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## THE CHRISTIE'S SYMPOSIUM: "THE HOLOCAUST ART LOOTING AND RESTITUTION"

On June 23, 2011, in Milan, Italy, *The Holocaust Art Looting and Restitution* symposium was presented by Christie's, auction house, and Art Law Commission of the Union Internationale des Avocats (UIA). This was a first, a conference focused on the Holocaust art restitution, to take place in Italy. The symposium convened leaders of the restitution community as well as government officials, scholars, and collectors.

Scholarly papers were presented on individual cases of looted art issues. Of those presented they included, the Netherlands and the return of the Goudstikker Collection; Hungary and its denial of the Baron Herzog Collection; and the United States and the restitution of the portrait of *Wally* from the Leopold Museum. A significant part of the symposium covered Italy's attempts to systematize their collections for verification and provenance. Unfortunately, the conference lacked any presentation of Polish instances of looted art. There were critical but true words by Charles A. Goldstein, Counsel to Commission for Art Recovery, describing Poland as a country hostile to restitution despite signed international agreements.<sup>1</sup>

During introductory speeches Marc B. Porter, Chairman, Christie's America and Monica S. Dugot, Senior Vice President, International Director of Restitution, Christie's, emphasized the responsibility of appropriate provenance research as well as restitution in cases of identified looted articles. Ms. Dugot brought up the example regarding the collection of Anna and John Jaffé of which sixty items went missing in 1943. Ten items were found of which six pieces were restituted and sold via Christie's auction including the *Grand Canal, Venice, with the Palazzo Bembo* (oil on canvas) by Francesco Guardi. It was sold to Getty Museum for \$7,605,488 (from Musée du Louvre on deposit in the Musée des Augustins, Toulouse) during the London auction on June 8, 2005 as well as two paintings restituted from Louvre (oil on canvas) by David Teniers II (renderings of Don Juan of Austria) which sold for \$442,147. Christie's is an example of the auction house following the Washington Principles of 1998, and also the Terezin Declaration. Christie's as a leading institution has its own guidance for dealing with Nazi-era art restitution issues available on its website.<sup>2</sup> Provenance research is difficult and time consuming. A key challenge is the availability of varied and independently accessible data bases as needed to conduct proper examination. On behalf of Christie's, Ms. Dugot

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<sup>1</sup> Poland signed the Washington Principles in 1998: <http://www.state.gov/www/regions/eur/holocaust/heac.html> and Terezin Declaration in 2009 <http://www.eu2009.cz/en/news-and-documents/news/terezin-declaration-26304/>.

<sup>2</sup> <http://www.christies.com/services/restitution/guidelines.aspx>.

advocated for better partnership between present owners of looted art and heirs of victimized families.

Charles A. Goldstein of Herrick, Feinstein LLP, Counsel to the Commission for Art Recovery, reemphasized moral and legal principles of countries who declared participation in restitution of looted assets during Washington and Prague conferences. He plainly named the countries of Poland, Russia, Slovakia, Hungary, as hostile to restitution in spite of their acceptance of international law. Countries whose governments take no action whatsoever to neither settle nor return Holocaust looted assets. Moreover, he emphasized biased application of European Union and local laws to export “national heritage” by countries such as Poland, Hungary, Czech Republic, Slovakia and Italy. According to Mr. Goldstein, restitution cases in Poland as well as Russia, Sweden, Czech Republic and Hungary are delayed deliberately and are worked with inconsistent determination. His opinion of the Polish government’s approach towards restitution of Holocaust looted art is characterized by “refusal to retribute Holocaust loot despite return of artworks to Polish claimants, failure to distinguish between confiscation of cultural works as a crime against humanity and Communist-era nationalization, and double standards for claims by or against the country.” Mr. Goldstein introduced the Italian lack of any action towards Holocaust restitution. Historically, Italian Fascist policies regarding Jews started in 1936 with expulsion of German Jews from Italy, continuing in 1938 with anti-Semitic laws which were the most draconian measures against Jews taking after the ones in Germany that lead to involuntary sale, non-official and official looting of Jewish assets. With Italy’s acceptance of Washington Principles and Terezin Declaration, non art belonging to Jews should resign from the Italian museums. Referring to these international agreements, Mr. Goldstein brought the example of the Pinacoteca Brrera’s refusal to permit claim, from abroad, of the heirs of Federico Gentili di Giuseppe for *Madonna col Bambino* by Zenale and *Christo Portacroce* by Romanino. Italy has not established official committee or administrative apparatus, such as a cultural or a governmental organization to carry on restitution tasks and provenance research. There has been little public recognition nor critical campaign against the Italian government. Italian commitment during the Washington Conference of 1998 has not resulted in the creation of working plans, nor has legislation been established. Basically, the Principles have been ignored, even refused. Italy in apparent hypocrisy is a country that has been restituting its own works of art starting after the War with activities of Siviero and most recently antiquities from J. Paul Getty Museum.

A further presentation delivered by Doctor Ilaria Pavan, Scuola Normale Superiore, Pisa, Andrea Pizzi, Studio Legale Pizzi, Bologna, Art Law Commission, Union International des Avocata (UIA), Professor Tullio Scovazzi, Professor of International Law, University of Milan-Bocca and Captain Andrea Ilari, Comandante del Nucleo Carabinieri Tutela Patrimonio Culturale di Monza were focused on particular academic, legal and technical issues of Italian approach toward application of restitution policies in the country.

Three restitution cases presented during the symposium are worth focus. They involve exemplary claims that had been handled differently by various countries. Respectively, I will describe the restitution case of: *Wally* to heirs of Lea Bondi Jaray presented

by Howard N. Spiegelger, the Goudstikker Collection to van Saher by Lawrence M. Kaye and the Herzog Collection by Agnes Peresztegi.

July 2010 ended a twelve year restitution process of the portrait of *Wally* by Egon Schiele that before 1938 belonged to renewed Austrian art dealer Lea Bondi Jaray. As elucidated by Howard N. Spiegelger, Co-Chair of the International Art Law Group at Herrick, Feinstein LLP (New York) and President of The Art Law Commission, Union Internationale des Avocats (UIA) the settlement in the restitution claim would not have been possible if the US government had not acted to force forfeiture of the painting.

Lea Bondi Jaray privately owned the portrait of Schiele's lover Velerie Neuril (1912). The 1938 Anschluss of Austria brought forth anti-Jewish laws whereby Jews were required to forfeit their businesses. An Austrian art dealer, Friderich Welz, a Nazi Socialist "arianized" Ms. Bondi's gallery and was on his quest to take hold of the *Wally* portrait that was in her private collection at her home. He succeeded because she had to flee Nazi Austria. After World War II, the American army seized Friderich Welz and his collection of stolen artworks, in amongst there was the portrait of *Wally* along with other pictures of Schiele from Dr. Heinrich Rieger's collection. Americans returned these works to Austrian government, and subsequently the Austrian National Gallery purchased Rieger's collection from his heirs.<sup>3</sup> Mistakenly, *Wally* was incorporated into the Rieger collection. In 1953 Ms. Bondi Jaray turned for advice to Dr. Rudolph Leopold for help in getting *Wally* from the Austrian Belvedere. Dr. Leopold, a collector of Schiele purchased the portrait into his collection in 1954. Ms. Bondi Jaray died in 1969. Schiele's catalogue raisonné published by Leopold Museum changed provenance of *Wally* to Dr. Rieger.<sup>4</sup> In 1997, Leopold loaned several Schiele's pictures from his museum to the Museum of Modern Art in New York (MoMA). The heirs of Lea Bondi Jaray informed MoMA of their rights to the portrait of *Wally*. In 1998, by the end of the exhibit, the portrait was subpoenaed by the District Attorney of New York City in connection with a criminal investigation. It was convened to determine if *Wally* was stolen property presented in New York in violation of New York law.<sup>5</sup> MoMA's defense, based on prohibition of seizure of any artwork on loan from an out of state museum, wanted to annul the subpoena. MoMA succeeded at which point the U.S. Attorney's office for the Southern District of New York began proceedings against the Leopold Museum to force forfeiture of *Wally* on the grounds that it was stolen property unlawfully imported into the United States. The painting was thusly seized by the U.S. Customs Services. The litigation of *Wally* restitution to heirs of Lea Bondi Jaray took over a decade. The parties reached a settlement in July 2010 following the death of Dr. Rudolph Leopold.

Concluding his presentation, Mr. Spiegelger advocated for European governments to create restitution commissions to examine or reexamine claims by victims and their families. He emphasized the role of the U.S. Government in the restitution of *Wally* as well as the government's support for the heirs according to the Washington Principles-points 7 and 8 which state: "7. Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted; 8. If the pre-War owners of the art that is found to have been

<sup>3</sup> Dr. Heinrich Rieger was sent to Theresienstadt concentration camp, where he died.

<sup>4</sup> Otto Kallir's catalogue raisonné of Schiele works states Lea Bondi as a owner of *Wally* in late 1930's.

<sup>5</sup> <http://www.herrick.com/siteFiles/Practices/86FE410EF768077D471AF6E3595A78A5.pdf>.

confiscated by Nazis and not subsequently restituted or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstance surrounding a specific case.”<sup>6</sup>

Lastly it is very important to mention the settlement terms of the case United States of America vs. Portrait of Wally, especially point (d) where the Leopold Museum will permanently display provenance specifically ownership to Lea Bondi Jaray and illegal conversion by Nazi, Friedrich Welz.<sup>7</sup> It is very crucial to give moral recognition to Nazi victims and their suffering during the Holocaust.

The return of Goudstikker collection,<sup>8</sup> as presented by Lawrence M. Kaye, Co-Chair of the International Art Law Group at Herrick, Feinstein LLP, New York exhibits the case of restitution of over two hundred works of art by the Dutch government to heirs of Jacques Goudstikker. It is an example of the largest restituted claim. Jacques Goudstikker was one of the most important and influential European art dealers. His collection was looted by Reichsmarschall Herman Goering in 1940, shortly after the Nazi invasion of the Netherlands. Goudstikker’s assemblage consisted primarily of Dutch Old Masters of the Golden Age, but also he was an owner of renewed Northern European and Italian paintings. Escaping from Nazi persecution, Jacques and his wife Dési, and their son, Edo fled the Netherlands. The art dealer tragically died in an accident on the deck of the ship which was providing their escape. The notebook of registry of the artworks survived. In the years 1946–1952, widow Dési sought to recover pieces found by Allies who returned the shattered collection to the Dutch government. The Netherlands included them in the national collection. The wife of Goudstikker’s son Edo, Marei von Saher and their two daughters Charlene and Chantal are the rightful heirs of the prominent collection. In 1998, they submitted a request to the Dutch government for restitution of the artworks. It was rejected. It took eight years to reconstitute the pictures from the Dutch state collection. Besides the 202 paintings that were returned by the Netherlands there are 1,000 that are still withheld within various museums and collections. For example *Adam and Eva* by Lucas Cranach the Elder is in the Norton Simon Museum in Pasadena, California, or a landscape by David Teniers the Younger in the Wallraf from Richartz Museum in Cologne, Germany. On the other hand there are several paintings that were returned to von Saher by governments, museums, private collection, dealers and auction houses in Austria, Great Britain, Germany (i.e. *Still Life With Flowers* by the Dutch female 17<sup>th</sup> century master painter Rachel Ruysch returned by Gemälde Galerie Dresden), Israel (i.e. drawing by Edgar Degas, restituted by the Israeli Museum in Jerusalem) and the United States (the Getty voluntarily agreed to return *Landscape with Cottage and Figures* by Mieter Molijn). According to Mr. Kaye these museums simply did not want to possess Holocaust looted art. The Goudstikker family has hired an independent researcher, Clemens Toussaint, to aid them in restituting the remaining missing works. Mr. Toussaint along with his team, diligently work on locating more than 1,000 artworks of

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<sup>6</sup> Text of Washington Principles: <http://www.lootedartcommission.com/Washington-principles>.

<sup>7</sup> To access full text of settlement: <http://info.herrick.com/rs/vm.ashx?ct=24F76A15D4AE4EE0CDD881AFD42F921E91907ABFDA9818CF5AE175767CEAC80BDF416>.

<sup>8</sup> For more information on the collection access <http://www.christies.com/features/2005-january-jacques-goudstikker-139-3.aspx>.

the shattered collection. His international project on indentifying looted Goudstikker collection started in 2002.

The last case of study which dramatically differs from the above relates to Hungary. Agnes Peresztegi, European Director Commission for Art Recovery presented on Hungarian denial of restitution to heirs of Herzog.<sup>9</sup> She openly opined on the lack of any undertakings by Hungary toward restitution, belying their signing of the Washington Principles and Terezin Declaration. In her introduction she notes that Hungary "avoids taking responsibility" for examination of past injustices. Here it is important to remember that Hungary prior to World War II, starting early 1920's, imposed anti-Jewish laws, and was an ally of Nazi Germany during the War.

According to Ms. Peresztegi, Hungary has renationalized Holocaust-era looted artworks and has denied the ownership rights of Holocaust victims and preferring instead to engage in law suits. Facing the request for restitution the state officials obscure or destroy records, lengthen negotiations, and use national media against plaintiffs. All of these actions show hostility of the Hungarian government toward Nazi era looted art. Further, Ms. Peresztegi explains Hungary's policy toward its art stolen from the country during WWII; the state established a specific committee: Hungarian Committee for the Restitution of Cultural Property. As Mr. Goldstein stated Hungary is one of the double standard countries if it comes to restitution of artworks. Example lies in the successful Hungarian restitution of a painting by Giorgio Vasari from Canadian museum in Montréal. Persistently but not effectively the country has sought returns from the Russia Federation.

The Baron Mor Lipot Herzog Collection was housed in the family palace on Andrássy út Boulevard in Budapest. It housed Old Masters like El Greco, Lucas Cranach the Elder, Zurbaran, Gustave Courbet, Velázquez, Mihály Munkácsy, Impressionists art by Renoir, Monet, and Renaissance furniture, tapestries, sculptures and decorative art was appraised as the second after Prado. With the death of Baron Herzog in 1934 his collection was passed onto the Baroness and then in 1940 it was inherited by three children: Erzsébet, István and András. András by tragic circumstance was drafted into forced labor military service in 1942, and murdered in 1943. In 1944, Nazi Hungary ordered confiscation of all art from Jews; director of the Museum of Fine Art in Budapest, Denes Csanky was the reposessor of the Herzog Collection. In May of 1944, Hungary proceeded with *Endlösung*. Most of the Herzog family survived fleeing persecution. With the communist era all of the assets were nationalized, and in 1954 Hungary nationalized "unclaimed" art at state-owned museums. After the fall of the regime the Herzogs queried Hungary for the return of their possessions. As a result, seven pictures of unknown artists from the collection were restored to Elizsébet before her death in 1992. Then Martha Nierenberg continuing the restitution claims together with her son David and the two daughters of András commenced a lawsuit in 1999. The Herzog heirs claim forty artworks in possession of Budapest museums.

Ms. Peresztegi emphasized Hungary's commitment but seemingly empty gestures via its signing of the Washington Principles (1998) and the Terezin Declaration (2009).

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<sup>9</sup> Official website for the Herzog Family Lawsuits against Hungary [http://www.hungarylootedart.com/?page\\_id=8](http://www.hungarylootedart.com/?page_id=8).

She noted that during the Vilnius International Forum on Holocaust- Era Looted Assets in 2000, Hungary was the only country not complying with international regulations. In 2008 the Hungarian court denied return of the Herzog Collection.<sup>10</sup>

It is disappointing that Hungary with its recently past position of European Union presidency (2010) did not aspire to be a true leader. Bias interpretation of international law calls for international reprimand and boycott.

Hungary and unrestituted Herzog's collection highlights Polish issues with return of Nazi-looted art. Poland this year, by coincidence, assumes from Hungary the European Union presidency. Poland can show true leadership its predecessor has not and should comply with signed international resolutions; Washington Principles and Terezin Declaration. Poland was not represented in this symposium in Milan, but herein lies my responsibility to conclude the report on restitution cases with the Polish accent. They are cases which, unfortunately, have not so far come to positive conclusions. Poland state museum, National Museum in Warsaw is in possession of one of the paintings from Herzog collection: Gustave Courbet's *Landscape Around Ornans*.<sup>11</sup> The Herzog family requested the return of the artwork in 2001. This picture came mistakenly to Poland, as it was returned by American Allies along with other Polish looted artworks found in Fishhorn, Austria. It is certain that this picture never belonged to any Polish collection, nonetheless was accepted and housed in National Museum in Warsaw. In Hungarian catalog on cultural losses during World War II, this painting was published with information of belonging to Baron Herzog Collection. Then Poland did not return the picture to Hungary. The inquiry of the Herzogs was dismissed because of insufficient documentation proving their ownership. The case was adjourned in 2004. For five years Herzog heirs collected requested documentation. In fall of 2010, the documentation started through the analysis process by the museum lawyers. Further the museum advised the Ministry to return the Courbet's painting to the Herzog heirs. However, the decision on return has been bounced between the Ministry of Culture and National Heritage of Poland and the National Museum in Warsaw. Minister Bogdan Zdrojewski said: "under current legal conditions, the state is not obligated to return works of art it does not possess, as they belong to specific institutions or private individuals."<sup>12</sup> Here we all know the National Museum of Warsaw is a state-owned institution. As stated by Mr. Goldstein, Poland is seen as disobliging and reluctant for the Washington Principles and Terezin Declaration, Poland does not comply with return of looted art to Holocaust victims or their heirs.

The Washington Principles were solely created to restitute works of art displaced during World War II by Nazis to rightful owners. Since the Washington Conference on Nazi-Confiscated Art Issues; Poland authorities were involved in the following cases of restitution of pre-war Jewish own assets: 1) forty Hebrew manuscripts and incunabula from Leon Vita Saraval's collection owned by Jewish Theological Seminary in Bre-

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<sup>10</sup> Hungary based their denial on the United States of America – Hungary Claims Settlement Agreement of 1973; Hungary paid \$18,9 million to the United States "in full and final settlement" of all claims against Hungary by the US nationals, who are instead to turn to their own governments for restitution. Hungary entered similar agreement with Italy also in 1973 (two András' daughters are Italian citizens).

<sup>11</sup> <http://cfar.website-testing.net/disabled/cases/claim-martha-nierenberg-against-poland>

<sup>12</sup> <http://www.nytimes.com/2010/10/29/arts/29iht-loot.html?pagewanted=all>

slau returned from Czech to Breslau Jewish community in 2004; 2) restitution of the 17<sup>th</sup> century painting by Pieter de Grebber to Gutnajer's heirs in 2008.<sup>13</sup>

Presently there are several claims against Poland, besides the aforementioned Herzog's claim of Courbet. There are: Max Silberberg, Carl Sachs, Leon Smoschewer, von Saher and Zoellner. The artworks are located in Polish National Museum of Breslau, Warsaw and Danzig. There is also a request of restitution of two paintings of Ralf Immergluck from Jewish Historical Institute of Warsaw. As it is known the Ministry of Culture and National Heritage does not keep any records of how many claims have been filed or how much art has been returned to claimants. It is worthy to mention, the Stefan Batory Foundation organized a similar conference in Warsaw on December 8–9, 2006 *Between Russia and Germany. The problem of displaced cultural property in Central Europe in the years 2000–2006*.<sup>14</sup> Most of the authorities in the restitution of Nazi-looted Art works presented then. As it can be observed not much changed in these five years, the heirs are still not being restituted their assets. Once more, the present symposium in Italy brought internationally recognized specialists in the subject together to examine and review what has been done for Holocaust victims in return of their artistic assets. Fulfillment of moral responsibilities by governments, collectors, auction houses meshed with legal resolutions, principles and declarations, and hurdling of technical roadblocks will ultimately benefit victims and heirs who have suffered greatly under Nazi power. Finally, the call was issued and should be heeded for greater involvement of governmental institutions, the establishment of a research body of provenance records, and a reminder of responsibilities of the signatories of the Washington Principles and the Terezin Declaration.

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<sup>13</sup> The picture came up for sale in Christie's London, Polish Embassy in London was informed by the Art Loss Register then Foreign Affairs Minister requested the return of the painting to Poland, but in meantime Polish diplomats in the USA informed about living in Philadelphia heirs of the pre-war owner of the picture, Abe Gutnajer. Poland returned the painting to the rightful owner in 2008.

<sup>14</sup> <http://www.batory.org.pl/english/about/ar2006/12.htm>.