

An Overview of the 2023 Israeli Inter-Ministerial Report about Looted Art in Israel

By Eyal Dolev*

In April 2023, a few days before the Israeli Holocaust Remembrance Day, the Custodian General at the Israeli Justice Ministry published an inter-ministerial team's report about provenance research of looted cultural assets in Israel. The report comprises over 100 pages in which it describes years of investigations and it also includes recommendations and a new legislation proposal. The team, which is responsible for the report, was established two years ago by the former Custodian General, Adv. Sigal Yaakobi (currently, a distinguished District Court Judge).

For many years, the State of Israel has been extensively criticized for not doing enough to locate and restitute Holocaust era assets in general, and cultural assets, in particular. In 2006, the State of Israel officially established the "Hashava" (meaning: "bringing back") organization which managed the restitution of Holocaust era assets (mostly real-estate and bank accounts) to the heirs of the holocaust victims. The "Hashava" law was initiated by Mrs. Colette Avital, a former politician, Ambassador and Holocaust survivor. The "Hashava" organization operated until 2017. Cultural assets were not processed by this organization yet the decisions regarding restitution of looted artworks were exclusively made by the museums (without an appeal instance).

The Inter-Ministerial Team's report, however, relates to all holders of looted artworks in Israel (including private collectors). At first stage, this report's recommendations particularly aim at major museums supported by Israel's Ministry of Culture (including the Israel Museum, Jerusalem, and the Tel-Aviv Museum of Art). One of the prominent recommendations focuses on the duty of the museums to conduct provenance research. The report suggests that Israel's Ministry of Culture will regulate such research. A new Internet website will provide lists of all the Israeli museum's artworks. Yet the report prioritizes research of artworks once held by US collecting points. Until now, no governmental budget was allocated for provenance research but this research might be financed by the Israeli government in the future.

According to the report's recommendations, restitution claims will be filed to the Custodian General in the Israel's Ministry of Justice. Notwithstanding, the Custodian General is expected to be proactive and locate the looted artworks' heirs. The Custodian has gained some experience in this field, however, when he processed Holocaust era property claims during the operation of the "Hashava" organization. However, the "Hashava" only dealt with claims filed by heirs of Holocaust *victims* (Jews who were murdered during the Holocaust) while claims of artworks are usually filed by heirs of Holocaust *survivors*.

The new legislation also necessitates the establishment of an appeal instance. A three-member appeal committee will be elected by Israel's Ministry of Justice and it will be as powerful as an administrative court. The elected committee will include a former Judge, a qualified lawyer, and an art expert. If an artwork has been restituted, and its heirs wish to sell

it, then the museum who currently owns this artwork is eligible for the right of first refusal to buy the artwork back.

Such legislation is required in order to overcome the current protection provided by the Israeli law to *bona fide* purchasers (Market Overt).

After WWII, a group of prominent Jewish figures (including Hannah Arendt) successfully convinced the US Monuments Men to transfer "heirless" artworks, formerly owned by pre-war Jewish owners, to the new Jewish Restitution Successor Organization (JRSO). Thus, many artworks were sent to the Bezalel Museum (currently, part of the Israel Museum, Jerusalem) and other museums where they are still deposited. No doubt, that policy aimed to guarantee that the artworks will be best kept and displayed for the benefit of the Jewish people until the legal heirs will be identified and the paintings can be restituted. The Israel Museum, Jerusalem, however, has settled several JRSO and other claims over the years. Likewise, the Tel-Aviv Museum of Art settled two (non-JRSO) claims of the Mosse heirs (MARI project). Notwithstanding, the Israel Museum has also rejected several claims and, consequently, some of these claims were filed in court (in the absence of a governmental Restitution Committee).

The new Israeli Justice Ministry report, however, genuinely suggests that a new mechanism will be deployed in settling these claims.

First, an extensive provenance research will be conducted in museums which own artworks made before 1945. Such research must be accomplished by academics who were appropriately trained for this mission. Arguably, the Israeli museums do not have a significant experience in accomplishing provenance research. However, for two years, Professor Leora Bilsky from the law faculty at Tel-Aviv University and Professor Mathias Weller from the law faculty at Bonn University maintain a joint academic course about artworks looted by the Nazis and consequent provenance research. Perhaps some of the 40 Israeli law students graduates in this course would be able to help the Israeli museums in dealing with this sensitive issue. This unique course will be also offered to Israeli and German law students at the beginning of the next academic year 2023-2024.

The Israeli Justice Ministry report was made by professionals – not politicians – in the Justice Ministry. Thus, the Israeli political Opposition is not expected to object this report's implication. Yet it is still unclear whether Yariv Levin, the recent Israeli Justice Minister, who is currently extremely busy with promoting his controversial "legal reform," will find enough time to regulate the artworks issue in due course.

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