

Spoliation
Advisory
Panel

 Bundeskanzleramt
 Kommission für
 Provenienzforschung



 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 January 2019, on behalf of the CIVS, France, the first chair of our Network of European Restitution Committees, published a press release announcing the establishment of the Network and its aim of collaborating on joint projects and sharing information. Twelve months later, the CIVS – Jérôme Bénézec and his team – have performed excellent work, especially the creation of this Newsletter and the publication of a guide about the work of the five Committees, which provides an overview of the different approaches to research on Nazi-looted art objects and their potential and actual restitution to their rightful owners or heirs. Further and closer cooperation on different questions can be expected in the future, not least the discussion of comparative law and the various legal solutions. At the conference marking the twentieth anniversary of the CIVS in November, my British counterpart in art restitution, Sir Donnell Deeny, stated publicly: *“The particular element that our five committees have in common is that they are all chaired by serving or retired senior judges, and, thus, inherently qualified and disposed to provide to the parties a fair process and independent and impartial adjudication.”* I am curious to find out what other similarities and points in common will be identified in the future.

At the same time, new developments have occurred. We are excited to watch the establishment of the new

“Mission” in France and the results of its first year of work. Changes are to be announced by other members of our Network, which will naturally be incorporated into our activities. We also need to consider what has been happening outside of our Network. Forty-four states signed the Washington Principles twenty-one years ago. How have those that had no access to panels or boards like our five countries been dealing with this self-imposed commitment? In times of disruption and resurgent nationalism, is it not our duty, even within our small Network, to find pathways for communication and possible collaboration?

At the moment I find myself in the peculiar situation of representing the Republic of Austria in this Newsletter in a double sense – on the one hand as Chairman of the Art Restitution Advisory Board and on the other hand as Federal Minister of Justice. The latter is the reason why the Board has decided not to convene for a winter session this year. But in both functions I would like to conclude by expressing my pleasure that Austria will be chairing the Network in 2020 and look forward to intensifying our knowledge of one another and of striving to maintain the excellent level of international cooperation, mutual understanding and learning.

Clemens Jabloner

Bundesminister a.D. Univ.-Prof. Dr. Dr. h.c.

NEWS

KOMMISSION FÜR PROVENIENZFORSCHUNG

The Advisory Board's decisions

On 18 October 2019, the Art Restitution Advisory Board recommended in its 94th session to the Federal Minister of Arts and Culture to restitute objects from the Natural History Museum in Vienna. The first case concerned four fossils originally belonging to the engineer Fritz Illner that were sold to the museum by his sister-in-law Irma Bondy before she fled to France, where Illner was already living. They were both later deported to Auschwitz and did not survive 8 May 1945. The other case dealt with books from the renowned Austrian judge and university professor Heinrich Klang, who was deported to Theresienstadt ghetto, where he worked as a judge in the ghetto court. He later testified that he had had to sell his library to prepare for his flight. The Advisory Board's decisions are published on the website of the Commission for Provenance Research (<http://www.provenienzforschung.gv.at/en/empfehlungen-des-beirats/beschluesse/beschluesse-1998-2019/>).

Events

This autumn was marked by a series of events with the participation of members of the Commission for Provenance Research: on 4 October, on behalf of the Commission, Monika Löscher (Kunsthistorisches Museum) organised a workshop in Kammerhof Museum, Bad Aussee, about Nazi art looting in the Ausseerland region. At a workshop on Hans Posse's networks on 17 and 18 October in the Germanisches Nationalmuseum in Nuremberg, Julia Essl (Albertina) gave a talk on Posse's years of study and their impact on his later function as special emissary. On 17 October, the Federal Chancellery (Pia Schölnberger for the Monument Protection and Art Restitution Affairs department), in cooperation with ICOM Austria, organised a workshop entitled "The museum in a colonial context", where questions about colonial provenance in Austrian federal museums were widely discussed. Also in October, Schölnberger visited Toronto at the invitation of the Sarah and Chaim Neuberger Holocaust Education Centre to present the Commission to different audiences, among them lawyers, educators and young professionals.

Justus Düren (Austrian National Library) took part in the conference "War and the book", organised by the University Library of Poznań and the Raczyński Library from 13 to 15 November. At the Austrian National Library, the war-looted art assigned to its collection was

discussed on the basis of statistics and examples from Smolensk State University and the library of the NSDAP Hohe Schule.

Leonard Weidinger (MAK – Museum of Applied Arts) was invited as an expert to the hearing of the JURI Committee of the European Parliament on cross-border restitution of looted art in Brussels on 3 December. He also gave a lecture on provenance research at the Conference of the CIVS on 15 November.

Mittagsgespräche

At the Commission's Lunchtime Lecture on 4 December, Gabriele Anderl gave insights into her project funded by the Commission about the art trade as illustrated by the historical export forms of the National Monuments Authority 1938–1945. Together with Anneliese Schallmeiner (Bureau of the Commission for Provenance Research) she also published an article on "Sequestered/Confiscated Assets in Trieste" (<https://www.memofonte.it/studi-di-memofonte/numero-22-2019/>). Around thirty new entries in the *Lexikon der österreichischen Provenienzforschung* can be expected by the end of the year (www.lexikon-provenienzforschung.org/).

CIVS

The Conference of 15 November



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To mark the 20th anniversary of its institution, the CIVS organized a conference in Paris. Under the title "20 years of reparation for anti-Semitic spoliations during the Occupation: between compensation and restitution", officials, experts, victims' representatives and lawyers gathered together on November 15 to assess twenty years of reparation, and to focus on the new impetus given to the restitution of cultural property.

The speakers presented to around 400 attendees the French policy on reparation, the new public organization for the return of art and cultural objects and the creation of

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the Mission for research and restitution of cultural property spoliated between 1933 and 1945. This conference was also an important event for the Network of European Restitution Committees. It pointed out the organization of the Network, its challenges, but also the differences between the committees, the action and the needs of the researchers and the specific issue of the looted books.

The CIVS will publish next spring the proceedings of the symposium.

Presentation of the Network

On December 3, the Director of the CIVS presented the Network, its creation and its results, to the legal affairs committee of the European Parliament. The presentation can be seen on its website:

<https://www.europarl.europa.eu/ep-live/en/committees/video?event=20191203-0900-COMMITTEE-JURI>

(The presentation is at 09 :43)

Conference in Bonn

On the 20th of January 2020, David Zivie, the Head of the Mission for the Research and Restitution of Cultural Property Stolen between 1933 and 1945, based in the Ministry of Culture in France, will lead a conference at the Institut Français, Bonn on the subject "Provenance research, provenance found: can spoliations be repaired?"

This is a joint event conceived by the CIVS, the Institut Français in Bonn, the Office for University Cooperation at the French Embassy in Berlin and in collaboration with the DFK (German Center for Art History) in Paris.

Institut Français in Bonn

From 6:15 pm
Adenauerallee 35, 53113 Bonn
Germany



RESTITUTIECOMMISSIE

The Dutch Restitutions Committee has issued a binding opinion about the application for restitution of the painting Mountainous Landscape by the artist Jacob van Geel, currently in the possession of Rotterdam City Council. The Committee takes the view that the City Council is not obliged to reconstitute the work.

The City Council acquired the painting in 1978 as a consequence of a bequest by the art dealer Vitale Bloch. Since then the painting has been in Museum Boijmans van Beuningen. Bloch acquired the work earlier from the Jewish artist and collector Joseph Henri Gosschalk. The applicants for restitution in this case are heirs of Gosschalk who assert that he lost possession of the painting involuntarily during his internment in Westerbork transit camp due to circumstances directly

related to the Nazi regime. The applicants and the City Council laid the claim before the Restitutions Committee for investigation and a binding opinion.

The Restitutions Committee concluded on the basis of the investigation conducted in this case that Bloch acquired the painting from Gosschalk in 1940 or possibly earlier. In regard to this, the Committee is of the opinion that insufficient facts and circumstances have been established on the grounds of which it can be deduced with the required degree of plausibility that Gosschalk lost possession of the painting as a result of circumstances directly related to the Nazi regime. In its binding opinion of 11 November 2019 the Restitutions Committee concluded that Rotterdam City Council is not obliged to reconstitute the painting.

The full text of the recommendation is on the Restitutions Committee's website : www.restitutiecommissie.nl

CASE STUDY

THE KIRSTEIN CASE

The Dutch Restitutions Committee was established in 2001 by the Dutch State Secretary for Education, Culture and Science to advise about claims on Nazi looted art. The Netherlands thus opted for a form of alternative dispute resolution for finding just and fair solutions in cases involving Nazi looted art. The Restitutions Committee was given two tasks when it was set up. Its primary role is to advise the State Secretary about claims to Nazi looted art that is in the Dutch national collection, in particular the collection of artworks recovered and returned after the Second World War, namely the NK collection. The Committee's other task is to advise about claims to Nazi looted art that is in other Dutch collections. Such collections can belong to provincial or local authorities, and also to private individuals. In such cases the Committee issues a binding opinion to the current owner of the artwork and the claimant or claimants. This case study is about a recent binding opinion the Restitutions Committee issued in the Kirstein case.

Background of Binding Opinion

The Netherlands does not have any special legislation concerning claims to Nazi looted art. Dutch property law protects an owner who acquired an artwork in good faith, even if the artwork concerned was stolen or looted in the past. This means that in the vast majority of cases concerning Nazi looted art, legal proceedings in court have no chance of success. The claimant and the owner may jointly decide, however, to submit the claim on a voluntary basis to the Restitutions Committee for advice. In so doing the current owner accepts that they may lose their property despite the fact that they are not legally bound to do so. The Restitutions Committee is tasked with finding a just and fair solution, taking into account the interests of the former and current owners. Article 3 of the regulations formulated by the Restitutions Committee to cover such cases describes a number of circumstances that the Committee can include in its considerations. The most important elements in the Committee's assessment are the questions of the original ownership and the circumstances in which possession was lost. The regulations also describe the procedure the Committee employs.

In this type of case the Committee issues advice to the claimant or claimants and the current owner. This advice is not without obligation. It is a binding opinion. This means that a party, if necessary, can go to court to enforce it. There is limited scope for lodging an appeal with the civil court. In most binding opinion cases the result is restitution or rejection of the claim, but the Committee may also recommend other possible just and fair solutions. By the end of 2019 the Committee had issued 17 binding opinions.

Binding Opinion in the Kirstein Case

The Kirstein case was about a drawing by the German artist Max Liebermann entitled *Jewish Quarter in Amsterdam*. Amsterdam City Council purchased the drawing in 1964 at a sale in Cologne and afterwards entrusted it to the Amsterdam City Archives, which collects drawings of Amsterdam by Liebermann.

The identity of the seller at the sale in 1964 was unknown. It was known, however, that the drawing originally came from the collection of Dr Gustav Kirstein of Leipzig. In



CASE STUDY

2017 the City Archives received an email from the legal representatives of the heirs of Gustav and Clara Kirstein. They wrote that previously the drawing had been part of the collection of the Kirsteins, who were Jewish, and that the couple had lost possession of the drawing as a result of their persecution by the Nazis. The heirs asked the City Archives to restitute the drawing. In response the City Archives, in accordance with Amsterdam City Council's policy, proposed submitting the case to the Restitutions Committee and requesting an investigation and a binding opinion. The heirs agreed to this.

After the Committee had received the request for a binding opinion, and after it had satisfied itself that the claimants were all heirs of the Kirsteins, it led an investigation based on the available facts. To do this, the Committee can call on the services of experienced provenance researchers, who report their findings with an overview of the facts. Since 1 September 2018 the researchers have been in the independent Restitution of Items of Cultural Value and the Second World War Expertise Centre. The overview of the facts presents in an insightful way the information that as a rule the parties have compiled themselves as well as that what emerges from the researchers' investigation. The parties have the opportunity to respond to the overview of evidence before the Committee issues its advice in order to avoid the Committee basing its advice on incorrect facts.

The overview of the facts made it very clear in this case that Liebermann's drawing was indeed originally from Gustav and Clara Kirstein's art collection. Gustav Kirstein built up a large collection containing various works by Max Liebermann. The Kirsteins were affected by anti-Jewish measures taken by the Nazis after they came to power in Germany in 1933. Gustav Kirstein died in 1934. In the spring of 1939 Clara Kirstein was compelled to hand over her family jewellery and silver. Her two daughters had meanwhile fled to the United States because of their persecution by the Nazis. Clara Kirstein also wanted to flee there. She had to pay a large sum in taxes in order to do so. She therefore sold part of her art collection. The day before Clara Kirstein planned to leave Germany, her passport was seized and she was summoned to report to the Gestapo. She committed suicide on 29 June 1939. Her two daughters were her heirs. The art collection built up by Gustav Kirstein was sold or offered for sale in 1939 and thereafter.

It was clear to the Committee that Kirstein's art collection was sold or confiscated during the period starting in 1939 as a result of persecution by the Nazis. It was also clear that the drawing was in any event part of this collection until 1923. Without additional information, however, the Committee could not exclude the possibility that the drawing had left the collection in some other way before 1939, perhaps without this being a consequence of Nazi persecution. A lack of information is typical in Nazi looted art cases, as was appreciated when the Washington Principles were formulated in 1998. The fourth principle, for instance, states as follows. *In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.*

Bearing in mind this principle, and on the grounds of indications that the Kirstein Collection did not change during the period up to 1939, the Committee concluded that possession of the drawing had been lost involuntarily as a result of circumstances directly related to the Nazi regime.

The Just and Fair Solution

In order to be able to arrive at a solution that was just and fair to both the claimants and the City Archives, the Committee then took account of the different interests in its assessment. This concerned on the one hand the interest of the claimants, descendants of Gustav and Clara Kirstein, who lost possession of the drawing involuntarily as a result of circumstances directly associated with the Nazi regime. In the Committee's opinion, the importance of restitution had to be given greater weight than the interest of Amsterdam City Council and the City Archives in retaining the drawing, despite the fact that Amsterdam City Council had acquired the drawing in good faith and that the drawing occupied an important place in the City Archives' collection. The just and fair solution recommended by the Committee in this case was therefore restitution of the drawing to the heirs of Gustav and Clara Kirstein. After the binding opinion had been issued, the City Archives and the heirs agreed that the City Archives would purchase the drawing.

The full text of the recommendation is on the Restitutions Committee's website: www.restitutiecommissie.nl

PRESENTATION OF A COMMITTEE: GERMANY'S ADVISORY COMMISSION ON THE RETURN OF CULTURAL PROPERTY SEIZED AS A RESULT OF NAZI PERSECUTION, ESPECIALLY JEWISH PROPERTY

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

As in previous years, 2019 was also marked by numerous activities with regard to cultural property seized as a result of Nazi persecution. These activities included e.g. the 20th anniversary of the establishment of the French "Commission pour l'indemnisation des victimes de spoliations" (CIVS) and the publication of the first volume "Provenienzforschung in deutschen Sammlungen – Einblicke in zehn Jahre Projektförderung" of the book series «Provenire» as well as of the "Leitfaden Provenienzforschung", both by the German Lost Art Foundation.

If one looks into the future, further important service measures in Germany will be to set up a "Help Desk" which will be a central point of contact on the issues of the identification of Nazi looted art such as the mediation of responsible contact persons, etc. With regard to the "Beratende Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter" ("Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property", "Commission"), it is planned to strengthen its administrative office.

Against this background, this is a suitable occasion to present the Advisory Commission¹.

THE ESTABLISHMENT OF THE BERATENDE KOMMISSION

16 years ago, in 2003, Germany's Federal Government, the Federal States and the local authorities set up the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property.

The Commission may be jointly called upon in individual cases in connection with cultural property seized as a result of Nazi persecution, especially Jewish property, in which the claimant and the holder of the cultural property seek mediation. As a result of its work, the Commission issues legally non-binding recommendations.

The Commission is composed of up to ten qualified persons and is chaired by Professor Hans-Jürgen Papier².

RECOMMENDATIONS

According to its "Rules of Procedures", the Commission shall become active if both parties agree to a mediation by the Commission and wish to receive a recommendation.

The criteria for the Commission's recommendations are the "Washington Principles" of 1998, Germany's "Gemeinsame Erklärung" of 1999, the "Handreichung" of 2001, and the Terezin Declaration of 2009. Against the background of finding a fair and just solution, the Commission may recommend e.g. that the cultural property should be returned or that it should be returned against payment of a compensation. It can also recommend that the cultural property should be returned subject to further conditions or that it should remain with the current holder or owner and a compensation should be paid. The Commission can also recommend that the request for the restitution of cultural property should be rejected.

As soon as the recommendation is available, it is transmitted to the parties and published.

1 - For more information about Germany's Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, readers can refer to the *Guide to the work of the Restitution Committees*, Paris, 2019.

2 - For the members of the Commission, please see <https://www.kulturgutverluste.de/Webs/DE/BeratendeKommission/Mitglieder/Index.html?sessionId=F18C50C7FA555F1A9B7D7E20FFD8E24E.m7>

PRESENTATION OF A COMMITTEE

As of today, the Commission has issued 17 recommendations. The Commission is currently working on four cases.

INTERNATIONAL COOPERATION

The Commission works also internationally as it is e.g. part of the Network of European Restitution Committees created in January 2019 and linking the five commissions in Europe to realize joint actions and to share information.

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

TO CONTACT THE BERATENDE KOMMISSION

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