Restitutions Committee

Bundeskanzleramt
Kommission für Provenienzforschung

Spoliation Advisory Panel

CIVS

Beratende Kommission
im Zusammenhang mit der Rückgabe
NS-verfolgungsbedingt entzogener Kulturgüter,
insbesondere aus jüdischem Besitz

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Network Of European Restitution Committees

On Nazi-Looted Art

EDITORIAL

In 2012 the Dutch Restitutions Committee organized a two-day conference in the Peace Palace in The Hague entitled 'Fair and Just Solutions? Alternatives to Litigation in Nazi-looted Art Disputes: Status Quo and New Developments'. On the first day there was a closed meeting of the five committees established by national governments to manage independent dispute resolution of claims involving Nazi-looted art. On the second day there was a public symposium for academics, experts, representatives of claimants, museums and the art trade, and interested others. The 2014 book of the same title, edited by the Committee's Secretary at the time, Evelien Campfens, contains a highly readable account of the proceedings.

The meeting of the five committees revealed how many similarities there were in their work as well as how many differences there were between them. Everyone involved found this opportunity to consult, cooperate and share information and ideas very useful. I was therefore very pleased that there was a follow-up in the form of a new meeting and conference staged by our British colleagues in London in 2017 and the Network of European Restitution Committees set up thereafter.

The Action Plan published after the 2017 London conference shows clearly that cooperation between the five committees is desirable in regard to many subjects. Take, for example, the Action Plan's first recommendation: *The Panels should address the difference between them in approaches to common definitions of spoliation, such as 'loss' and 'forced sale'.* This recommendation concerns a question that the Dutch Restitutions Committee in any event has to address in many cases: what is actually meant by Nazi-looted art? In some cases that the Restitutions Committee has advised about there has been little reason to debate this issue because, for example, it was obvious from the available historical information that an artwork had been confiscated. This is what the Washington Principles are about: 'art that had been confiscated by the Nazis'. The Terezin Declaration makes it crystal clear that the concept of Nazi-looted art has to be interpreted more broadly. This concept also covers 'wrongful property seizures, such as confiscations' and 'forced sales and sales under duress'. It is not yet clear, however, in which circumstances there is a 'forced sale' or 'sale under duress'. An important issue, for instance, is the extent to which the loss of possession has to have been a direct consequence of the Nazi regime. And how should one address art that was sold while someone was on the run? In addition, how should a claim be processed if evidence is no longer available? The Washington Principles say that this should be taken into account, but not how.

Obviously the answers to such questions are of interest to all five committees. I hope that cooperation between the committees and the sharing of experience and ideas in the Network can make a major contribution.

Fred Hammerstein
Chair of the Restitutions Committee, The Hague

News

KOMMISSION FÜR PROVENIENZFORSCHUNG

In **its 93th session** on 14 June 2019 the Art Restitution Advisory Board passed three resolutions. Firstly it recommended the restitution of a watercolor by Friedrich Schilcher, acquired in 1942 by the Albertina, to the heirs of Luise Simon who had fled from Austria in 1939 to Switzerland. Also the Austrian Museum of Folks Live and Folks Art should restitute eleven objects that the museum had acquired from the Jewish antiquity dealer Wilhelm Hernfeld. And in the case of a pianoforte that is today property of University of Music and Performing Arts Vienna the Board decided in favor of a restitution to the Teutonic Order that had been dissolved by the National Socialists.

All recommendations can be found at :
http://www.provenienzforschung.gv.at/de/empfehlungen-desbeirats/beschluesse/beschluesse-1998-2019/

Furthermore, the Commission for Provenance Research has organised its usual **„Lunchtime Lectures"** (to be found at:
http://www.provenienzforschung.gv.at/en/kommission/veranstaltungen/).

Whereas in May 2019 Konstantin Ferihumer, provenance researcher at the Academy of Fine Arts Vienna, spoke about „Aryanisation" as a form of social practise using the example of the Viennese jewellery industry, the following month art historian and author Birgit Schwarz gave an insight to the researchproject „Diaries of Hans Posse", carried out at the German Art Archive Nuremberg. In July, Ilse Reiter-Zatloukal, Institute of legal history at the University of Vienna, and Mathias Lichtenwagner, now researcher at the Jewish Comunity of Vienna, gave an insight to their newly published book about the practice of the Austrian prohibition act concerning National Socialist actuation (NS-Wiederbetätigung).

In June a total of 30 new articles for **the Dictionary of Austrian Provenance Research** ("Lexikon der österreichischen Provenienzforschung") have gone online: the announcement can be found here (page 4):
http://www.provenienzforschung.gv.at/wp-content/uploads/Mittagsgespraech_2019-07-10.pdf;
see also the website of the Dictionary of Austrian Provenance Research:
https://www.lexikon-provenienzforschung.org/

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A painting returns to France

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On 23 July 2019, Peter Forner from Berlin handed over a painting by the French painter Nicolas Rousseau to the French State, represented by Ambassador Anne-Marie Descôtes, at the French Embassy. During the Second World War, the painting was transported from France to Berlin, where it remains in the custody of the Forner family to this day.

Peter Forner's father, Alfred Forner, was stationed in Normandy during the Second World War as a non-commissioned Air Force officer. Before a visit to his hometown in September 1944, his superior entrusted him with a painting whose origin could still not be clearly reconstructed. On his arrival in Berlin, Alfred Forner discovered that the building where he was to hand over the artwork had been destroyed, and so took it to his private apartment. Alfred Forner died in the same year shortly after his return to France. The painting was kept first by his wife and later by his son Peter.

For Peter Forner, handing over the work of art means more than just clarifying the ownership. To him, it is a contribution towards overcoming our common past and towards Franco-German friendship.

At the initiative and request of Peter Forner, the painting was handed over to the French State for safekeeping. Despite extensive research in Germany and France by the CIVS and the *Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945* of the

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French Ministry of Culture, the origin of the artwork could not yet be clearly determined.

The painting will be exhibited in a museum or city hall in France and will be given a plaque that traces its history while the provenance research continues. The intention is to inform the public about the past of the artwork and hopefully identify the rightful owner.

This voluntary return of a painting by a private person is unique gesture valued all the more by the French government who has been able to find this quick and particular solution by exhibiting an artwork in a public institution while research continues.

20 ANS civs

The Paris Conference programme is now online

The programme for the Conference on the 15th of November 2019 in Paris "Twenty years of reparation for anti-Semitic spoliations during the Occupation: between compensation and restitution" is now available online. Please find it here: *https://framaforms.org/sites/default/files/forms/files/programme_20anscivs.pdf*

For further information please contact Ms Isabelle Rixte (isabelle.rixte@civs.gouv.fr).

Reinforcement of Franco-German cooperation on Nazi-looted art

On 22 May 2019, Mr Michel Jeannoutot (chairman of the CIVS), Mr David Zivie (Head of the M2RS) and Mr Rüdiger Hütte (executive board of the DZK) have signed a Franco-German cooperation agreement in the field of provenance research to identify Nazi-looted art and to promote fair and just solutions at the French Embassy in Berlin in the presence of Ambassador Anne-Marie Descôtes.

Partners of the cooperation agreement are the *Deutsches Zentrum Kulturgutverluste (Zentrum), the Commission pour l'indemnisation des victimes de spoliations intervenues du fait des législations antisémites en vigueur pendant l'Occupation (CIVS) and the Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945* of the French Ministry of Culture (M2RS).

The cooperation agreement provides for close and trusting cooperation in the search for and investigation of Nazi-looted art, documentation and communication. The agreement consolidates and expands the exchange of information between the DZK and the CIVS already practiced in the research of the Gurlitt art trove. Regular meetings and joint events are planned. The cooperation partners will set up a joint working group to prepare the current topics of the cooperation and to accompany its implementation.

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RESTITUTIONS COMMITTEE

New Member and New Advisor of the Restitutions Committee

Saskia Cohen-Willner has been appointed as new member of the Restitutions Committee. Saskia Cohen-Willner is an art historian and established independent curator. She also works as a researcher and author, specializing in sixteenth- and seventeenth-century paintings, works on paper and art literature. Saskia Cohen-Willner holds a PhD from the University of Amsterdam.

The Committee has appointed Jaap Cohen as its advisor. Jaap Cohen is a historian, author and biographer. Previously he worked as a researcher with the NIOD Institute for War, Holocaust and Genocide Studies. Jaap Cohen holds a PhD from the University of Amsterdam.

Case Study

THE „WELFENSCHATZ" („GUELPH TREASURE")

The controversy of the so-called Welfenschatz has for many years been the focus of discussion about the handling of Nazi-looted art; only in June 2019, the Stiftung Preussischer Kulturbesitz, in which the Welfenschatz is housed, announced that it will appeal to the U.S. Supreme Court to dismiss a lawsuit seeking restitution of the Welfenschatz. Within this discussion, also the recommendation of the Advisory Commission for the return of Nazi-confiscated cultural artefacts on the Welfenschatz dated March 20th, 2014 is mentioned. Also due to the complexity of the case, it seems to be helpful to take a closer look at this recommendation. Against this background, it follows a shortened version of the Commission's recommendation; for the full text please see for the German version *https://www.kulturgutverluste.de/Content/06_Kommission/DE/Empfehlungen/14-03-20-Empfehlung-der-Beratenden-Kommission-im-Fall-Welfenschatz.pdf?__blob=publicationFile&v=7* and for the English version *https://www.kulturgutverluste.de/Content/06_Kommission/EN/Empfehlungen/14-03-20-Recommendation-Advisory-Commission-Guelph-Treasure.pdf?__blob=publicationFile&v=7*

1. Historical background

According to the recommendation, the main facts of the case are as follows:

The Welfenschatz is a collection of late medieval works of ecclesiastical art in gold from Braunschweig Cathedral, which had been owned by the Princely House of Braunschweig-Lüneburg since the 17th century. In the 1920s, the princely house tried to sell the collection. At the time, the price estimates varied greatly, from 42 million Reich marks to 6 million Reich marks. In October 1929, shortly before the outbreak of the world economic crisis, Jewish art dealers from Frankfurt/Main acquired the collection consisting of 82 individual items at a price of 7.5 million Reich marks. The purchase contract was signed on the 5th of October 1929 by the proprietors of the art dealership, J.S. Goldschmidt, I. Rosenbaum and Z.M. Hackenbroch. «Foreign and domestic business associates» were involved in the purchase, who formed a consortium with the authorized art dealers. The consortium agreement has not been found to date. The composition and legal structure of the consortium are not known. In the purchase contract, the art dealers undertake to sell the treasure of relics and to give the princely house a share in the profits obtained above a certain profit margin. It was expressly agreed, that the buyers would not be entitled to retain the purchased objects themselves either in whole or in part, but rather that they would be obliged to «make every effort to sell». In the years that followed, the art dealers tried in vain to sell the whole collection in Germany and in the USA. It is generally believed that the world economic crisis considerably impaired the willingness of potential purchasers to buy. In 1930/31, they succeeded in selling only 40 individual items, primarily in the USA, for a total price of approximately 2.7 million Reich marks. The remaining 42 pieces were put into storage in Amsterdam after the collection had been exhibited in the USA. In 1934, Dresdner Bank expressed an interest in purchasing the collection, which at the time was still in Amsterdam and therefore not in Germany. The bank presented itself as a potential buyer. However, it was to remain secret that it was acting on behalf of the State of Prussia. In April 1935, the consortium of art dealers submitted an initial binding offer to the amount of 5 million Reich marks. Dresdener Bank responded with an offer of 3.7 million Reich marks. In June 1935, a purchase sum of 4.25 million Reich marks was agreed. The purchase price was to be paid partly in cash (3,371,875 Reich marks) and partly (due to the currency export provisions in effect at that time) in works of art (800,000 Reich marks), which were to be sold abroad for the foreign business partners. The purchase contract was signed on the 14th of June 1935 by the art dealers I. and S. Goldschmidt and Z. M. Hackenbroch, as well as by Isaac Rosenbaum and Saemy Rosenberg, the previous proprietors of the Rosenberg Company, as the seller, and by Dresdner Bank (for the State of Prussia) as the buyer. In July 1935, the purchase price was paid less a provision of 100,000 Reich marks. The 42 pieces in the collection were brought to Berlin. After 1945, the Welfenschatz was seized by the occupation authorities and later handed over in trust first to the State of Hessen and then to the State of Lower Saxony. In 1963, the collection was taken over by the Stiftung Preußischer Kulturbesitz and has been exhibited at the Kunstgewerbemuseum in Berlin ever since. Within the context of the reparation procedures, no compensation claims were made by the Jewish art dealers or their heirs or by the other participants with respect to the Welfenschatz treasure.

2. The position of the claimants

In 2008, the heirs to the art dealers demanded that the 42 Welfenschatz pieces be returned by the Stiftung Preußischer Kulturbesitz. The claimants are of the view that the sale in 1935 was a case of confiscation due to persecution. In 1934 and 1935, they maintain that Dresdner Bank and the Prussian state government behind it deliberately exploited the difficult economic situation the Jewish art dealers found themselves in and exerted pressure on them. Even the Prussian Prime Minister Göring became involved. He was the driving force behind this transaction, they claim. The purchase price of 4.25 million Reich marks did not correspond to the market value of the collection. According to expert estimates, a purchase price of at least 6 to 7 million Reich marks for the 42 individual items would have been appropriate in 1935.

Case Study

3. The position of the defendant

The Stiftung Preußischer Kulturbesitz refused to return the Welfenschatz. It refers to the fact that it has not been clarified whether the four art dealers alone or also other participants in the sale were the co-owners of the Welfenschatz. Only all of the co-owners as a whole would be entitled to claim the return of the collection. The sale in 1935, the Stiftung holds, was not a compulsory sale due to persecution. The art dealers had been attempting to sell the collection since 1929 and did not enter into the contract in 1935 under political pressure. The purchase price of 4.25 million Reich marks reflected the market value at that time and was therefore appropriate. There were no other interested potential purchasers in 1934 and 1935 that would have been in a position to raise the purchase sum. The lack of demand and the lower purchase price in comparison with earlier estimates can be attributed to the world economic crisis and not to the repression of Jewish art dealers by the National Socialist government. They accepted the purchase price after lengthy negotiations. If one compares the entire proceeds from the sale of the 40 individual items in 1930/1931 and the 42 individual items in 1935 to the purchase price in 1929, the Jewish art dealers and their business partners made a loss in the amount of ca. 10%. Moreover, the Stiftung pointed out that the art dealers and their business partners were free to dispose of the proceeds from the sale. In any case, there is no evidence which speaks against free disposal.

4. The recommendation of the German Advisory Commission

After the two parties were unable to come to an agreement, they called upon the Advisory Commission in 2012.

On March 20th, 2014, the Commission stated its position on the Welfenschatz case under the chairmanship of Prof. Dr. Limbach. Thereby, the Commission has examined this extraordinary case in detail, evaluated the extensive documentation and written submissions from of the parties and listened to their legal representatives. According to the findings of the Commission, the art dealers had been trying to resell the Welfenschatz since its acquisition in 1929. They were able to sell 40 individual items in 1930 and 1931, but did not receive any offers for the remaining 42 individual items. Dresdner Bank first expressed an interest in purchasing the remainder of the collection in 1934 on behalf of the Prussian State government. During the negotiations, which were drawn out over a lengthy period of time, the different target prices for both sides gradually approached each other. Although the Commission was aware of the difficult fate of the art dealers and of their persecution during the Nazi period, there was no indication to the Commission that pointed to the art dealers and their business partners having been pressured during negotiations, for instance by Göring. Furthermore, the effects of the world economic crisis were still being felt in 1934/1935. In the end, both sides agreed on a purchase price that was below the 1929 purchase price, but which reflected the situation on the art market after the world economic crisis. The art dealers used the proceeds primarily to repay the financial contributions of their domestic and foreign business partners. Moreover, there was no evidence to suggest that the art dealers and their business partners were not free to dispose of the proceeds. According to the Commission, the sale of the Welfenschatz was not a compulsory sale due to persecution. Therefore, it couldn't recommend the return of the Welfenschatz to the heirs of the four art dealers and any other previous co-owners.

Presentation of a committee: Spoliation Advisory Panel

A BRIEF HISTORY

The Spoliation Advisory Panel was established in 2000, following the 1998 Washington Conference on Holocaust Era which encouraged all EU Member States to adopt non-binding principles to assist in resolving issues relating to Nazi-looted art. Additionally, the Vilnius Forum Declaration in 2000 asked all governments to undertake every reasonable effort to achieve restitution of cultural assets looted during the Holocaust Era to their original owners.

Prior to 2009, where the Panel upheld a claim for an object in a national collection, it was unable to recommend the return of the object because this was not possible under the governing legislation of the body involved. The Holocaust (Return of Cultural Objects) Act 2009 allows national museums to return cultural objects in response to a claim where the Panel recommends it and the Secretary of State for Digital, Culture, Media and Sport agrees.

The Spoliation Advisory Panel has advised on 20 claims in 18 years. 13 claims have been upheld and 7 rejected. The Panel's reports are published and laid before the UK Parliament. They can be found here:

https://www.gov.uk/government/collections/reports-of-the-spoliation-advisory-panel

On 4 July 2019, the Holocaust (Return of Cultural Objects) (Amendment) Act 2019 became law in the UK. The 2009 legislation had a sunset clause which would have meant that the powers of return would have ended on 11 November 2019. The 2019 Act removes the sunset clause and ensures that families who lost cultural objects during the Nazi-era and which are now in a UK national collection, can continue to have their property returned to them.

COMPOSITION OF THE SPOLIATION ADVISORY PANEL

Under Section 3 (2) of the Holocaust (Return of Cultural Objects) Act 2009, the Secretary of State may designate a panel for the purposes of the Act.

There are two Panel chairs, The Rt Hon Sir Donnell Deeny and The Rt Hon Sir Alan Moses and eight members.

The following areas of experience and backgrounds are represented on the Panel - legal, museums, economics, moral philosophy, fine art and the history of Europe during the Nazi-era.

The Panel has a small Secretariat provided by the Department for Digital, Culture, Media and Sport which carries out research, as required.

TASKS AND POWERS

The Spoliation Advisory Panel consider claims from anyone who lost possession of a cultural object during the Nazi era where the object is in a UK museum or gallery. The Panel may also consider claims for items in private collections where the owner consents. The Panel's proceedings are an alternative to litigation, not a process of litigation and the Panel will therefore take account of the moral strength of the claimant's case and whether any moral obligation rests on the institution.

Where the Spoliation Advisory Panel upholds a claim, it may recommend either:

(a) the return of the object to the claimant, or

(b) the payment of compensation to the claimant, the amount being in the discretion of the Panel having regard to all relevant circumstances including the current market value, but not tied to that current market value, or

(c) an ex gratia payment to the claimant, or

(d) the display alongside the object of an account of its history and provenance during and since the Nazi era, with special reference to the claimant's interest therein.

The Panel's recommendation is not binding on the parties although the institutions involved have always sought to implement the Panel's recommendation.

BRIEF DESCRIPTION OF THE PROCEDURES

On receipt of a claim, the Secretary of State for Digital, Culture, Media and Sport decides, on the basis of the above, whether to designate a Panel to consider the claim, whether for the purposes of the Holocaust (Return of Cultural Objects) Act 2009 (the Act) or otherwise.

Where a Panel has been designated to advise on a claim, the Panel's Secretariat shares the claim with the institution concerned, which then has six weeks to submit its statement of case.

For the Panel to begin work on assessing a claim, the parties should provide the Panel with sufficient information regarding the object, its present location and the circumstances in which it was lost, amongst other things. Further guidance on the information required is available on the website address below. In accordance with the principles of fairness and transparency, all parties are expected to disclose anything relevant

PRESENTATION OF A COMMITTEE

which emerges from their research, whether or not they perceive it to be helpful to their case.

The Panel then reaches its determination on the claim based on the written statements and drafts its report. An embargoed copy of the draft report is then shared with the parties to allow them an opportunity to identify any factual errors.

The draft report is then presented to Ministers prior to its publication as a report to the UK Parliament.

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Spoliation Advisory Panel

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