

The Lohengrin on the other side of the Carpathians¹

*The sacred power, the wonder of my order,
the strength with which my secret arms me,
I wished to dedicate to the service of that purest heart:
Why did you wring that secret from me?
Now, alas, I must be parted from you!*

*Ut queant laxis
Resonare fibris
Mira gestorum
Famuli tuorum,
Solve polluti
Labbii reatum,
Sancte Ioannes.*

The Prelude

1. In mid-1800's, long before Ernest Hemingway labelled Paris 'a moveable feast', a German composer Richard Wagner moved to Paris in the hopes to better deal with his Germanness, which he for some reason felt as a somewhat inferior trait for a man of culture. Wagner wrote in French and generally believed Paris to be the "capital city of the nineteenth century". He badly dreamed of recognition by the French cultural establishment and would not take anything else for success. Although Wagner's younger friend, Friedrich Nietzsche, claimed Wagner's only true home was Paris, Wagner's relationship with Paris was ambivalent.
2. In 1845 Richard Wagner returned from Paris to Dresden, and, quite distressed at the move, worked as a Kapellmeister at the Royal Dresden Court. By then he gained support from King Ludwig II of Bavaria and was a successful composer. Wagner was working on several musical pieces, when someone left a book of German fairytales on his desk. Richard took the book with him to Marienbad in Karlovy Vary where he went for fashionable health treatment with his wife Cosima. Wagner got absorbed by old German stories and seemed to believe that history and myth were all the same, which may of course be true from the standpoint of culture, and that is all what mattered to Richard Wagner. Right then and there he writes the libretto for 'Lohengrin' and sends elated letters to his friends and family about how much he is delighted with the outcome. With this work of art Richard Wagner said he intended to enliven a long forgotten, and – to his mind – barbarized German myth about love.
3. The original myth tells a tale of a fair damsel in distress to be saved by a knight whose name and origin she may not ask. Lohengrin, or the Swan Knight, is a knight of the Holy Grail from a mysterious world. He is sent in a boat pulled by swans to save a fair maiden who in her native land is accused of a grave crime that she did not commit. He saves her indeed but warns that she may not ask his name. The moment she cannot

¹ The moot court problem is based on true facts and comes with a minor literary adaptation. Section "The Aftermath" is fictional and designed for the purposes of the moot court.

resist the temptation and asks his name and origin, Lohengrin disappears forever, condemned to remain in solitude. Wagner was mesmerized by the idea of knowing the true identity and the impossibility of having true love either once or before you know that identity. He also wondered what, if anything, should be ineffable and whether by naming things people destroy their magic.

4. As the opera was put on stage in 1850 – to much success – in Germany, Richard Wagner could not attend any of the performances as he was exiled from his native Germany for his revolutionary ideas, which after his death reportedly and infamously endeared Adolf Hitler to his music. Wagner first saw his creation on stage ten years after the premiere, in 1861, in Vienna. Nietzsche commented, “*Where will the chivalrous Middle Ages be resurrected in its flesh and spirit, as it is in ‘Lohengrin’?*”
5. Paris, the city of Wagner’s dreams, sees ‘*Lohengrin*’ in 1887 at Eden Theatre, and boos it for political reasons. The cultural establishment of France, whose recognition Richard Wagner desired so much, could not separate his political views and nationality from their own political convictions, and Wagner has long become unwelcome in France.
6. Different times prompt us to create new meaning out of old facts; what seemed hopeless, as a damsel’s life and accusation, might now be inspirational; what seemed necessary, as a knight’s appearance, may no longer be the only way out; and what seemed ineffable should now definitely be pronounced.

The Rise

7. Some thirty years after ‘*Lohengrin*’ is written, in 1874, Varvara Khanenko (born Tereshchenko), the eldest daughter of wealthy Ukrainian industrialists, honeymooned in Italy with her newlywed husband, an up-and-coming attorney from an aristocratic Ukrainian family Bogdan Khanenko who splits his time between St. Petersburg and Moscow, and later Warsaw.² It is unclear whether the newlyweds go to the opera in Italy, but it is known that they frequent museums and purchase a few works of art to bring back to their new home, which is to be in Kyiv. Bogdan would write later, “*On our way we dropped by art galleries in Vienna, Venice, Bologna, Florence, Rome and Naples. These were the happy days. Everyone smiled at us. We bought something we liked. And by the way, although we didn’t understand much in art at the time, we weren’t mistaken and picked rather decent paintings.*”³
8. This is also around the time that Salomea (originally Solomiya) Krushelnytska is born in 1872 in Bilyavyntsi village, the region of Ternopil, then in the larger region of Galicia, that was under the rule of the Austro-Hungarian Empire.⁴ A fourth child of a young town priest, Salomea sings songs that she picks up from local villagers, and in

² Both of the couple were of aristocratic background. In 1661 Polish King Jan Kazimir bestowed aristocratic privileges upon the Khanenkos and in 1870 Nicola Tereshchenko for his philanthropy was offered aristocratic title for the entire family from the Russian Empire.

³ Nadiya Muzlova’s interview, <https://bigkyiv.com.ua/lyubov-silnee-zhizni-istoriya-semi-hanenko-i-ekollektsii/>

⁴ Here and herein on Salomea Krushelnytska: Solomiya Krushelnytska: cities and fame. Galyna Tyhobayeva, Iryna Kryvoruchka, 2009.

her teenage years her talent for music becomes more pronounced. Already in 1883 Salomea sings at concerts in Ternopil, and after one of them befriends Ukrainian poet Ivan Franko, who becomes a life-long friend. Yet, she does not seem to be set on any special path and prepares to get married just like every other girl in town. We do not know much about Zenon Gudkovskiy, a young student of religious studies, to whom she got engaged, except that closer to the marriage ceremony, he said that he expected Salomea to tend to his vast household more than she would to her music classes. In response to Salomea's elated stories about her music studies, he compared Chopin to chopping,⁵ clearly preferring his bride to take more interest in the latter. The crude comparison made Salomea realize that this was not the life for her, and she called off the engagement. Although Salomea's traditional family apparently would have much preferred to see their daughter married to a priest rather than singing at opera houses (that hosted casinos for a living) and being in a company of morally unconventional people, Salomea's family did not wish to interfere with her talent.

9. By then, Varvara and Bogdan's marriage proves to be a happy one, which is seen from Bogdan's memoirs.⁶ As the artistic shopping spree of the Khanenkos continues on each travel to Europe, their collection got larger, and they needed a larger space. In 1888, with the money she got for her marriage and possibly a contribution from her husband, Varvara purchases from her father for 30,000.00 karbovanets, a large two-story house in the center of Kyiv.⁷
10. By 1890's, the Khanenko house in Kyiv looks like a palace where the couple kept most of their collection of art and antiquity. However, the most precious part of the collection was kept at the couple's apartment in St. Petersburg that served Bogdan Khanenko's social position and political aspirations. There is a column in Magazine "Art of Southern Russia" No. 11-12 in 1913 that informs the readers that Bogdan and Varvara Khanenko plan to create their namesake museum in their house which will subsequently be bequeathed to the city of Kyiv and which museum will be financed with the profit from a neighboring "profit estate"⁸ No. 13 on Tereshchenkivska street,⁹ also belonging to the couple. It is unknown how Bogdan Khanenko, a descendant of famed cossaque leadership and an heir to Polish aristocracy who was then successfully accepted to the Russian aristocracy, experienced his Ukrainian identity, but it is clear that he did not share the reservations and skepticism that Wagner had towards his national identity. Bogdan certainly felt Kyiv to be his home and cared for its wellbeing. Despite being in constant communication with Russian statesmen he separated his own cultural heritage from that of the Russians; notably, in 1889, when important archeological artefacts of the princely era were found in Kyiv, Bogdan made sure the most valuable of them were

⁵ In Ukrainian, «цікавитися шопою більше, ніж Шопеном», or word play that dwells on the similarity between the composer's last name and the word "shopa" that means a small building with household supplies.

⁶ Bogdan Khanenko. *Collector's Memoir*. Kyiv, 2008. pp. 26-27.

⁷ Record Book of Kyiv Notary M Vorobyov for 1888. State Archive for the City of Kyiv. 30. Case 43. Pages 144-145.

⁸ Profit estates were a common asset management tool whereby the house was given for rent and the money was used to finance a different venture.

⁹ See Chronicle // Journal "Art in the Southern Russia" No. 11-12, 1913, page 506.

not taken to St. Petersburg but would stay in Kyiv.¹⁰ At the same time in Ternopil and Lviv, Salomea's naturally strong mezzo-soprano of almost three octaves and her rustic beauty quickly make her a beloved starlet. Her sisters Olga, Osypa, Hanna and Emilia all help sew her exclusive costumes for each role. But the quick success is telling Salomea that there is not much more she can learn if she stays.

11. As there are things that need not be said, just felt, the opportunity for a new challenge soon avails itself. In 1893, Gemma Bellincioni, an Italian singer who performed in Lviv, attends the Lviv Opera House's production of Donizetti's *'La Favorita'* with Salomea in the leading role, and recommends that she goes to study in Milan, Italy. Olena Krushelnytska-Okhrymovych, Salomea's sister, would later say in her memoirs: "*With the help of a relative called Dashkevych, our father took out a bank loan in the amount of 2,000 guildens.*" The loan covered only a part of her studies which cost 1,000.00 lears per annum. In Italy, Salomea finds a challenge to fit her energy – she is told to change her voice from mezzo-soprano to a soprano. Alongside working on this task which would be daunting for most established professional singers, especially bearing in mind that at the time the pitch was not established and had a tendency at increasing, with A₄ tuned to either 435 Hz or 432 Hz, making it more demanding for a soprano, Salomea spends at least six hours every day rehearsing new roles, and also studies 6 languages, reads a lot and corresponds with the brightest minds of her time.
12. Success seems to follow Salomea as she works hard on independent-minded heroines who were ahead of their time. She is most noted for saving the opera *'Madama Butterfly'* in 1904 after it was booed in Milan, but that she did out of respect for the composer, her friend Giacomo Puccini, and not out of piety to the heroine, who is obviously not her type. Her soulmates in opera are Brunhilda of Wagner's *'Der Ring des Nibelungen'* (the singer was dubbed a "*perfect Brunhilda*"), Valkyrie of Wagner's *'Die Walküre'* ("*impressive Valkyrie*"), Strauss's Salome (acclaimed as "*unsurpassed Salome*"), Verdi's Aida, ("*unforgettable Aida*"), Ponchielli's Gioconda ("*the only Gioconda in the world*"), Moniuszko's Halka ("*unique Halka*"), whom she interprets to much success in Paris, London, Rome, Milan, Florence, Berlin, Vienna, Madrid, Lisbon, Buenos Aires, St. Petersburg, Cairo etc. She is a Rockstar of her time, and her singing causes frenzy among fans; after she premieres in *'Lohengrin'* in Krakow in 1895, the public waits for her outside the opera house, and then carries her on their hands while the rest are pulling her carriage in place of the horses.¹¹ Salomea Krushelnytska will later be said to be the only woman alongside the four recognized opera superstars of the time – Enrico Caruso, Mattia Battistini, Titta Ruffo, and Fiodor Shaliapin. With Caruso and Ruffo she regularly tours in St. Petersburg.
13. Interestingly enough with her penchant for a *dolce vita* in Italy and friendship with Puccini, Salomea's favorite operas are not Italian. She much prefers Wagner, whom, albeit being more difficult to sing, she finds more thought-provoking: "*his music speaks not only to the soul, but also to the heart*".¹² Due to his political views Wagner became increasingly unwelcome at major opera houses, regardless of the quality and uniqueness

¹⁰ Letter from Bogdan Khanenko to Fedor Vovk dated December 1889. Scientific Archive of the Academy of Sciences of Ukraine. Fund of F.Vovk. No. 4291.

¹¹ Memoirs of Olena Okhrymovych, Archives of the Museum of Solomiya Krushelnytska.

¹² Letter from S. Krushelnytska to M. Pavlik, Archives of the Museum of Solomiya Krushelnytska.

of his work. Despite recurrent scandals and boycotting of his operas in Europe, Salomea only says Wagner's music is too smart for most. Her performance of Wagner's *'Lohengrin'* in Paris in 1902 is a success regardless of any politics. *La Revue d'art dramatique* gave Salomea a very flattering comment after. Neither Richard Wagner nor his friend Friedrich Nietzsche are alive at the time, but the warm welcome of an estranged composer's opera would have been a merry testament to Nietzsche's *amor fati* paradigm.

14. Salomea is of course ahead of her time, much like her heroines. Excelling at her work, she becomes the highest-paid female opera singer of her time, with one concert in Paris yielding 2,000.00 francs and 1,800.00 roubles in Poland (as compared to 800.00 roubles when a different singer performs, as confirmed in his letters to Salomea by General Ivanov who then acted as opera impresario). She is rumored to be the first Ukrainian woman to drive a motorcar. It is unclear how much money Salomea made per year or at all, but it is clear that she was among the highest paid singers together with the fabulous four – Caruso, Shaliapin, Battistini, Ruffo. Of Caruso, for instance most known will be his Havana concert in 1940 where he will be paid USD 10,000.00.
15. In early 1900s Salomea's friend and composer Giacomo Puccini calls evenings with his friends, among whom is a successful Italian lawyer and mayor of a picturesque Italian town of Viareggio, Cesare Riccioni. He was the one who in 1906 helped Salomea successfully use a defense of force majeure in a case over termination of her performance contract in Palermo after an eruption of the Vesuvius volcano rendered the area a breathing hazard especially for singers. Salomea and Cesare befriend each other and get married a couple years later in Buenos Aires in 1910. Happy to settle down, Salomea purchases a gorgeous villa in her husband's native Viareggio and entitles it "Villa Salome", by the name of her heroine and close to the name she prefers to be called. At the time, Viareggio was home to many an artistic person, and Villa Salome soon becomes one of its most favorite attractions.¹³
16. In 1910, the European art world is still very much in the spirit of the decadent era known as *fin de siècle*. By then, the Khanenkos were not only art collectors, but avid philanthropists and Varvara is an epitome of an aristocratic wife – she does charity, she learns to buy the best works of art and amasses one of the best collections in Europe. Varvara Khanenko specifically takes to developing Ukrainian rustic art. She becomes one of the organizers of the Kyiv Craft Society – a community of socially responsible estate owners and intellectuals from Ukraine who were influenced by a common trend of Art and Craftsmanship and the works of British William Morris and John Ruskin to revive and preserve local cultural heritage. At each of the couple's estates, Varvara Khanenko cares for the wellbeing, education and health of the villagers by setting up hospitals, schools, crafts and art colleges, and a theater. At their estate in the village of Olenivka, not far from Kyiv, Varvara opens a workshop of carpentry and stamping and a textile college for girls where they were taught traditions of local art, basics of color and ornament. For boys, there is a wood workshop at the same place. The products of these workshops are sold as far as in London, at a shop that Varvara Khanenko opens in the 1910s especially for this purpose. Varvara's amateur theater for starters receives mentoring from Mykhailo Starytskyi, a famed Ukrainian playwright. At the same time, Bogdan Khanenko develops his statesman persona. In 1905, in the midst of the Russia-

¹³ Yu.Savytskyi, press release: <https://www.radiosvoboda.org/a/24748860.html>

Japan war he gets posted to Harbin to lead evacuation of the wounded. It is understood that Bogdan brings the majority of their Chinese art collection (mostly bronze sculpture) from that operation in Harbin. Among previously acquired European renaissance portraits and Asian ceramics & sculpture, the Khanenkos add works of art from Iran and Turkey and develop a keen interest in orthodox iconography. Their acquisitions at this time include a Ukrainian baroque iconographic painting called “Deesis” dated XVIII century that was created at the request of Ukrainian cossaque hetman Ivan Samoylovich who, centuries earlier, in 1674, overtook power over a part of Ukraine from Bogdan Khanenko’s ancestor, hetman Mykhailo Khanenko.

17. In the autumn of the year 1903 Salomea purchases a three-story house in the center of Lviv, which was at the time the capital of the Galicia region under Polish rule. Salomea’s house in Lviv becomes a home for her family and unmarried sisters after the death of Salomea’s father Amvrosiy. The house also becomes a popular music club where students and professionals in classical music can network, relax and share their work. The place becomes known in Lviv as a ‘*Musical Kamyanytsya*’. All events and activity were managed by the husband of Salomea’s sister Osypa, Carlo Bandriwski, with the help from the family lawyer, Volodymyr Starosolskiy. In 1920 Salomea performs her favorite Wagner’s ‘*Lohengrin*’ and ‘*Lorelei*’ for her last operatic performance that took place at the Milanese opera, and sets herself for a happily married life with less time-consuming concerts.

18. In 1892 Varvara Khanenko accompanies her beloved husband on yet another medical visit to Bad-Gleichenberg (Austria),¹⁴ a resort as fashionable among wealthy Europeans as Marienbad, the hometown of “Lohengrin”. Despite having never met, upon comeback to their respective hometowns, both Salomea and the Khanenkos harbor very similar plans. Both highly successful people of their time, well-traveled and well-educated, they are at the top of the then Ukrainian intellectual elite. The Khanenkos get inspired by the museums of Western Europe that they see on each travel and decide to leave their beautiful collection of art to the people of the city of Kyiv, already in 1913 announcing to make their home a museum after their demise. They also seem to mirror the idea behind the Victoria and Albert museum in London, as theirs too, would become a testament to their love. Salomea Krushelnytska is inspired by the success of her music club “Musical Kamyanytsya” that became a center of attraction to musicians in the region, and also wants to honor the memory of her elder colleague, Ms. Valeria Rostkovska, famous in the role of Moniuszko’s Halka before Salomea famously took the role up. Ms. Rostkovska spent her last days among nuns in a nursing home after her operatic career was over, and Krushelnytska believed no opera singer deserved such fate. Salomea Krushelnytska decides to bequeath both her Italian villa and the house in Lviv to the musical community.

19. Everything is the best it can be and set for this course of action.

The Fall

20. During WW1, Salomea can no longer visit her family in Ukraine and spends most of her time touring South America. She returns to Europe when it becomes safe.

¹⁴ Letter from Varvara Khanenko to her sisters dated June 21, 1892, Central State Historic Archive, Fund 830 (Tereshchenko).

21. To save their most valued pieces in the art collection from the raging war, the Khanenkos in 1915 evacuate 90 wooden boxes full of paintings to the Emperor's Historical Museum in Moscow. In May 1917 Varvara Khanenko becomes a widow as her husband Bogdan Khanenko died of poor health in May 1917. In his last will and testament Bogdan Khanenko articulated their wish to create a museum in their home at 15 Tereshchenkivska street in Kyiv and urged Varvara to do the necessary to transform their collection into a public museum.¹⁵ In October 1917, after the Bolshevik uprising in Petrograd (St. Petersburg), where the couple's apartment is home to the most famous pieces in the collection, then 65-year old Varvara fetches a train to transport all masterpieces from devastated Petrograd (St. Petersburg) to Kyiv where these masterpieces would become the heart of the museum-to-be. It is not meant to be this way though. After a tumultuous beginning of 1918 when Kyiv saw several changes of political regime, the power transferred (not peacefully) to the Leadership ("Hetmanat") of Pavlo Skoropadskiy. Varvara concentrates on setting the private museum that they so dreamed about, tucking her sadness over the loss of a loved one into work that she also loved. Already in 1918, the collection and the house are ready. According to Bogdan's will, Varvara is supposed to relinquish the house only after her own death. The German military leadership that is in Kyiv and supports Skoropadskiy offers their assistance to Varvara, suggesting she transfers the collection to Germany, but she explains that her and her late husband's wish was to make the collection available and complete for Ukrainians. Later, a contemporary and subsequently a scientific advisor at the Khanenko museum Sergiy Gilyarov would write, "*she did not want to leave Kyiv and the museum that to her was more valuable than life itself*". On December 15, 1918, fearing more political instability, Varvara Khanenko drafts and signs a deed of gift in respect of her house and the entire collection of art for the benefit of the Ukrainian Academy of Sciences with a material condition – that a public museum would be created and would bear the name "*Museum of Bogdan and Varvara Khanenko*". The most important conditions include:

- a. the art collection shall include all artwork according to the list prepared by Varvara Khanenko, without exception for missing art or the art lost in the war.
- b. Should the Academy of Sciences manage to fulfill the wish of Varvara Khanenko and found an institute of art history, the students shall be free to use the museum for education purposes.
- c. The art collection shall not be amended, divided, transferred, loaned or displaced, even temporarily.¹⁶

22. From late January to summer 1919 Kyiv is under the Bolshevik rule and the Ukrainian Soviet Socialist Republic is proclaimed. Around the same time the Bolsheviks start their aggressive nationalization campaign. Varvara, coming from a family of large industrialists and married into one of the wealthiest families, and also holding an art collection, to Bolsheviks is an epitome of capitalism, so her estate gets no pity. Varvara

¹⁵ Last will and testament of Bogdan Khanenko (extract from the Record Book of Kyiv Notary M Vorobyov), Scientific Archive of the Khanenko Museum, case 35.

¹⁶ Deed of gift by Varvara Khanenko to Ukrainian Academy of Sciences. Institute of Handwriting. Fund of the Ukrainian Academy of Sciences, 1-26173.

Khanenko still gets to pick the person of her choosing to direct the newly nationalized museum, and she chooses a famous art historian, Georgiy Lukomskiy experienced in turning private art collections into public museums. In May 1919 first groups of workers and villagers are reported to have arrived at the museum to see the art. Lukomskiy will remember later that Varvara was not allowed to visit the larger part of the house that used to be hers and that was used for public viewing so that “*not to disturb the workers and villagers who come for a visit*”.¹⁷ The house at 13 Tereshchenkivska street is transferred to the new government and the profit from it is no more directed to the maintenance of the museum. According to unconfirmed data, the entry to the museum then cost 2,000.00 karbovanets. On June 23, 1919 a Decree on Nationalization is adopted and starting from September 1919 the people’s army lead by Mr. Denikin enters Kyiv. The new army cancels the nationalization started by the previous rule and Varvara again becomes the owner of the museum. However, the museum continues to be open for public viewing. In the coming years, as the Soviet rule is confirmed in Kyiv, the Ukrainian Academy of Sciences accepts the museum to its administration and Varvara Khanenko becomes a member of the Museum Committee – a collegiate body that directs the museum – and chairs the committee’s meetings until her death in 1922.

23. However, the conditions of the deed of gift are breached: in 1919 the museum sees additions of art collections belonging to the Riepnins, Branickis, Gudym-Levkovychis. After the Bolsheviks assume their control over Moscow, they nationalize the Emperor’s Historic Museum in Moscow together with the 90 wooden boxes of artwork from the Khanenkos’ collection that were sent there in 1915 for safekeeping. The artwork is transferred to the Moscow Museum Fund and is subsequently divided between other museums of the USSR, from Moscow to Tashkent without Varvara’s consent. Some Italian artwork ends up at Tretyakovskaya Gallery. Having learned about this in the summer of 1921, the Ukrainian Academy of Sciences immediately sends the director of the Khanenko Museum, Mr. Makarenko to Moscow to search for the missing pieces from the Khanenkos’ collection and to bring them back to Kyiv. Most of the artwork from the 90 boxes is located, but around 30 paintings that are among the best in the entire collection go missing, including “St. Anna” by Rubens and “A horse fight” by Paolo Ucello.¹⁸ Starting from 1925, in the framework of a new policy that called for specialized museums, the Khanenko Museum gradually loses artwork that belongs to other streams rather than the one assigned to the museum – that of foreign art. The Khanenko collection gets dispersed among different museums of Kyiv, Ukraine and the USSR¹⁹ as Khanenkos’ family portraits get moved to Taras Shevchenko historical museum in Kyiv in 1925, and 29 paintings by Russian artists get moved to The Museum of Russian art in 1937. In July 1930 a new policy is proclaimed – that of directing all funds to industrialization. For this, the Shop of State Sale “Intourist” takes from the Khanenko museum for sale 20 pieces of art including European paintings of XVIII century that the Shop claims to be of a “*less than museum quality*”. They are supposed to be sold abroad, with the proceeds going to the state budget for industrialization purposes. One of the selected artefacts is a Shirvanian Waterpouurer dated 1206 – a

¹⁷ Lukomskiy G., The Khanenko Museum. Historic essay and a brief overview of the collection if the Kyiv State Museum of the Khanenkos. Paris 1925. Chronicles 2000. Ukrainian cultural Almanach 2005. Page 93.

¹⁸ Report of the scientific advisor Mr. S.Gilyarov in 1919-1929. Scientific Archive of the Khanenko Museum, case 13, pp. 23-24.

¹⁹ Report of Rudyk H. on the collection of the Khanenko Museum (preparation for publishing).

masterpiece from Iran. Although it never sells abroad, it does not return to the Khanenko Museum either. Instead, in 1932 the Shirvanian Waterpouner finds its way to the permanent exhibition of the State Hermitage in Leningrad (St. Petersburg).²⁰

24. Before her death, Varvara makes her last will and testament confirmed by Mr. Mykola Makarenko, the museum director. The text of the will is not available, but it is retraced in Mr. Makarenko's memoirs. He confirms that Varvara Khanenko maintained her and her husband's desire to bequeath the museum to the city of Kyiv and to finance its maintenance out of the profit from the house at 13 Tereshchenkivska street. In 1924, two years after Varvara's death, the Soviet administration makes a decision to rename the museum "*due to the complete lack of revolutionary achievements whatsoever*".²¹
25. During this time Salomea is still enjoying her career and married life until in 1936 she widows. Before WW2 the Italian government advises against any non-essential travel; Salomea's Italian friends tell her of the perils of communism and beg not to leave Italy. However, heartbroken Krushelnytska decides to visit her mother and sisters in Lviv and stays longer than initially intended as she breaks her leg on a steep staircase of 'Musical Kamyanytsya'. As Salomea is immobilized, the world around her, to the contrary, starts moving with a frightening speed. Bolsheviks who already seized power in Kyiv, gain popularity in Lviv, as for some reason, people believe nothing could be worse than the Poles who were different from Ukrainians in language and religion, and constantly suppressed every local attempt at independence. Lviv that used to be part of the Galicia and Volyn regions in the territory of Poland with a brief period of independence as the capital of the independent Western Ukrainian People's Republic in 1918-1919, becomes Soviet in 1939.
26. In the summer of 1941, after Kyiv is bombed, most paintings from the Khanenkos' gets transferred to Ufa in the far east of the Soviet Union where they will be kept at the local art museum until 1944. The artwork that remained in Kyiv during WW2 was issued to the Nazi leadership against written declarations. In 1943, before the Nazi army left Kyiv, the artwork was returned to Kyiv. In autumn 1943 Reichskommissar for Ukraine Erik Koch and a special envoi on culture and museums Georg Winter ordered that the artwork is packaged, put on train and taken to Konigsberg, Germany with the fleeing soldiers. There were 11 wooden boxes and several packages of art. A museum worker at the time, Ms. Polina Kulzhenko witnesses that the transferred artwork is first kept at an estate of Rischau near Konigsberg, and later at the palace of Windelhof.²² In 1945 there is a fire at Windelhof and the artwork is reportedly lost together with other assets in the palace. The art from the Khanenko collection will subsequently be listed in the documents of the Nurnberg trials. In reality, some of the artwork is indeed burned, but some of it will be spotted just a few years after in private collections.

²⁰ Rudyk H., In search of lost masterpieces. Available at: <http://www.historians.in.ua/index.php/en/istoriya-i-pamyat-vazhki-pitannya/723-hanna-rudyk-u-poshukakh-vtrachenykh-shedevriv-dolya-krashchykh-tvoriv-skhidnoyi-kolektsiyi-khanenkiv-u-1920-1930-roky>

²¹ Minutes of meeting No. 20 of the Museum Committee dated May 26, 1922. Archive of the Khanenko Museum, case 13, p. 83.

²² Kulzhenko P., Memoirs. Available at: <https://www.s-bilokin.name/Bio/Memoirs/Kulzhenko/NaziOccupation.html>

27. In Lviv, as everywhere in Western Ukraine, the Bolsheviks at first adopt a tactic of a more lenient approach to locals in their unpopular policies of terror and nationalization, in an attempt to maintain an image of a liberator and to win allies among locals. However, imprisonments and torture come soon, and horrific stories are told. During this period, people from NKVD, the Ministry of the Interior of the USSR who quickly became notorious for their torture of everyone they deemed enemies of communism, talk Salomea, by now an Italian national by virtue of her marriage, into staying in Ukraine. They promise her a prestigious position at the Lviv Music Academy that would enable her to do much good to young singers in Ukraine, if she also takes Soviet nationality. The NKVD also hint that this decision would ingratiate her to the Soviet government and would help them disregard any *'wrongdoings her religious family members may be found guilty of'*. Salomea believes this and ignores the pleas of her sisters who ask her to leave with them and travel to the Americas where she is also known and loved. As her Italian passport expires in April 1946, the Soviet authorities tell her that this means she is no longer considered an Italian national, but a stateless person, and that she can no longer leave USSR. Even though USSR established consular relations with Italy in 1921, these were between RSFSR and Italy, and there is no immediate contact with the Italian authorities from Lviv at the time for Salomea to verify this information. In 1948, the Embassy of USSR in Italy led by Ambassador Mikhail Kostylev, the Bureau for NKID (People's Commissariat of Exterior Relations), the intelligence service under NKVD of the USSR, all come in contact with Salomea and her friends in Italy to organize the sale of her Italian villa. The sale includes the villa and the land in Viareggio, all Salomea's belongings, including a collection of exclusive and award-winning stage costumes and a piano – gift from Giacomo Puccini, as well as possibly her car.
28. Salomea's Italian lawyer with whose family she is very friendly, Count Widar Cesarini Sforza,²³ informs the officers of the USSR Embassy in Italy that he would oppose the sale, as he is not sure that the sale is in the interest of his client. However, after the officer provides what seems to be a hand-written letter from Salomea, the Count can oppose the sale no more. Salomea ends up receiving a small portion of the money – 18,000.00 Soviet roubles, and immediately has to spend 3,000.00 of it on winter clothes to withstand snowy Ukrainian winters in Western Ukraine. The remaining money allows her to support her sister for a limited time. The Soviet government requires that the larger portion of the money from the sale be renounced by Salomea for the sake of the Soviet state, and having conducted the sale on behalf of Salomea, they never disclose the full price of sale to her. The family that remains in Ukraine, namely the one coming from Salomea's sister Olena, who is a grandmother to another musical legend, Ukrainian composer Myroslav Skoryk, is soon sent to labor camps in Siberia for dozens of years, to come out in late 1950s.

The Aftermath

29. Soon after the sale of 'Villa Salome' is complete, Count Widar Cesarini Sforza receives another letter from Salomea, this time he can only decipher the greeting and the signature, while all the rest is censored. He also receives a letter signed by Volodymyr

²³ Widar Cesarini Sforza, in *Dizionario biografico degli italiani*, Roma, Istituto dell'Enciclopedia Italiana.

Starosolsky, the family's lawyer in Lviv, that is not censured, but is awfully belated by some 8 years, dated mid-1940, whereby he tells a story of himself being detained and of the same risk looming over the Krushelnytska family. He is asking whether any international claim may be made, and whether it can also be made on behalf of Varvara Khanenko, as she left Volodymyr Starosolskiy a power of attorney to manage her affairs and a possible return of missing artwork to the museum that was the work of her life. This makes Count Widar Cesarini Sforza realize that something was awfully wrong with the sale and with Salomea's stay in the USSR.

30. Count Widar Cesarini Sforza conducts research and finds documents produced by the USSR Investment commission that worked for a limited time from 1919 to 1921 with a view to provide a cover-up for the bloody mess that the collectivization and nationalization have become known internationally. During this time, the commission produced a 1920 'Treaty for the Promotion and Encouragement of Socially Responsible Investment between Countries Liberated from Imperialistic Reign' between the USSR, Canada, the United States of America, Argentina, Brazil, Uruguay, and Colombia, and a 1921 'Treaty on Fair Usage of Foreign Property' between Italy, Poland and USSR and the 1917 'Treaty of Friendship and All Kinds of Support' between USSR on the one hand and the Ukrainian People's Republic (with the capital in Kyiv that only functioned in 1917-1921) to which Western Ukrainian People's Republic (also a short-lived state that functioned with capitals in Lviv, Ivano-Frankivsk and Ternopil, in 1918-1919) soon acceded. All three treaties offered generous protections to investments made by each other's investors and provided for arbitration as a dispute resolution mechanism.
31. After a chain of attempts to contact Volodymyr Starosolskiy, Count Widar Cesarini Sforza understands the former died in Siberian labor camps. A scholar in private and public international law, Count Widar Cesarini Sforza quickly understands that what happened may very well be a breach of investment protections by the USSR and looks for Salomea's relatives to suggest an investment claim is made. As contact with people in the USSR is impossible, Count Widar Cesarini Sforza finds Salomea's relatives further abroad.
32. Salomea's sisters Emilia and Maria who moved to Argentina and to the United States respectively, have long felt the unfairness of what happened to their famous sister and mourned her last years of life, trapped in poverty and lack of appreciation. So, when they were contacted by her lawyer Count Widar Cesarini Sforza who said they had good standing in an investment treaty case, they were excited. The lawyer recommended to combine their claims with similar ones and offered the Khanenko case which he believed to be prone to success.
33. The case is filed with the International Center for the Settlement of Investment Disputes (ICSID) on 10 January 1953 by Count Widar Cesarini Sforza on behalf of Salomea, Emilia and Maria Krushelnytska as well as Varvara Khanenko and the families of her sisters Maria Ivashchenko and Yephrosinia Sakhnovska against the USSR.

The Claimants' claims are as follows:

1. The Tribunal has jurisdiction over the claims under the 1920 'Treaty for the Promotion and Encouragement of Socially Responsible Investment between Countries Liberated

from Imperialistic Reign’, the 1921 ‘Treaty on Fair Usage of Foreign Property’ and the 1917 ‘Treaty of Friendship and All Kinds of Support’

a. The Tribunal has jurisdiction *Ratione persona*

- i. Salomea was an Italian national and qualified as an investor both in Ukraine and in the USSR once the USSR occupied Lviv
- ii. The Khanenkos were the nationals of the territories subsequently occupied by the USSR and thereby received the status of foreign investors under the 1917 ‘Treaty of Friendship and All Kinds of Support’ when the territory was seized by the Bolsheviks
- iii. The heirs of both families are entitled to investment protections by virtue of succession and may rely on the 1920 ‘Treaty for the Promotion and Encouragement of Socially Responsible Investment between Countries Liberated from Imperialistic Reign’ for additional protections

b. The Tribunal has jurisdiction *Ratione materia*

- i. ‘Musical Kamyanytsya’ qualifies as an investment under all three treaties and is made in the territory of the contracting state for the purposes of the 1920 ‘Treaty for the Promotion and Encouragement of Socially Responsible Investment between Countries Liberated from Imperialistic Reign’, the 1921 ‘Treaty on Fair Usage of Foreign Property’ and the 1917 ‘Treaty of Friendship and All Kinds of Support’
- ii. ‘Villa Salome’ qualifies as an investment and shall be deemed to have been made by an investor of the USSR as Salomea was forced to switch her nationality
- iii. The house at 15 Tereshchenkivska street in Kyiv and the art collection fit the requirements of an investment under the 1919 ‘Treaty of Friendship and All Kinds of Support’

c. The Tribunal has jurisdiction *Ratione temporis*

- i. The house at 15 Tereshchenkivska street in Kyiv was acquired and the art collection was made in the territory that became the USSR in 1917 as the collection was only then finalized and documented
- ii. ‘Musical Kamyanytsya’ was purchased in the early 1900s when Salomea Krushelnytska held Italian nationality and was sold when she obtained the nationality of the USSR and therefore fulfils the temporal requirement
- iii. ‘Villa Salome’ qualifies as an investment from the moment Salomea had to forcefully change her nationality

2. The USSR breached the investment protection standards under the 1920 ‘Treaty for the Promotion and Encouragement of Socially Responsible Investment between Countries

Liberated from Imperialistic Reign’, the 1921 ‘Treaty on Fair Usage of Foreign Property’ and the 1917 ‘Treaty of Friendship and All Kinds of Support’

- a. The USSR breached the full protection and security standard by:
 - i. allowing to have artwork from the Khanenko collection be taken to Germany in 1943,
 - ii. detaining artwork kept in the St. Petersburg apartment of the Khanenkos and the Emperor’s Historical Museum in Moscow and by later sending it to Russian museums,
 - iii. by imprisoning the family of Salomea’s sister Olena,
 - iv. by displacing Salomea and Varvara from parts of their homes and by detaining Salomea in the USSR
3. The USSR breached the fair and equitable treatment standard in the 1920 ‘Treaty for the Promotion and Encouragement of Socially Responsible Investment between Countries Liberated from Imperialistic Reign’, the 1921 ‘Treaty on Fair Usage of Foreign Property’ between Italy, Poland and USSR and the 1917 ‘Treaty of Friendship and All Kinds of Support’ by:
 - a. taking the house at 15 Tereshchenkivska street in Kyiv
 - b. taking the art collection belonging to the Khanenkos to pieces and establishing a state museum in contradiction to what was requested in the will of Bogdan and Varvara Khanenko
 - c. selling ‘Villa Salome’ on spurious grounds and in an unfair manner, and by using moral pressure on Salomea Krushelnytska to get her consent for the sale
4. The USSR expropriated the property of the Claimants in contradiction of the 1920 ‘Treaty for the Promotion and Encouragement of Socially Responsible Investment between Countries Liberated from Imperialistic Reign’, the 1921 ‘Treaty on Fair Usage of Foreign Property’ and the 1917 ‘Treaty of Friendship and All Kinds of Support’ by:
 - a. The taking the house at 15 Tereshchenkivska street in Kyiv and the valuable pieces from the Khanenko art collection in Kyiv, in the Khanenkos’ apartment in St.Petersburg and at the Emperor’s Historical Museum in Moscow and those looted to Germany without consent of the investors, without due process and without payment of compensation constitutes expropriation
 - b. The sale of ‘Villa Salome’ was conducted under pressure on the investor, on spurious grounds, with an unwarranted donation to the USSR, and the money paid to Salomea Krushelnytska as a result may not be deemed prompt adequate and effective compensation
 - c. The taking of ‘Musical Kamyanytsya’ was unwarranted and constituted expropriation
5. The USSR is liable to compensate for:

- a. The free market value of ‘Villa Salome’ in Viareggio, Italy
- b. The free market value of stage costumes of Salomea Krushelnytska created by French designers
- c. The free market value of the piano instrument that was a gift from Giacomo Puccini based on the prices that are currently usual for this kind of goods
- d. The free market value of the car at the rate it would be sold in 1939 when Salomea Krushelnytska was not allowed to leave the USSR upon her short visit to Lviv
- e. The free market value of the house ‘Musical Kamyanytsya’ in Lviv
- f. Lost profit from possible concerts of Salomea Krushelnytska in Europe and the Americas from 1939 till the year of her death, 1952, at Caruso’s rate, including that payment for his 1940 concert in Havana in the amount of USD 10,000.00
- g. The free market value of the house at 15 Tereshchenkivska street in Kyiv
- h. Restitution or, if impossible to locate, compensation for all paintings from the Khanenko art collection, both those contained in the museum and those found in other museums as the will of Bogdan and Varvara Khanenko was not followed
- i. Moral damages for displacement of Salomea Krushelnytska from a part of her house in Lviv and detention in the USSR, to her heirs, the families of her sisters Maria Ivashchenko and Yephrosinia Sakhnovska, and for displacement of Varvara Khanenko from a part of her house as well as for the moral suffering caused by the refusal to have her name on her museum

The Respondent stands with the following:

1. The Tribunal has no jurisdiction over the claims under the 1920 ‘Treaty for the Promotion and Encouragement of Socially Responsible Investment between Countries Liberated from Imperialistic Reign’, the 1921 ‘Treaty on Fair Usage of Foreign Property’, and the 1917 ‘Treaty of Friendship and All Kinds of Support’
 - a. The Tribunal lacks jurisdiction *Ratione personae*
 - i. Salomea Krushelnytska was of Ukrainian descent, fervently nationalistic, and her purchase of property in Lviv may not be considered a contribution to the USSR
 - ii. Salomea Krushelnytska changed her nationality to that of the USSR and therefore relinquished all investment protections
 - iii. The successors of Salomea Krushelnytska were all nationals of the Austro-Hungarian Empire or the Western Ukrainian National Republic at the time the investment was made and therefore do not qualify as investors

- iv. The Khanenkos were Ukrainian nationals all along and may not be considered foreign investors
- b. The Tribunal lacks jurisdiction *Ratione materia*
 - i. ‘Musical Kamyanytsya’ does not qualify as an investment under treaty the 1921 ‘Treaty on Fair Usage of Foreign Property’ and the 1919 ‘Treaty of Friendship and All Kinds of Support’ as it was continuously violating public order with loud music in the residential area
 - ii. ‘Villa Salome’ does not qualify as an investment as Salomea Krushelnytska was an Italian citizen all along when the investment was made
 - iii. The Khanenko art collection was not an investment as it contained nudity and therefore violated internal laws of the USSR
 - iv. The house at 15 Tereshchenkivska street in Kyiv was taken for public purpose as there was a nationalization policy in place
 - c. The Tribunal lacks jurisdiction *Ratione temporis*
 - i. The Khanenkos’ art collection was brought into Kyiv during many years before Kyiv became Soviet and therefore does not benefit from investment protection post-factum
2. The USSR did not breach the investment protection standards under the 1920 ‘Treaty for the Promotion and Encouragement of Socially Responsible Investment between Countries Liberated from Imperialistic Reign’, the 1921 ‘Treaty on Fair Usage of Foreign Property’ and the 1917 ‘Treaty of Friendship and All Kinds of Support’, in particular,
- a. The USSR did not breach the full protection and security standard:
 - i. As the standard only concerns life and physical safety of the investor – in both cases the investors were in safety and died of natural causes
 - ii. The artwork taken to Germany in 1943 was looting in wartime and therefore the USSR does not bear any responsibility for such looting and its consequences
 - iii. The taking of artwork to Russian museums from the apartment of Bogdan and Varvara Khanenko in St. Petersburg and from the Emperor’s Historical Museum in Moscow was done by unknown people outside of USSR control but in any event the taking of the artwork to Russian museums was done according to internal laws of the USSR in the state of necessity, to salvage valuable artwork and to ensure even distribution of cultural heritage
 - iv. The imprisonment of the family of Olena, the sister of Salomea Krushelnytska, is outside the scope of this dispute as Olena is not an

investor under applicable treaties, and in any event, the imprisonment was not done in the context of investment

- v. The displacing of Salomea Krushelnytska and Varvara Khanenko from their homes was done for public purpose and in due process of Soviet law, both women were ensured minimal shelter and means to feed themselves
 - vi. Salomea Krushelnytska was not unlawfully detained in the USSR as she herself decided not to leave before WW2 was over, and then failed to have her Italian passport renewed
- b. The USSR did not breach the fair and equitable treatment standard under the 1920 ‘Treaty for the Promotion and Encouragement of Socially Responsible Investment between Countries Liberated from Imperialistic Reign’, the 1921 ‘Treaty on Fair Usage of Foreign Property’ and the 1917 ‘Treaty of Friendship and All Kinds of Support’
- i. Taking of the Khanenko art collection complied with the wish of its former owners as the USSR made the collection available to the public in a state museum according to the will of Bogdan and Varvara Khanenko
 - ii. Selling ‘Villa Salome’ was done with the consent of Salomea Krushelnytska; at the time, no complaint over moral or other pressure was filed by her with competent authorities of the USSR
 - iii. The taking of the house at 15 Tereshchenkivska street in Kyiv did not breach any standard as the nationalization applied to all estates in the same manner

3. The USSR is not liable to make requested compensation for the following reasons:

- a. The free market value of ‘Villa Salome’ is inapposite as the villa was looted and destroyed right after the sale due to the wartime, and would have lost its value anyway
- b. The lost profits of Salomea Krushelnytska shall not be compensated as they were not expected due to wartime and her old age
- c. The artwork seized from the Khanenkos’ apartment in St. Petersburg and the Emperor’s Historical Museum in Moscow shall not be compensated as the will of the former owners was to have it in the museum, and this was done by sending it to different museums according to internal laws of the USSR
- d. The artwork seized by the German soldiers in 1943 shall not be compensated by the USSR due to the event being outside of the USSR’s powers
- e. ‘Musical Kamyanytsya’ shall not be compensated for, as it was not being used to its public purpose, which is housing people, and the USSR shall not encourage illegal usage by making compensation

- f. Restitution of paintings to the heirs of Varvara Khanenko is in contradiction to the will of the Khanenkos as they bequeathed all their artwork to the museum
- g. The free market value of the house at 15 Tereshchenkivska street in Kyiv shall not be compensated as the place is being used by the Khanenko Museum, according to the will of Bogdan and Varvara Khanenko
- h. There is no common practice of awarding moral damages in investment proceedings

The ICSID registers the case on January 20, 1953 and on February 25, 1953 informs the parties that the Tribunal has been constituted. The Claimants appointed Ms. Mary Beck, the first female lawyer of Ukrainian descent in the United States of America as their arbitrator. The Respondent appointed Mr. Charles Dirba, the co-founder of the Communist Party of America. The parties appointed Mr. Rene Cassin, the drafter of the Declaration of Human Rights, as President of the Tribunal.

The hearings are scheduled to take place in the week of February 22, 2021, in Kyiv and/or online, of which the parties shall be informed in more detail a month in advance of the hearings.

On January 15, 2021 the party representatives and the Tribunal held a pre-hearing conference, where:

- the counsel for Respondent requested a postponement of the hearings due to the need to coordinate their legal position between various state authorities and their legal counsel.
- Claimant, in turn, requested an extension of the deadline for submission of pre-hearing skeleton arguments due to the need to spend more time on deciphering partly censored documents obtained from Respondent in document production.

The Tribunal subsequently issued Procedural Order No. 5 whereby scheduled the deadline for submission of pre-hearing skeletons for April 2, 2021 and the hearings for April 19-25, 2021. In the same Procedural Order No. 5, the Tribunal requested the parties to confirm the facts that both rely on. The Case-study has therefore been amended by the added facts (version in track changes is available only to counsel).