**The Lohengrin of the other side of the Carpathians**[1]

*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*
*Labii 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 resists the temptation and asks his name and origin, Lohengrin disappears forever,

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

condemned to remain in solitude. Wagner was mesmerized by the idea of knowing the true identity and the impossibility to having true love once or before you know it. He also wondered what, if anything, should be ineffable and whether by disclosing 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 him to Adolf Hitler. He 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), a daughter of wealthy Ukrainian industrialists, honeymoons 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 Warsaw. There, they do not go to the opera, but 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*."[2]

8. This is also around the time that Salomea (originally Solomiya) Krushelnytska is born in 1872 in Bila village, then in the region of Galicia, Austro-Hungarian Empire.[3] A fourth child of a young town priest, Salomea sings songs that she picks up from local villagers, and in 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

[2] Nadiya Muzlova's interview, https://bigkyiv.com.ua/lyubov-silnee-zhizni-istoriya-semi-hanenko-i-ee-kollektsii/

[3] Here and herein on Salomea Krushelnytska: Соломія Крушельницька: міста і слава. Галина Тихобаєва, Ірина Криворучка // Апріорі, 2009

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,[4] 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 family being a traditional one that 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. As the artistic shopping spree of Varvara continues on each travel to Europe, the apartment of Varvara's parents soon becomes too small. With the money she got for her marriage and a contribution from her husband, Varvara purchases a large two-story house in the center of Kyiv.

10. By 1890's, the Khanenko house in Kyiv looks like a palace and the couple dreams of one day making it a museum where all their collection would be showcased. At the same time in Ternopil and Lviv, Salomea's naturally strong mezzo-soprano of three octaves and her rustic beauty quickly makes 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 2000 guldens*." The loan covered only a part of her studies which cost 1000 lears per annum. In Italy, Salomea finds a challenge to fit her energy – she is told to change her voice from mezzo-soprano to 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 $A_4$ 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'* (dubbed "*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

[4] 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.

Aires, St. Petersburg, Cairo etc. She is a Rockstar of her time, and her singing causes frenzy among fans, as after she premiered in '*Lohengrin*' in Krakow in 1895, the public waits for her outside the opera house, and then carried her on their hands while the rest are pulling her carriage instead of the horses.[5] Salomea Krushelnytska is later said to be the only woman alongside the four recognized opera superstars – 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 were 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*".[6] Due to his political views Wagner became increasingly unwelcome at major opera houses, regardless of the quality and uniqueness 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 XXX in Paris in XXX 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 Nieztsche's *Amor fati* paradigm.

14. Salomea is of course ahead of her time, much like her heroines. Excelling in her work, she becomes the highest-paid female opera singer of her time, with one concert in Paris yielding 2000 francs and 1800 roubles in Poland (as compared to 800 roubles when a different singer performs, as confirmed by General Ivanov who then acted as opera impresario in his letters to Salomea) and 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 signers together with the fabulous four – Caruso, Shaliapin, Battistini, Ruffo. Caruso, for instance is most known for his Havana concert in 1940 were he would be paid USD 10,000.

15. In early 1900s Salomea's friend and composer Giacomo Puccini organizes evenings with his friends, among whom is a successful Italian lawyer and mayor of a picturesque Italian town of Viareggio, Cesare Riccioni, who in 1906 helped Salomea successfully use a defense of force majeure in a case over termination of her singing contract in Palermo after an eruption of the Vesuvius volcano rendered the area a breathing hazard. 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 Salomea", by 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.[7]

16. By then, Varvara Khanenko 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. Among European renaissance portraits and Asian ceramics, she develops a keen interest in orthodox iconography and gathers the best ones in the region.

[5] Memoirs of Olena Okhrimovych.
[6] Letter from S. Krushelnytska to M. Pavlik.
[7] Yu.Savytskiy, press release: https://www.radiosvoboda.org/a/24748860.html

17. After the end of WW1, in 1920s Salomea purchases a three-story house in the center of Lviv, then the capital of the Galicia region under Polish rule. Salomea's house in Lviv becomes not only a home for her parents and unmarried sisters, but a popular music club where students and professionals in classical music 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. In 1894-1923 she tours Vienna, Chernivtsi and Odesa on an annual basis, extending her trip as her performances become increasingly popular among locals.

18. In late 1890s Varvara Khanenko accompanies her beloved husband on yet another medical visit to Baden and Marienbad and passes by Chernivtsi. They most probably do not think of Marienbad as a home town of Lohengrin, but rather of as a fashionable place for medical treatment. In Chernivtsi, again, they miss the highly successful performances by Salomea Krushelnytska. Despite having never met, upon comeback to their respective home towns, 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 Ukraine, making 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 leave 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. In 1921 the Khanenkos had to move their art collection provisionally to their Moscow apartment to save it from possible looting. However, the artwork is soon seized by unknown people. In 1942 some paintings from the Khanenkos' collection are taken to Konigsberg, Germany with the fleeing soldiers and are reportedly lost in fire during one of the bombings. Some of the artwork was indeed burned, but most of it ends up in German art museums and would be spotted just a few years after. Most of the art sent for safekeeping in Moscow is taken to Hermitage in St. Petersburg and other museums in Russia without Varvara's consent. For a while, a Russian-Ukrainian commission on art would work to identify and return the works of art from the Khanenko collection, but after it becomes obvious that the number of the works to restitute keeps growing, the commission's work gets blocked by the Russian members and the restitution stops.

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

22. Soon after, Varvara Khanenko widows and is living in a small shed near her beautiful large house. Her husband Bogdan died of poor health in 1917. He maintained their wish for a museum in his last will and requested that Varvara did the necessary to organize the collection and turn the house into a museum for the public after her own death. 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 was supposed to relinquish the house only after her own death, however, as the Bolsheviks took Kyiv over in January 1918, new communist government advises to relinquish her collection sooner. At the same time, German museums offer 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 that year she signs a deed of gift in respect of her entire collection of art for the benefit of the Ukrainian Academy of Sciences with one material condition – that the museum would bear the name "*Museum of Bogdan and Varvara Khanenko*". 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 to them an epitome of capitalism. They even rule that the Khanenkos had '*no merit in the revolution'* and therefore do not deserve their name on their museum, so the museum becomes entitled "*Museum of Eastern and Western Art*". In June 1919, Varvara's family home is nationalized by the Decree of URSR's RadNarCom. Soon after, the Khanenko house opens its doors as a public museum and Varvara is allowed to take a limited role in curating art exhibitions for three more years, until she dies in 1922. A year before her death, Varvara manages to get some of her salvaged art from Moscow, but 30 painting are still reported as missing.

23. During this time Salomea is still enjoying her career and married life until in 1938 she widows and loses her father. The WW2 erupts and 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 that 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.

24. 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 the locals. However, imprisonments and torture come soon, and horrific stories are told. During

this period, the people from NKVD, the Ministry of the Interior of the USSR that 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 took on 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 her car. Salomea's Italian lawyer with whose family she is very friendly, Count Widar Cesarini Sforza,[8] 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 – 18000 Soviet roubles, and immediately has to spend 3000 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 sale price to her. The family that remains in Ukraine, namely the one coming from Salomea's sister Anna, who is a grandmother to anther 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**

25. 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 censured. He also receives a letter signed by Volodymyr Staroselsky, 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 Staroselskiy a power of attorney to manage her affairs and a possible return of missing artwork to the museum that she still considered hers.

[8] Widar Cesarini Sforza, in Dizionario biografico degli italiani, Roma, Istituto dell'Enciclopedia Italiana.

This makes Count Widar Cesarini Sforza realize that something was awfully wrong with the sale and with Salomea's stay in the USSR.

26. 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, Argentina, Brazil, Uruguay, and Colombia, and a 1921 'Treaty on Fair Usage of Foreign Property' between Italy, Poland and USSR and the 1919 'Treaty of Friendship and All Kind 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) and Western Ukrainian People's Republic. All three offered generous protections to investments made by each other's investors and provided for arbitration as a dispute resolution mechanism.

27. After a chain of attempts to contact Volodymyr Staroselskiy, 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 USSR is impossible, Count Widar Cesarini Sforza finds Salomea's relatives abroad.

28. Salomea's sisters Emilia and Maria who moved to Argentina and to Canada respectively, have
29. 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 to the Khanenko case which he believed to be prone to success.

30. 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 1919 'Treaty of Friendship and All Kind 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 USSR once USSR occupied Lviv
        ii. The Khanenkos were Ukrainian nationals and received the status of foreign investors under the 1919 'Treaty of Friendship and All Kind 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 1919 'Treaty of Friendship and All Kind of Support'
   ii. 'Villa Salomea' 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 art collection fits the requirements of an investment under the 1919 'Treaty of Friendship and All Kind of Support'

c. The Tribunal has jurisdiction *Ratione temporis*
   i. The art collection was made in the territory that became USSR in 1917 as the collection was only then finalized and documented
   ii. 'Musical Kamyanytsya' was purchased in the 1920s when Salomea Krushelnytska held Italian nationality and was sold when she obtained USSR nationality and therefore fulfils the temporal requirement
   iii. 'Villa Salomea' qualifies as an investment from the moment Salomea forcefully changed 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 1919 'Treaty of Friendship and All Kind 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 1942,
      ii. detaining artwork kept in the Moscow apartment of Khanenkos in Moscow and by later sending it to Russian museums,
      iii. by imprisoning the family of Salomea's sister Anna,
      iv. by displacing Salomea and Varvara from their homes and by detaining Salomea in 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 1919 'Treaty of Friendship and All Kind of Support' by:
   a. taking the art collection belonging to the Khanenkos to pieces and establishing state museum in contradiction to what was requested in the will of Bogdan and Varvara Khanenko
   b. selling 'Villa Salomea' on spurious grounds and in an unfair manner, and by using moral pressure on Salomea Krushelnytska to get her consent
4. The USSR expropriated the property of the Claimants in contradiction to 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 1919 'Treaty of Friendship and All Kind of Support' by:

a. The taking of the valuable pieces from the Khanenko art collection in Kyiv, in their apartment 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 the 'Villa Salomea' in Viareggio
    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 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 rate of his 1940 concert in Havana of 10.000 USD
    g. Restitute or, if impossible to locate, compensate for all paintings from the Khanenko art collection, both those in the museum and those found in other museums to her heirs, the families of her sisters Maria Ivashchenko and Yephrosinia Sakhnovska, as the will of Bogdan and Varvara Khanenko was not followed
    h. Moral damages for displacement of Salomea Krushelnytska from the entirety of her house in Lviv and detention in USSR, and for displacement of Varvara Khanenko from 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 1919 'Treaty of Friendship and All Kind of Support'
    a. The Tribunal lacks jurisdiction *Ratione persona*
        i. Salomea Krushelnytrska was of Ukrainian descent, fervently nationalistic, and her purchase of property in Lviv may not be considered a contribution to USSR
        ii. Salomea Krushelnytrska changed her nationality to that of USSR and therefore relinquished all protections

iii. The successors of Salomea Krushelnytska were all Ukrainian nationals 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 Kind of Support' as it was continuously violating public order with loud music in the residential area
ii. 'Villa Salomea' 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

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 1919 'Treaty of Friendship and All Kind 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 dies of natural causes
ii. The artwork taken to Germany in 1942 was looting in wartime and therefore the USSR does not bear any responsibilities for such looting and its consequences
iii. The taking of artwork to Russian museums from the apartment of Bogdan and Varvara Khanenko in Moscow was done by unknown people outside of USSR control and taking 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 Anna, the sister of Salomea Krushelnytska is outside the scope of this dispute as Anna 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 1919 'Treaty of Friendship and All Kind of Support'

i. Taking the Khanenko art collection complied with the wish of its former owners as the USSR made the collection available to public in a state museum according to the will of Bogdan and Varvara Khanenko
ii. Selling 'Villa Salomea' was done with consent of Salomea Krushelnytska; at the time, no complaint over moral or other pressure was filed by her with competent authorities of the USSR

3. The USSR is not liable to make requested compensation:
    a. The free market value of the 'Villa Salomea' is inapposite as the villa was looted 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 Khanenko's apartment in Moscow in 1921 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
    d. The artwork seized by the German soldiers in 1942 shall not be compensated by the USSR due to event being outside of 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 willed all their artwork to the museum
    g. There is no common practice of awarding moral damages in investment proceedings

The ICSID registers the case on January 20, 1953 and on February 20, 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 detailed a month in advance of the hearings.