Hungary/Hongrie – Croatia/Croatie – Marquess of Northampton – Antiquity/antiquités – Post 1970 restitution claims/demandes en restitution post 1970 – Judicial claim/action en justice – Judicial decision/décision judiciaire – Illicit excavation/fouille illicite – Illicit exportation/exportation illicite – Ownership/propriété – Request denied/rejet de la demande – Sale/vente – Repurchase/rachat*

*The Sevso Treasure, a Roman-era collection of 14 silver trays, bowls and jugs, was consigned at Sotheby's by the Marquess of Northampton in 1989. Sotheby's released a press statement which said that the treasure would not be sold until all claims against it had been dealt with. Lebanon filed an ownership claim and was joined by Yugoslavia (replaced by Croatia in 1991) and Hungary. Lebanon retracted its claim on the eve of the trial, whereas Croatia's and Hungary's claim was dismissed. Hungary bought seven pieces of the treasure in 2014, and a further seven pieces in 2017.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.*

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## I. Chronology

### Post 1970 restitution claims

- **1970's**: The **Sevso Treasure**, a Roman-era collection of 14 silver trays, bowls and jugs crafted in the fourth or fifth century A.D., was **illegally excavated** at an unknown location.
- **1984**: The Marquess of Northampton, i.e. Spencer Compton, **purchased** the treasure through a private sale held by Sotheby's for £14 million. The sale of ten objects of the Sevso Treasure to the Getty Museum failed because their Lebanese **export licences** were found to be **forged**.
- **1985**: Lebanon issued valid export licences.
- **1989**: The Marquess of Northampton consigned the collection with Sotheby's in Switzerland for a private **sale**. The collection was brought to New York by the auction house.<sup>1</sup>
- **9 February 1990**: Sotheby's issued a press release stating that provenance information as to the Sevso Treasure was missing and that it would not proceed with the sale should any claim arise.
- **15 February 1990**: **Lebanon** filed suit in New York, asking for the **return** of the treasure.
- **20 February 1990**: The Lebanese government obtained a **temporary restraining order** that foreclosed any transfer of possession or ownership outside New York City. Lebanon was joined in its claim by the Socialist Republic of Yugoslavia (as intervener).
- **8 November 1990**: In answer to Lebanon's interim injunction seeking to bar Sotheby's from the sale of the treasure, the New York Supreme Court rendered an order.<sup>2</sup>
- **1991**: With the fall of Yugoslavia, **Croatia** replaced Yugoslavia in the lawsuit. **Hungary** filed a competing ownership claim.
- **September 1993**: **Lebanon withdrew** its claim of ownership. The New York Supreme Court **rejected** both **Hungary's and Croatia's claims** of ownership.
- **1994**: The dismissal of all claims was affirmed by the New York Appellate division.
- **17 October 2006**: The Sevso Treasure was privately exhibited at Bonhams auction house in London, but it was not offered for sale.<sup>3</sup>
- **26 March 2014**: Hungary bought seven pieces of the treasure.<sup>4</sup>
- **July 2017**: Hungary bought the remaining seven pieces of the Sevso Treasure.<sup>5</sup>

## II. Dispute Resolution Process

### Judicial claim – Judicial decision

- The legal battle regarding the Sevso Treasure involved several countries (Lebanon, Hungary, Yugoslavia and Croatia).
- The validity of the Lebanese export licenses was questioned by the Getty Museum in 1984, when the Museum was interested in acquiring four items of the treasure. In order to obtain a

<sup>1</sup> Kurzweil et al., "The Trial of the Sevso Treasure", 84.

<sup>2</sup> *Republic of Lebanon v. Sotheby's and the Trustee of the Marquess of Northampton and the Socialist Federal Republic of Yugoslavia*, 167 A.D.2d 142, 561 N.Y.S.2d 566 (N.Y. Sup. Ct. 1990), 1990 N.Y. App. Div. LEXIS 13289.

<sup>3</sup> Merryman, "Thinking about the Sevso Treasure", 2.

<sup>4</sup> Arkell, "Hungary Buys Half Sevso Hoard".

<sup>5</sup> "Hungary Buys 2nd Half of Roman-Era Silver Treasure".

valid export permit, Sotheby's chairman Peter Wilson's son, Philip Wilson, approached one of Lord Northampton's former solicitor's clients, Ramiz Risk. Subsequently, Ramiz Risk, Peter Wilson and "a National Museum official" met in Beirut and obtained the official's authorization to re-issue an export license for the treasure.<sup>6</sup>

- It is not until Lord Northampton planned to sell the collection at Sotheby's in the early 1990 that Lebanon filed its claim.
- According to the transcript of pre-trial rulings,<sup>7</sup> Sotheby's had, prior to planning the sale of the treasure in Switzerland, "undertook to inquire of the Cultural Attaches in the embassies in Switzerland of each of 29 nations which were within the borders of the Roman Empire in the fourth century A.D. whether the pieces were recorded as stolen property". Furthermore, the auction house also contacted, inter alia, UNESCO, INTERPOL and the International Council for Museums. Lebanon obtained almost immediately a preliminary injunction, which banned any transfer of ownership or possession of the collection out of New York City.<sup>8</sup> The preliminary injunction was confirmed six months later. Lebanon was joined in its ownership claim by other countries, namely by the Socialist Federal Republic of Yugoslavia (taken over by Croatia when the former dissolved) and Hungary. Each country's authorities initiated investigations on the origins and provenance of the Sevso Treasure.<sup>9</sup>
- Lebanon dropped its complaint shortly before the commencement of the trial, probably for lack of evidence and the risk of high trial costs.<sup>10</sup>
- With regards to the remaining claim by Hungary and Croatia, the New York State Supreme Court ruled in Lord of Northampton's favour. The Court concluded that both governments failed to conclusively prove that the treasure had been found within its borders.<sup>11</sup>
- Ultimately, Hungary purchased the treasure. Until Hungary's purchase, the question of ownership had not been resolved. The Sevso Treasure had therefore been stored in a London vault and was foreclosed from public viewing.
- In 2006, the display of the collection at Bonhams auction house was met with criticism. The UK Parliament issued a motion in December 2006 requesting both Hungary and the Marquess of Northampton to provide all available information as to the collection's origin and provenance. It also called for "a stop to any disposal of the silver (other than one occurring by consent of all parties)" until the evaluation has occurred.<sup>12</sup>

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<sup>6</sup> Kurzweil et al., "The Trial of the Sevso Treasure," 84.

<sup>7</sup> *Republic of Lebanon v. Sotheby's and the Trustee of the Marquess of Northampton and the Socialist Federal Republic of Yugoslavia*, 167 A.D.2d 142, 561 N.Y.S.2d 566 (N.Y. Sup. Ct. 1990), 1990 N.Y. App. Div. LEXIS 13289.

<sup>8</sup> *Ibid.* at 143

<sup>9</sup> On each country's incentive to believe that the treasure had been found within their respective borders, see *ibid.* 85 ff.

<sup>10</sup> Anton, *Illegalen Kulturgüterverkehr*, 159.

<sup>11</sup> *Republic of Croatia v. The Trustee of the Marquess of Northampton 1987 Settlement*, 203 A.D.2d 167 (1994), 610 N.Y.2d 263, at 168.

<sup>12</sup> UK Parliament, Early Day Motion 517, "Sevso Treasure".

### III. Legal Issues

#### Illicit excavation – Illicit exportation – Ownership

- **Origins of the treasure and its subsequent exportation.** To date, what can be ascertained for sure is that the treasure has Roman origins, but it cannot be established as to which part of the Roman Empire it originated. In fact, Lebanon, Hungary and Croatia have all claimed ownership over the treasure, thus facing the difficult task of finding factual evidence showing that the Sevso Treasure was illicitly excavated and exported from their respective territory.<sup>13</sup>
- The purchase was accompanied by Lebanese export permits.<sup>14</sup> However, when the government of Lebanon filed its claim of ownership, it disowned these permits alleging that they were falsified. The government alleged that the silverware had been found on its territory and would therefore be, in compliance with Lebanese laws, national property.<sup>15</sup>
- As the treasure had been presumably excavated and exported without the consent of the source country, it raises the issue of qualifying the object as national patrimony despite the fact that the country never had its actual possession. In this respect, in the United States courts rely on the so-called “McClain doctrine”. Pursuant to this doctrine, national legislation may confer ownership of antiquities to the State of origin no matter if it had actual possession of such objects. Such laws however must comply with certain standards: (i) their scope of effect has to be sufficiently clear; (ii) evidence must show that the antiquities in question were found within the actual territory of the country which is claiming ownership; (iii) the act of conversion must have occurred after the vesting national law came into force.<sup>16</sup>
- Eventually, following a 7-week trial dealing with the evidence filed with the ownership claims by Hungary and Croatia, the New York Supreme Court decided that said evidence was not sufficient to establish the provenance of the Sevso Treasure. The silverware items have been since categorized as “undocumented” or “unprovenanced”<sup>17</sup> and kept in the United Kingdom.
- **Acquisition of the treasure by the Marquess of Northampton.** On the one hand, the lack of valid provenance information and exportation permits raises doubts on the rightful acquisition of the treasure by the Marquess of Northampton.<sup>18</sup> Nonetheless, investigations led by Scotland Yard concluded that the Marquess had acquired the treasure in good faith. In particular, it appears that when proceeding with the sale Lord Northampton had relied on the expertise of Sotheby’s chairman Peter Wilson, who passed away in 1984, and on his solicitor.<sup>19</sup>

<sup>13</sup> See Fincham, “Sevso Treasure on Private Display”; see also Palmer, “Statutory, Forensic and Ethical Initiatives in the Recovery of Stolen Art and Antiquities”, 18.

<sup>14</sup> Merryman, “Thinking about the Sevso Treasure”, 1, fn. 3.

<sup>15</sup> It is the Getty Museum that first contested the validity of the Lebanese export permits in 1984 when interested in the purchase of the silverware; see *ibid.* 2.

<sup>16</sup> *United States v. McClain*, 545 F.2d 988 (USCA 5<sup>th</sup> Cir. 1977); rehearing denied 551 F. 2d 52 (USCA 5<sup>th</sup> Cir. 1977); 593 F.2d 658 (USCA 5<sup>th</sup> Cir. 1979); affirmed in part, reversed in part, 444 US 918 (1987). The principles are elaborated in Gerstenblith, “Ownership and Protection of Heritage”.

<sup>17</sup> Merryman, “Thinking about the Sevso Treasure,” 3 and 7.

<sup>18</sup> Ownership of the treasure was transferred to the “Marquess of Northampton 1987 Settlement Trust” by the Marquess.

<sup>19</sup> Kurzweil et al., “The Trial of the Sevso Treasure”, 84.

#### IV. Adopted Solution

##### Request denied – Sale

- At present, origins and provenance of the Sevso Treasure have not been convincingly asserted. All ownership claims have either been abandoned (Lebanon) or dismissed (Croatia and Hungary).
- Hungary kept on its research for evidentiary information until it finally purchased seven items of the collection for 15 million euros in 2014, an amount well below the previously estimated repossession expense. It seems that the pieces were not bought from the Marquess of Northampton but from unnamed London owners.<sup>20</sup> Then the Hungarian government paid another 28 million euros to undisclosed sellers for the remaining seven objects of the collection.

#### V. Comment

- The collection is entitled “Sevso” because of an engraving on one of the large plates, which reads: “Let these, O Sevso, yours for many ages be, small vessel fit to serve your offspring worthily”.<sup>21</sup>
- While the Marquess was seeking to sell the Sevso collection, the auction house Bonhams certified that it had no intentions to do so when exhibiting the silver in 2006.<sup>22</sup> Even though the dispute as such could not be terminated for lack of provenance information, the lawsuits had rendered the collection unsalable. In fact, as long as no conclusive evidence had been found, the objects could not be disposed of except as agreed to by all involved parties at the time, namely the Marquess of Northampton, the United Kingdom (where they are stored) and the Republic of Hungary.<sup>23</sup>
- The display of the Sevso items at Bonhams caused a vivid debate in the UK on the issue as to whether museums should exhibit unprovenanced items.<sup>24</sup> Notwithstanding the great quality of the collection, ICOM’s Vice-President, Patrick J. Boylan, underlined that it comes with a “potential legal nightmare”. As soon as the origins of the Sevso hoard are validly established, a request for their return by the State in question will be almost inevitable.<sup>25</sup>
- Interestingly, lawyers at the lawfirm Allen & Overy had advised the Marquess of Northampton to purchase the collection in the early 1980s. As the collection turned out to be unsalable for missing conclusive provenance and ownership information, the Marquess sued the lawfirm for damages. Although bought for £14 million, his collection was estimated to be worth around £50 million. Both parties ultimately reached a settlement agreement providing for the payment of £24 million to the Marquess of Northampton.<sup>26</sup>

<sup>20</sup> Arkell, “Hungary Buys Half Sevso Hoard”.

<sup>21</sup> “Peer Wins Pounds 24M Claim Over Silver”; and Bailey, “Bonhams to Show Sevso Silver”, 2.

<sup>22</sup> Bailey, *ibid.*; Riding, “14 Roman Treasures, on View and Debated”.

<sup>23</sup> See UK Parliament, Early Day Motion 517, “Sevso Treasure”.

<sup>24</sup> See, for instance, Riding, “14 Roman Treasures, on View and Debated”.

<sup>25</sup> Lenzner, “The Illicit International Trade in Cultural Property”, fn. 13.

<sup>26</sup> See “Peer Wins Pounds 24M Claim Over Silver”.

- In order to address the problem of the illicit trafficking of cultural goods, Merryman suggested increasing the support of the licit market by reducing the nationalization of cultural property and exportation restrictions. Furthermore, he advanced the idea of acquisitions by governments at fair value from finders of the cultural objects which they wish to hold in their national collections, all in leaving the remaining ones to a licit market. As the country of origin of the Sevso Treasure remained unknown, Merryman advocated for its exhibition in a museum enabling scientific research, until evidence as to its origins would be produced. In the later event, the object should be returned to its country of origin.<sup>27</sup>
- The market of unprovenanced antiquities would indeed not be encouraged, as the Marquess of Northampton had been factually dispossessed. Before Hungary's purchase of half the treasure, it remained unclear as to which country's museum would be entitled to display the Sevso silver. It remains to be seen what will happen to the other pieces of the treasure. One option might be to declare these pieces temporarily as "world cultural heritage" with the possibility for museums to display the collection on a limited loan.

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<sup>27</sup> See Merryman, "Thinking about the Sevso Treasure". 13, 18.

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