

## Clarifications to the Case-study in 2020-2021 EEFI Moot Court

### I. PROCEDURAL

1. Did the parties to the dispute (Claimant and Respondent) agree on any version of ICSID Arbitration Rules to be applied by the tribunal, and if not, what rules will be applied?

*The Parties have not agreed on any specific version of the ICSID Arbitration Rules. It is up to you to find out which version of the Rules applies in this case, though this is largely irrelevant.*

2. Will the arbitral tribunal apply substantive law as it was interpreted when the investment was made, when the alleged violation of the aforementioned treaties occurred or at the moment of adjudicating?

*All law, commentary and interpretations shall be used in this moot court as they are available at the moment the oral hearings are conducted in this EEFI Moot Court.*

3. Are the Claimant and Respondent allowed to rely on judgments of courts and tribunals rendered after 1953 and practices developed after 1953?

*Yes.*

### II. FACTS OF THE CASE

4. When and for what reason has the USSR imprisoned the family of Salomea's sister Anna? [Claimant's submission FPS]

*It was Salomea's sister Olena. Her family was sent to Siberian camps in 1947, as per public domain. The formal reasons largely unknown and believed to be fueled by libel.*

5. Under what circumstances has the USSR displaced Salomea from her home? [Claimant's submission FPS]

*This information is in the public domain. Salomea Krushelnytska was informed that Musical Kamyanytsia is nationalized by the Soviet Government and that she is allowed to occupy only one apartment in the entire house while the rest would be occupied by other people.*

6. Where has Salomea spent her life after selling the Villa Salomea? [para. 24]

*In one of the apartments in Musical Kamyanytsia, in Lviv. She was invited to teach at the Lviv Music Academy, but after its manager, Vasyl Barvinsky, fell victim to repressions, Salomea was constantly on the brink of losing her job, and possibly, her life.*

7. When exactly has Salomea decided to hand over Musical Kamyanytsya and Villa Salomea to the musical community? [para. 18]

*At the time she purchased each of them.*

8. Other than a “hand-written letter from Salomea” [mentioned in para. 24], was there any other evidence of Salomea giving her consent for the sale of Villa Salomea?

*No.*

9. While Villa Salomea was sold on behalf of Salomea by the Soviet Government [para. 24], what did happen with Musical Kamyanytsya? Did it remain to be owned by the musician community?

*In 1939, it became a residential building for random people during the Soviet reign. Although a local city council approved creation of the museum at Musical Kamyanytsia in 1979, it only became active as a museum in 1991. It is still active as a museum in 2021. It never came to be owned by the musicians' community.*

10. How could Varvara move the art collection to Khanenko's Moscow apartment in 1921 [para. 20], considering that she signed a deed of gift and relinquished the collection for the benefit of the Ukrainian Academy of Science in 1918 [para. 22]? When exactly the art collection was taken to Moscow and when it was taken to Hermitage?

*Please refer to clarification provided in the Case-study, paras. 21-24.*

11. Did Soviet Government inform Salomea in advance that some portion of the money received from the sale of Villa Salomea must be renounced for the sake of the Soviet state? [para. 24]

*No.*

12. Did USSR legislation prohibit the running of a music club in the residential house? [para. 17]

*No, there was no specific prohibition of “running a music club” in residential houses. However, it was prohibited to purchase or sell immovable property and to resell anything from movable to immovable property, to do business, to make any transaction in foreign currency, to go abroad or communicate with foreigners (unless authorized by the state authorities for a specific purpose), and to be unemployed, all punishable under the Criminal Code of the USSR. Also, the definition of hooliganism or public disturbance was large enough to include public displays of affection, and loud noise in the residential area. A bourgeois lifestyle was not tolerated and could be interpreted as antisovietism and sometimes even state treason.*

13. Following para 22, the Bolsheviks advised Varvara to relinquish her collection. In which did the Bolsheviks advise Varvara to do so?

*This was an advice given in personal meetings of Varvara Khanenko with the fonctionnaires of the USSR and was not recorded otherwise than in correspondence of Varvara Khanenko. You can rely on the Case-study for this.*

14. What paintings formed part of Khanenkos' collection? Were they of any historical or cultural significance? [para. 7]

*There is a long list of artwork that finally made it to the collection of the Khanenko Museum, which you can partly consult on the website of the museum at: <https://khanenkomuseum.kiev.ua/en/collection/>*

*Some of the other artwork that was in the initial collection but did not make it to the museum are mentioned in paras. 16 and 23 of the Case-Study.*

15. During what period of time has the Musical Kamianytsa museum existed? [para 17]

*Musical Kamyanytsia existed first as residence and networking club from the year it was purchased in 1903 till 1939, then it was a residential building for random people during the Soviet reign. Although a local city council approved creation of the museum at Musical Kamyanytsia in 1979, it only became active as a museum in 1991. It is still active as a museum in 2021.*

16. When the art collection was finalized and documented? [para 22] When exactly did the Bolsheviks take over Kyiv? Para 22 mentions that “*the Bolsheviks took Kyiv over in January 1918*”, whereas on page 9 (Claimant's submission) it is stated that “[*t*]he art collection was made in the territory that became USSR in 1917 as the collection was only then finalized and documented”.

*Please refer to clarifications provided in the Case-study in para. 22.*

17. Was the “hand-written” letter that Salomea allegedly sent to Count Widar Cesarini Sforza actually written by her and uncoerced?

*There were two letters from Salomea Krushelnytska to Count Widar Cesarini Sforza relevant to the Case-study. On both letters all pertinent information is given in the Case-study in paras. 28-29.*

18. Was Volodymyr Starosolskiy authorized to act on behalf of Varvara Khanenko also after her death?

*Yes, for the purposes of EEFI Moot Court.*

19. Was Salomea notified of sale of her assets, and if so, when?

*Yes, she was notified and was given a part of money received from the sale.*

20. At what price the Villa, the land in Viareggio, the collection of stage costumes, the piano and the car were sold?

*The amount that the sale fetched was never disclosed.*

21. What entities did perform the actions that the Claimant seeks to attribute to the USSR?

*All relevant Soviet entities mentioned in the Case-study and the Soviet Government in general.*

### III. TREATIES

22. What is the definition/wording of an ‘investor’, ‘investment’, ‘foreign investor’, ‘expropriation’, ‘property’, ‘dispute resolution’ 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' and the 1917 'Treaty of Friendship and All Kind of Support'

*Consult 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'.*

23. When treaties come into force?

*On the dates they were adopted.*

24. Do treaties contain provisions on investment protection by virtue of succession or allows relatives to seek compensation on behalf of the investor?

*This is a matter of legal argument.*

25. Do treaties require parties to provide full protection and security with regard to investment, and if so, what is the wording of a relevant clause/clauses?

*Yes. Consult 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'.*

26. Do treaties require parties to provide fair and equitable treatment with regard to foreign investment, and if so, what is the wording of a relevant clause/clauses?

*Yes. Consult 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'.*

27. Do treaties prohibit expropriation of property and if so, what is the wording of a relevant clause/clauses?

*Yes. Consult 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'.*

28. Do treaties contain provisions on the scope of compensation due in case of breach of its provisions, and if so, what is the wording of a relevant clause/clauses?

*Consult 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'.*

29. For the purposes of this case, shall the Convention on the Settlement of Investment Disputes between States and Nationals of Other States be considered to have entered into force?

*Yes.*

30. For the purposes of this case, shall the USSR be considered to be a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States?

*Yes. All states concerned are presumed to be parties to the ICSID Convention.*