

Newsletter

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A message from
 the Federal Government Commissioner
 for Culture and the Media,
 the Standing Conference of Ministers of Education
 and Cultural Affairs of the *Länder* in the Federal Republic
 of Germany
 and the German associations of local authorities

This year marks the 20th anniversary of the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property. The Commission was established in 2003 by the Federal Government Commissioner for Culture and the Media, the Standing Conference of Ministers of Education and Cultural Affairs of the *Länder* in the Federal Republic of Germany, and the German associations of local authorities.

These past 20 years, the Advisory Commission has made a significant impact and, with its highly regarded recommendations, has helped shape Germany's practice in the restitution of Nazi-looted art. Still to this day, it plays an important role in addressing the legacy of the Nazis' theft of art and cultural property in Germany. This is an ongoing task and remains a challenge for federal, regional and local authorities alike. We would like to express our deepest thanks to the honorary members, including all alumni, for their extraordinary dedication to this important cause.

The Commission was set up in the implementation of the Common Statement of 1999 in which Germany showed its commitment to the Washington Principles of 1998. The 25th anniversary of the Washington Principles this coming December reminds us once again of our historical responsibility not to let up in our efforts – we owe this to the victims of National Socialism.

We hope the Advisory Commission and the four other European Restitution Committees on Nazi-Looted Art, including their entire network, continue their important work in the years to come.



CLAUDIA ROTH

Member of the German Bundestag
 Federal Government Commissioner for Culture and
 the Media



FALCO MOHRS

Minister for Science and Culture, Lower Saxony
 President of the Standing Conference of Culture
 Ministers



REINHARD SAGER

District Commissioner
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Greetings by Prof. Hans-Jürgen Papier Chairman of the Advisory Commission



© PROF. HANS-JÜRGEN PAPIER

The Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, celebrates its 20th anniversary this year. Is this a reason to celebrate? As I look back over the last two decades, not only do I think of the fates of the families behind the restitution claims, but as a lawyer I am naturally also mindful of the rules to which our recommendations are subject. Here, Germany has made things easy for itself. Our recommendations are based on the Joint Statement issued by the Federation, the Länder and the national associations of municipal authorities in 1999 and the so-called *Guidelines* for its implementation: these are not laws, they are an expression of a political and moral commitment. This is all very well insofar as the Washington Principles of 1998 are not legally binding for the signatory states. However, in view of the blatant injustice perpetrated by the National Socialist state, whose legal successor is the Federal Republic of Germany, I believe it is important to deal with these issues on a binding legal basis, and this requires legislation to be passed. Yet as things stand, no consensus seems to have been found regarding Germany's responsibility in this respect.

Nevertheless, the current coalition agreement of the Federal Government states the following: "We will improve the restitution of Nazi-looted art by (...) strengthening the Advisory Commission." This wording is so vague that it might as well say: "We want to make the world a better place." But how would it be possible to strengthen the work done by the Commission without comprehensive legislation on restitution?

From the point of view of the Advisory Commission itself, the answer is clear. Since the Commission is conceived as a mediation panel, its recommendations have no binding effect. It is true that the 22 recommendations issued in the course of the last two decades have been implemented, but at times not altogether smoothly. Nonetheless, it would be desirable for the Commission's decisions to be binding since this would have a much more powerful impact. What is more, in terms of the standing of the Advisory Commission it would be preferable for it to be assigned guaranteed autonomous status regulated by law – by establishing it as an independent higher federal authority, for example.

And finally, there is a point that is of utmost impor-

tance for our day-to-day work: to this day, the Commission is only able to take action if both sides lodge a request for mediation by the Commission, i.e. the heirs of those who lost their cultural property during the National Socialist era due to persecution and those who have this property in their possession today. In quite a number of cases the state or municipal institution does not wish the matter to go before the Commission, thereby rendering it impossible for a recommendation to be issued. As a consequence, claimants have no way of having the suspected looting of their art assessed. This is an untenable state of affairs. For this reason, on the occasion of its 20th anniversary, I argue strongly that the strengthening of the Commission envisaged in the coalition agreement should involve introducing legislation governing the establishment of the Commission, the procedures it follows and the effect of its decisions, also introducing an option of unilateral requests for mediation

and making the decisions binding in nature. To me, this seems the least that should be done. Furthermore, consideration should be given to a more far-reaching restitution law that applies to private individuals who are in possession of cultural property that was seized as a result of persecution.

Ambassador Eizenstat, the originator of the Washington Principles, discusses these issues in detail in an interview (p. 6).

Prof. Rita Süßmuth, who has been with the Advisory Commission since its inception, looks back on the work of the past 20 years (p. 11).

Dr. Gesa Vietzen summarises the debate on the Commission from 2003-2023 (p. 15).



HANS-JÜRGEN PAPIER

Chair of the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property

Interview with Ambassador Stuart Eizenstat: “The Washington Principles have had a ripple effect.”



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Ambassador Stuart Eizenstat was “Special Representative of the President and Secretary of State on Holocaust-Era Issues” during the Clinton administration. He organised the Washington Conference on Holocaust Era Assets, which resulted in the Washington Principles on Nazi-Confiscated Art. He continues to be an active advocate for progressive rules for the return of Nazi looted art worldwide.

Ambassador Eizenstat, since its foundation in 2003, the Advisory Commission has examined 22 cases. In the light of the large amount of art that has not yet been restituted, that seems to be a marginal number. How do you assess that?

You are addressing a complex dilemma here, which is causing a problematic perception of the handling of Nazi-looted art in Germany. The low number might hint at a trust issue that has to be tackled. Unlike comparable institutions in the UK, the Netherlands, Austria and France, the German Advisory Commission so far can only deal with cases in which both

parties agree to use the Commission. There are many instances where the institution holding a looted art object does not agree to call the Advisory Commission. These cases stay unsolved. In some cases, private agreements can be found and result in restitution or compensation payment. Also, those do not appear before the Advisory Commission. The matter gets even more frustrating if a looted object is in private hands. In those cases, current German law solely protects the current owner and there is no legal way to claim a looted art object. The low number of 22 cases does not reflect the situation on the ground. It does not mean that there is only a small amount of Nazi-looted art objects in Germany. On the contrary. To date a significant amount of Nazi-looted art is still held by the German state and private entities. Much to our regret there are no comprehensive statistics in Germany on the restitution efforts that have taken place until today. There seems to be some effort, but we have no clear database. This lack of transparency has led to a critical perception of Germany’s handling of Nazi-looted art worldwide.

The representatives of the victims' interests require the establishment of a unilateral right of appeal to start a mediation by the "Beratende Kommission" upon claimants' requests. Do you support this idea?

Yes, absolutely. The owners or heirs of Nazi looted art often live abroad today and depend on legal representation when asserting a restitution claim. They face very high costs as they often need to hire two law firms, one in the country of residence and a second one in Germany. In addition, they must pay for expensive provenance research. They also encounter language problems. On the other side, German institutions and private entities receive state funding for provenance research and rely on broad administrative and legal expertise. One way to even out this situation would be to give the victim's side a unilateral right to approach the Commission. I addressed the issue on a national level. In 2018 when we celebrated 20 years of the Washington Principles in Berlin, Mrs. Grütters, who was minister for culture and media at the time, announced the unilateral right to appeal. However, the announcement got our hopes high, but it only applies to a handful of national owned museums out of more than 7.000 museums in Germany.

It is particularly embarrassing when, as it happened in the case of Picasso's *Madame Soler*, the community of heirs to Paul Mendelssohn-Bartholdy is willing to go before the Commission and the Bayerische Staatsgemäldesammlungen blocks that after receiving public funding for provenance research.

Besides, the Advisory Commission should be staffed in an international and balanced way to inspire confidence from all parties. One way to do that could be to grant a Jewish organization such as the Claims Conference a right of codetermination.

There is a controversial debate on how to deal with so-called flight goods. What's your take on that?

I do not understand why so-called flight goods should be controversial. In my understanding, the forced sale of works of art under the circumstances of a flight abroad fully conforms to a forced sale under the Washington Principles and the Terezin Declaration. After their escape, persecuted persons lost their source of income. Therefore, many persecuted persons had to survive by selling their works of art in a setting of distress. Without Nazi persecution and expulsion, they would not have sold their art treasures.

A vast majority of the surviving victims are no longer with us today. Does this affect the restitution of Nazi-looted art?

In most of Europe, the Holocaust destroyed entire Jewish families and the threads of family memory. The Holocaust survivors are the last eyewitnesses who can tell anything about works of art owned by their families. Therefore, more than 75 years after the Holocaust, it is becoming more and more difficult to reconstruct contexts and ownership. The prospects of returning looted artworks personally to their former owners decline. But we must do everything in our power not to perpetuate the Nazi injustice. With the restitution of a work of art, the material damage suffered by the owners can be partially repaired. But the damage inflicted over all these years can never make the recovery provide a sense of complete justice.

Does the general public in Europe support the efforts to retribute Nazi-looted art?

There is a great deal of public interest in the topic of looted art, which was significantly fueled by the Gurlitt Art Trove. As almost every museum in Germany is involved, this global issue can often be illustrated on a local level. This always generates a special interest. In addition, we constantly learn many new things about the origins of Holocaust-era art collections thanks to provenance research. This public interest contrasts with the difficult and protracted circumstances of the restitution process, which is often accompanied by problematic discord and negative commentary. It is deplorable that this great joint moral effort is so burdened.

Having talked about the German past and perspective, I would like to look back 25 years, when, in 1998, thanks to your commitment the Washington Principles were adopted. Are you satisfied with the results so far?

After several days of negotiations at the Washington Conference in 1998, it appeared we would not be successful in having 44 nations agree to the Washington Principles on Nazi-Confiscated Art. It took an 11th hour compromise to succeed, in which my colleague J.D. Bindenagel and I proposed making the Principles voluntary and that countries would "act within the context of their own laws". Because they were voluntary, there were many skeptics that they would have

a major impact. But Philippe de Montebello, then the head of the Metropolitan Museum of Art in New York and the chairman of the Association of Art Museum Directors, was accurate in stating that the “art world would never be the same” with the Washington Principles.

Five European countries have established art restitution commissions to resolve claims to Nazi-confiscated art, including Germany’s “Beratende Kommission”, the United Kingdom, France, Austria and the Netherlands. Thousands of artworks, books, and Jewish cultural objects have been restituted or claims have been successfully resolved. The American Alliance of Museums established a central search portal connected to some 179 American museums to facilitate claims. Sotheby’s Restitution Department, headed by Lucian Simmons, and Christie’s International Director of Restitution, initially Monica Dugot and now Richard Aronowitz, have full time staffs which examine the provenance of all art consigned to them for sale or auction which passed through European hands between 1933-1945, and have changed their consignment contracts so that they will not sell those with suspicious provenance. Christie’s has resolved over 200 claims under the “just and fair solutions” standard of the Washington Principles.

Belatedly, the European Union has begun to address Nazi-looted art, with the European Parliament in 2019 passing a resolution calling on the European Commission and Member States to establish practices and recover Nazi-looted art.

Since the start of the century, there has been new momentum behind the Washington Principles. The Vilnius International Forum on Holocaust Era Looted Cultural Assets in January 2000 provided additional focus on Nazi-looted art and cultural and religious objects. At the Prague Holocaust Era Assets Conference organized by the Czech Republic in 2009, the Terezin Declaration, in which I took a leading role negotiating with 46 countries, broadened and strengthened the Washington Principles by making it clear they include not only confiscation of artworks but forced sales and sales under duress (e.g. to get an exit visa), and encourage not just public museums but “private institutions and individuals” to apply the Washington Principles. In 2022, at the Terezin II Conference in Prague, the Terezin Declaration was reaffirmed by

some 35 countries.

Moreover, in 2018 at the 20th anniversary conference in Berlin on the Washington Principles, the U.S. Special Envoy for Holocaust Issues Tom Yazdgerdi, and I, as Special Representative of the Secretary of State for Holocaust Issues, signed a Joint Declaration with Monika Grütters, then the Federal Government Commissioner for Art and the Media, in which Germany provided additional funds for German public museums for provenance research, envisioned to end the statute of limitations for Holocaust art claims, and promised that public museums which refused to participate in what was then known as the *Limbach Commission* would receive no federal government subsidies. But unfortunately, this announcement has not been implemented to date, nor has the coalition agreement according to which the Advisory Commission is to be strengthened.

In France, the Commission for the Compensation of Victims of Spoliation (CIVS) was given authority over looted art and recommendations on restitution go to the prime minister’s office. In 2022, the French Senate restituted 15 artworks in its State Collection, and just recently the French Ministry of Culture has announced it will introduce laws that will facilitate the restitution of Nazi-looted artworks and make it unnecessary to go through the parliament to return such artworks to original owners and their heirs.

Moreover, in 2021-2022, the Dutch ended their “balancing” test, which allowed their museums to keep Nazi-looted art if it was of more importance to them than to the heirs of original owners, finding it was contrary to the Washington Principles. There has been some progress in Israel, Luxembourg, and Switzerland. The World Jewish Restitution Organization issued a comprehensive 2022 report about outstanding Croatian looted cultural objects – the Croatian government should swiftly seek to meet with the WJRO experts to start a process for these items’ return.

The US Congress has been particularly supportive. In 2016, they created a unique federal statute of limitations to facilitate claims – six years after discovery. And in the 2018 JUST Act, Congress called on the State Department to report on the implementation of the Terezin Declaration, which was done in a report released in July 2020, in which I participated, involving

US Embassies in the 46 countries that endorsed the Terezin Declaration.

I believe the Washington Principles have had a ripple effect. Germany has returned the Benin Bronzes to Nigeria taken during its colonial era. In 2021, French President Emmanuel Macron commissioned a study of its colonial period, and the report recommends returning artifacts taken during its colonial period. The Dutch are doing likewise.

There has long been an *Art Loss Registry* in London. The Holocaust Claims Processing Office of the New York State Department of Financial Services facilitates claims, including for looted art. And there is a new profession of provenance researchers.

One promising new initiative is the Jewish Digital Cultural Recovery Project Foundation which is creating a digital archival registry of Nazi-looted art to facilitate their identification and return.

Russia is likely the repository of the greatest amount of Nazi-looted art, which they took from the Germans when they captured Berlin and other parts of Germany and Europe. Although they not only endorsed the Washington Principles and the Terezin Declaration, and although Russian President Putin has not specifically renounced the Washington Principles or the Russian 1998 law that more or less goes along with them, Russia has done little to implement it.

Many European countries, as shown in the 2020 JUST Act report, have done little on art restitution, including Spain, Poland, and others.

Moreover, by its own admission, the software for the American Alliance of Museums' Nazi-Era Internet Portal is out of date and needs to be updated to accomplish the goal for which it was established.

Provenance research is a low priority for art museums, but it is the essential first step to the identification and recovery of Nazi-looted art.

Laws forbidding deaccessioning prevent public museums from returning looted art.

What motivated you to push for an adoption of the Washington Principles?

After a year on the White House Staff of President Lyndon B. Johnson, I worked as research director on the

1968 presidential campaign of Vice President Hubert Humphrey against Richard Nixon. My meeting with fellow campaign worker Arthur Morse was transformative for me. He had just completed his book *While Six Million Died*, which using newly declassified documents, documented what President Roosevelt and his administration knew about the Nazi genocide of the Jews and failed to act on it. It was a shock since Roosevelt was an icon in our home. I pledged to myself that if I ever had a senior position in an American administration, I wanted to do all I could to remove this cloud from the otherwise glorious record of the US in helping defeat Nazi Germany. It was this conviction that led me to recommend to President Jimmy Carter, as his Chief White House Domestic Policy Adviser, that he name a Presidential Commission on the Holocaust, headed by Elie Wiesel, which in turn recommended the creation of a US Holocaust Memorial Museum. It is life coming full circle that President Joe Biden has appointed me to chair the governing council of the Museum.

While serving as US Ambassador to the European Union in Brussels (1993-1996), I was asked by Assistant Secretary of State Richard Holbrooke, at the behest of President Bill Clinton, to become the Special Representative of the President and Secretary of State on Holocaust-era Issues. My entire staff at the US Mission to the European Union urged me not to take on the additional responsibility, since I had a full-time job as Ambassador to the EU. But my wife Fran reminded me of my pledge in 1968 and I took on the additional responsibility. I negotiated over \$8 billion in recoveries from Swiss and French banks, German and Austrian slave and forced labor companies, European insurance companies, communal and private property recovery. It was during my work on these issues that I met four scholars who had written books on Nazi-looted art: Lynn Nicholas, Hector Feliciano, Konstantin Akinsha, and Jonathan Petropoulos.

At the London Gold Conference in December 1997, I persuaded the British hosts to have a final panel on Nazi-looted art and had Hector Feliciano speak. I invited the nations attending to come to Washington in 1998 for a Conference focused solely on Nazi-looted

art. It was at that Conference that I led the negotiations of the Washington Principles on Nazi-Confiscated Art.

In 2009, I became the Special Negotiator for the Jewish Claims Conference in their annual negotiations with Germany on behalf of Holocaust survivors, again fulfilling my 1968 pledge.

The Washington Conference should be seen in the broader context of a quest for justice for Jews who still suffer the consequences of perpetuated Nazi crimes to this day. The true challenge of this quest comes with the high level of mobility of looted art objects, the wide dispersion of art objects and the frequently changing owners.

What do you wish for the near future of the Advisory Commission in Germany?

Despite all our strain, we still are at the beginning of our efforts to restitute Nazi-looted art. I would like to see the Commission more involved in finding “fair and just solutions” under the Washington Principles and the Terezin Declaration. I would like to see more German government funding to public museums and to private museums for provenance research. A unilateral right of appeal for the victims’ side could bring more cases before the Commission and lead to a higher number of fair and just solutions. I would like to encourage the Commission to strengthen the victim’s side in the spirit of equal opportunities. This might

help to increase the victim’s faith in the Commission. I welcome the Commission’s efforts to deepen the cooperation with its international partners and I would be glad to see more international participation in the future.

Dear Mr. Ambassador, thank you very much for the interview!

JULIA ALBRECHT

Head of office of the Advisory Commission



Beratende Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogenen Kulturguts, insbesondere aus jüdischem Besitz

Interview with Prof. Rita Süßmuth: “It’s always about more than just an image...”



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In December 1998, the Federal Republic of Germany, along with 43 other states, signed a declaration of intent to implement the *Washington Principles* – non-binding principles “to assist in resolving issues relating to Nazi-confiscated art.”⁽¹⁾ In a Common Statement issued the following year, the Federal Government, the Länder and the national associations of local authorities reaffirmed their endeavour to “to look for and identify further Nazi-confiscated cultural property in so far as the legal and factual possibilities allow and, if necessary, take the necessary steps [...]”⁽²⁾ to implement the since then much-invoked “just and fair solution” set out in point 8 of the *Washington Principles*. The *Guidelines* developed in 2001 serve to support practical implementation of the task the Federal Government, the Länder and the municipalities set themselves in 1999.⁽³⁾ The establishment of alternative mechanisms set out in point 11 of the *Washington Principles* was implemented in 2003 by the Federal Government, the Länder and the national associations of local authorities: since then, the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, has been tasked with mediating in cases of disagreement.

One of the first members of the Advisory Commission was the former President of the Bundestag, who holds a doctorate in education, Prof. Rita Süßmuth. From the very beginning, she regarded the task of the Advisory Commission as striking a balance between the conflicting interests. A review.

Prof. Süßmuth, you are the longest serving member of the Advisory Commission since it was set up. Congratulations! Do you remember being appointed? What was your initial reaction?

I have to tell you that I still have very vivid memories of being appointed because at that time there were still a lot of unresolved cases – to do with restitution, compensation and how to deal with property that had formerly belonged to Jewish citizens. All this seemed very important to me because it was a part of history that had not yet been critically appraised. I must repeat here once again: we had an important job to do but weak instruments at our disposal. What irritated me even then was that both sides had to agree to mediation, and that we did not have the ultimate authority. We were essentially called in to undertake another attempt in cases where no agreement had been reached. We had no legal instruments at our dis-

posal to enforce our decisions: what we were actually doing was mediation – trying to have a conversation with both sides.

Later on, provenance research became an increasingly important factor. Here the focus was on the partners' willingness, or our ability to influence them in terms of being able to offer a conciliatory response, if not actually resolve the problem at hand.

How did the first session go?

We had a wonderful chair: Jutta Limbach. I knew her as a lawyer already and held her in high esteem. I was quite curious to see how she would go about it. She remained very calm, even when things started to get heated. And she was very matter-of-fact. Not in a cold way: she was very much dedicated to the cause and was very keen to keep us focused in spite of the fact that problems were virtually impossible to solve. We were aware that this kind of consensus-building was crucial, not only within Germany itself but also far beyond the country's borders.

How important is art in your own life? Is there a work of art that you're particularly fond of?

I must say that there have been two particular examples in more recent times, though that doesn't mean to say that other works of art aren't important in my life. Firstly, there's the work of Ulrike Arnold, who paints her pictures using colours from the most diverse countries. I have two of her paintings hanging in my apartment and it gives me great pleasure to look at them. The earthen colours alone have such intensity and expressive power!

And then of course there was my involvement with Christo over a number of years. The whole "wrapping" thing tends to be the immediate association here, but if you look at the later exhibitions you can see that his work is actually very revelatory, too, so you get an idea of what he was trying to do. You don't have to see the "wrapping" simply as concealment – it's actually about the question of what's underneath.

It took a long time to put the project into practice.⁽⁵⁾ But to some extent I'm one of those people who like to say: right, let's see what this is really all about. With the great involvement and participation of our members of parliament and the efforts of the artists them-

selves – Christo, Jeanne-Claude and their team – it was possible to reach out to the people of Germany with what Christo was doing. I have to say that this project would not have gone ahead without the support of the German population at large. And this is exactly the kind of thing that creates another kind of relationship with art.

Entering into a relationship with an artist also means discovering them. And in this case, the discovery was a success. And also: a Rodin is certainly as important to me as a Baudelaire is in terms of language. I still like to look at the pictures I have around me: they're very varied and diverse. We're always talking about our diversity, but you often have to work hard to make it happen in reality.

At the Washington Conference on Holocaust-Era Assets in 1998, principles were adopted regarding works of art confiscated by the National Socialists (Washington Principles) in order to identify works of art confiscated during the Nazi era, locate their rightful owners or heirs and to arrive at "just and fair solutions". To what extent do you believe that heirs or claimants are able to sense that the implementation of the Washington Principles is a way of making amends?

We've always respected the *Washington Principles*. But if I'm to be honest, we've always struggled with them, too. There are tensions when it comes to striking a balance between what is legal and what is moral, and these tensions would often lead to conflict in our negotiations. Anyone attaching priority to the supremacy of the law alone was frequently not satisfied with us. Yet law is not important if it isn't compatible with morality. For us, it wasn't about law versus morality but law and morality: we wanted to arrive at solutions that were satisfying in both the legal and the moral sense. The two go together – the aim is to combine them. Provenance research is undoubtedly an enriching factor here. But the moral issues are always part of the equation.

When it comes to restitution issues, moral obligation is given priority over legal provisions. Do you judge this to be right, or would you support an alternative of allowing the law to prevail?

I attempt to put forward my position, but it isn't shared by all members. That's why some have left the Advisory Commission. None of the Commission members claims that the law is irrelevant or that we don't need provenance research. As I have just emphasized, the question of how the property migrated is being attempted to be clarified by provenance research in order to do justice to the matter and thus also to the persons involved. But at times, cases arise where this is hardly possible. This is why we're not concerned with the question of either law or morality: we aim to satisfy both law and morality. As far as I'm concerned, the two are inextricably combined. There are many things that law alone cannot account for. It's important to look at the kind of life situations people find themselves in as well.

The Rules of Procedure of the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, were reformed for the last time in 2016. Do you see the process as being complete, or is there still potential for innovation?

I do think there is potential here. We should elaborate more clearly whether it is really necessary for a case only to be accepted for mediation by the Commission if both partners agree.

Ultimately, it is above all an ethical debate on the question of how we do justice to the people who have suffered this fate.

And provenance research is highly complex: if it's to be done thoroughly and well, we can't expect everything to be completed within six weeks. Of course, there are cases where things do get done quickly. But there are also cases where the process is drawn-out. Sometimes you have conflicts that have to be dealt with over a prolonged period of time so as to be able to do justice to the matter and to the individuals concerned.

In the 20 years that you've been a Commission member, has there been any decision of the 22 recommendations made by the Commission that you look back on critically? And if so, why?

I don't want to mention any names now, but at the end

of an internal decision-making process, it's natural to think that the other person may have been right after all. These things do happen. We strive to achieve as much consensus as possible. In some cases, doubts remain afterwards as to whether justice has been done to all those involved. But it's impossible to treat this kind of work like an empirical treatise: it takes a lot of thought and at least the attempt to put yourself in the shoes of those concerned.

And I would leave it at that. However, debate does help clarify the situation. That's why it's not just a burden but an opportunity to revisit issues that weren't clarified and gain a different perspective on things.

I would also submit that no Commission is perfect. People have to understand that this is not a Commission that is approving some commodity and then pronouncing its judgement.

Provenance research has seen major advances since 1998. Some argue that this has led to more interest being focused on the research itself rather than on the individual fates and persecution suffered by the former owners. What do you think about this?

I can't agree. From what I have experienced and continue to experience on our Commission, this is not the case. We're involved with a period of incredibly cruel history here, starting from the human being, which we must not forget and focusing on individuals who we mustn't forget.

2003-2023. What is your overall assessment, looking back on 20 years of the Advisory Commission?

The Commission should continue its work. It has always been important to us for both sides to be given an equal hearing: nobody should be able to claim that one side wasn't heard. I saw the difficulty of this task from the beginning. But I do have to say that out of the 22 cases we have dealt with at the request of both parties, there were no fewer than 16 that we were able to resolve by consensus.⁽⁶⁾ So, something has been achieved: you can't say that the instrument we have is inefficient and that we're not getting anything done. It's not a Commission like any other. It certainly has its weaknesses. And anyone who thinks in terms of the usual rules relating to bodies like this has to be

much more patient with us and engage with more aspects than just the property itself. It's always about more than just an image or the depiction of people or busts, etc. A bit like Christo's wrapping. You don't necessarily see it otherwise, it was important to Christo for us to take a closer look. After all, this wouldn't have come about at all if people hadn't engaged with the controversies – to be able to say: this is what Germany is about, too. So that we don't forget what art makes possible, but also the suffering involved.

Dear Prof. Süßmuth, thank you very much for the Interview!

KATHRIN BARRERA NICHOLSON

Office of the Advisory Commission



Beratende Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogenen Kulturguts, insbesondere aus jüdischem Besitz

(1) Washington Conference Principles on Nazi-Confiscated Art (Washington Principles), online at URL: <https://www.beratende-kommission.de/en/grundlagen> [23.02.2023]

(2) Common Statement, online at URL: <https://www.beratende-kommission.de/en/grundlagen> [23.02.2023]

(3) Guidelines for implementing the Statement by the Federal Government, the Länder and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property, of December 1999. These were revised in 2007 and rewritten in 2019.

(4) Prof. Rita Süßmuth held the office of President of the Bundestag from 25 November 1988 to 26 December 1998.

(5) The artist couple Christo and Jeanne-Claude wrapped the Reichstag

building from 24 June to 7 July 1995. The project involved years of planning, having also met with rejection. It was Rita Süßmuth, in her position as President of the Bundestag at the time, who pushed for the project to go ahead with the support of the parliamentary majority and against the then Chancellor Helmut Kohl and the then parliamentary group leader Wolfgang Schäuble (all CDU).

(6) The Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property has made 12 recommendations for restitution since it was established. In six cases it recommended against restitution. In four cases, recommendations were issued for compensation to be paid to the heirs. <https://www.beratende-kommission.de/en/recommendations>

Not the law, but the right thing to do?

On the discussions surrounding the Advisory Commission 2003-2023

A panel requested by the museums themselves

Shortly after the public presentation of the *Guidelines for implementing the Statement by the Federal Government, the Länder and the national associations of local authorities on the tracing and return of cultural property seized as a result of Nazi persecution, especially of Jewish property*, of December 1999 in Berlin on 24 April 2001, the Standing Conference of the Ministers of Education and Cultural Affairs welcomed “the initiative of the Cultural Foundation of the German Federal States to establish a high-ranking advisory panel in order to be able to arrive at decisions swiftly in connection with the return of cultural property seized during the National Socialist era, especially of items that had originally been in Jewish ownership”.⁽¹⁾ The experience of some museums in implementing the Washington Principles up to then had shown that legal requirements or other guidelines alone were not always helpful when it came to arriving at satisfactory decisions, but that there was also a need to take moral and ethical aspects into account. In the interest of the museums, the Cultural Foundation of the German Federal States therefore advocated “setting up an Advisory Commission as soon as possible whose main task would be to issue recommendations in exemplary cases of claim or restitution so that the necessary decisions could be arrived at more quickly”.⁽²⁾ In order to provide support for proceedings in this way, the idea was to set up a commission made up of personalities with as high a profile as possible and possessing outstanding expertise in the areas of law, culture and history. The substantial and organisational details of the establishment of the commission were to be clarified by autumn 2001.⁽³⁾

Subsequently, an Accord between the Federation, the federal states and the national associations of local authorities was concluded on the setting up of the Commission, and this was also to form the basis of the Commission’s activities.⁽⁴⁾ On 9 April 2003, the Federal Cabinet finally agreed to the establishment of a *Beratende Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogenen*

Kulturguts, insbesondere aus jüdischem Besitz [Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property].⁽⁵⁾ On this basis, the first eight members of the Advisory Commission were formally appointed, namely: Prof. Thomas Gaehtgens, Prof. Jutta Limbach, Prof. Günther Patzig, Prof. Dietmar von der Pfordten, Prof. Reinhard Rürup, Prof. Rita Süßmuth, Dr. Richard von Weizsäcker and Prof. Ursula Wolf.⁽⁶⁾ A press release issued by the Federal Government on 14 July 2003 stated: *Kommission für Rückgabe von NS-Raubkunst nimmt ihre Arbeit auf* [Commission for the return of Nazi-looted Art begins its work].⁽⁷⁾ At the inaugural meeting held on the same day, Prof. Jutta Limbach was elected as chair and Prof. Thomas Gaehtgens as her deputy.⁽⁸⁾

The reflections begin

The establishment of the Advisory Commission was seen as a supplement to the procedure laid down in the Common Statement, according to which the bodies responsible for the public institutions were initially to decide independently on the restitution of cultural property expropriated as a result of Nazi persecution.⁽⁹⁾ At the request of the museums, the Commission was to act in a supportive capacity in “individual cases of legal complexity that can be resolved more effectively based on moral and ethical categories than by means of legal action”.⁽¹⁰⁾ The then Minister of State for Culture and Media, Christina Weiss, also saw the commencement of the Commission’s work as improving the “chance of arriving at just and fair solutions in favour of the former owners or their heirs”.⁽¹¹⁾

The *Accord between the Federation, the federal states and the national associations of local authorities on the establishment of an Advisory Commission of 2003* provided that the Commission should issue recommendations as a result of its work.⁽¹²⁾ For the first ten years of its existence, these recommendations were published as press releases by the Federal Government and never exceeded three pages in length.⁽¹³⁾ The manner

in which they were published increasingly led to the criticism that due to the “merely superficial nature of the explanations”, the criteria on which the decisions were based were not transparent, making it impossible to engage in debate on the underlying considerations.⁽¹⁴⁾ For this reason, the wish was expressed among experts that not only the recommendations should be made available to the interested public but also the information relevant to the case.⁽¹⁵⁾ A legal action entitled *Einsicht in die Unterlagen der Beratenden Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter* [Inspection of the documents of the Advisory Commission for the return of cultural property seized as a result of Nazi persecution, especially Jewish property] to obtain access to the documents of the Advisory Commission converted this wish into a formal request, though it was subsequently rejected by the Magdeburg Administrative Court.⁽¹⁶⁾ The reason given was that the “legal power of disposal lies with the Advisory Commission, which, however, is not an official authority, as it acts entirely independently and neither takes nor prepares administrative decisions itself”.⁽¹⁷⁾ The ruling stated that the Commission was in fact a “purely advisory panel that issued legally non-binding recommendations based on decisions requiring the weighing up of ethical considerations”.⁽¹⁸⁾ It further asserted that the Advisory Commission could not be clearly assigned to the Federal Government, the federal states or the municipalities, either in terms of its organisation or its function; moreover, it was said to act autonomously. Although its activities were said to be in pursuit of a political goal of the Federal Republic of Germany, according to the ruling this goal had not been consolidated in law.⁽¹⁹⁾ The then Chairperson of the Commission, Jutta Limbach, stated accordingly: “We deliberately take the liberty of keeping our moral reasoning brief. We are not a court or an authority.”⁽²⁰⁾ From April 2013 to March 2014, however, the practice of issuing recommendations did undergo further development, in terms of both form and content. While in 2013, the *Recommendation in the case of the heirs of Alfred Flechtheim v. Stadt Köln* was the last to be published as a press release by the Federal Government, the recommendation issued in the case of the Welfenschatz [Guelph Treasure] a year later was published as an informal paper, already indicating a tendency towards a more detailed justification.⁽²¹⁾ In the months that passed between these two recommendations, the subject of the identification and restitution of cultural

property expropriated as a result of Nazi persecution was given fresh impetus by the public announcement of the “Schwabinger Kunstfund” [Schwabing Art Trove] and the establishment of an international task force: this gave rise to structural changes and the incorporation of private art collections.⁽²²⁾

Further development

When considering the establishment of a Stiftung Deutsches Zentrum Kulturgutverluste [German Lost Art Foundation], which would ultimately merge the Koordinierungsstelle Magdeburg [Coordination Office] and the Arbeitsstelle für Provenienzforschung [Coordination Office for Provenance Research], thought was also given to “whether and how the work of the Advisory Commission could be made more victim-friendly”.⁽²³⁾ The Foundation was established in January 2015 and at its first conference, Rüdiger Mahlo, representative of the Jewish Claims Conference in Germany, reiterated his call to include “representatives of the victims’ side on all committees and commissions dealing with restitution and provenance research”, an appeal that was explicitly supported by Hermann Parzinger, President of the Stiftung Preussischer Kulturbesitz [Prussian Cultural Heritage Foundation], among others.⁽²⁴⁾ Parzinger also saw the creation of rules of procedure as an opportunity to ensure that the work done by the Advisory Commission would gain “even greater acceptance”.⁽²⁵⁾ Representatives of Jewish organisations and victims’ associations renewed these demands in an open letter to the Federal Government on 9 March 2016 in which they called for a reform of the Advisory Commission. Their demands included a new appointments policy, greater transparency in the decisions, and also the possibility of lodging a unilateral request for mediation. They also called for the recommendations to be more binding in nature. A working group made up of representatives of the Federal Government, the federal states and the national associations of local authorities responded to these demands: after six months of dialogue, it was decided that in future, private owners of cultural property could also lodge a request for mediation with the Commission, that rules of procedure should be published, and that the recommendations should be underpinned with more detailed justifications. In addition, the Commission was expanded from eight to ten members, “including at least one Jewish member so as to ensure more direct representation of the victims’ perspective”.⁽²⁶⁾

Accordingly, the *Accord between the Federation, the federal states and the national associations of local authorities on the establishment of an Advisory Commission of 2003* was revised. Paragraph 1 now also allowed requests for mediation to be lodged by private individuals or entities, providing they made a binding declaration of commitment to the Washington Principles of 1998 and the Common Statement of 1999. Paragraph 2 broadened the Commission's scope of action in that, in addition to issuing a recommendation to conclude the proceedings, it was given greater influence in securing an amicable settlement between the parties. Furthermore, rules of procedure were to be published and the recommendations were to include publicly accessible justifications in the future. Finally, the parties were expected to follow the recommendations.⁽²⁷⁾ Nonetheless, it would be wrong to assume that it was not until the modification of the Accord on 2 November 2016 that the Commission set itself rules of procedure. Indeed, its very first meeting was primarily focused on "agreeing on the Commission's procedural principles".⁽²⁸⁾ As such, the Commission was already guided by principles as to how to proceed from when it began its work in July 2003; these principles were not in the public domain, however. As the Commission evolved further, the principles were subsequently codified and published.⁽²⁹⁾

This reform process was overshadowed by the death of Prof. Jutta Limbach, who passed away shortly before the reform was completed on 12 September 2016.⁽³⁰⁾ An outstanding moral authority, she had been instrumental in shaping the first phase of the Commission. Her death marked the end of the Limbach era: because of the comprehensive reform which was subsequently undertaken, this was also a watershed moment in the history of the Commission. From the end of 2015 onwards, Limbach's deputy Prof. Reinhard Rürup took over the position of chair on a provisional basis until Prof. Hans-Jürgen Papier was appointed as the new chair on 9 November 2017; he had previously joined the Advisory Commission as a member in January 2016.⁽³¹⁾

An appeal as an obligation

Nonetheless, there was one essential point contained in the demands for the restructuring and repositioning of the Advisory Commission that the reforms of 2016 failed to address: the possibility of lodging a unilateral request for mediation – something that for years had regularly been called for. In the opinion of

the then head of the secretariat of the Advisory Commission, Michael Franz, however, the possibility of dragging a party into proceedings against its will fundamentally contradicted the character of the Commission as a mediation panel. Moreover, in his view, the unilateral request for mediation would only be appropriate if the recommendations themselves were legally binding as well.⁽³²⁾ By contrast, Hermann Parzinger said in his speech in 2015 that he believed the option of a unilateral request for mediation was "certainly desirable and correct":⁽³³⁾ "If a public institution has good reasons to refuse restitution, it should not shy away from initiating the procedure before the Advisory Commission. [...] Public bodies in Germany could even be obliged to go before the Advisory Commission if it were not possible to arrive at an agreement with the claimants."⁽³⁴⁾

The possibility of lodging a unilateral request for mediation was never introduced, however: instead, appeals remained non-binding. For example, the then Minister of State for Culture and the Media, Monika Grütters, stated that she expected, "all German museums, without exception, to be prepared to take part in proceedings before the Advisory Commission as a matter of course".⁽³⁵⁾ She said that in the event that the parties did not reach a settlement, she considered the bodies responsible for the institutions to be under obligation to attempt to ensure that a request for mediation was lodged.⁽³⁶⁾ On the occasion of the international German Lost Art Foundation conference on the 20th anniversary of the Washington Principles, Grütters announced that a (moral) obligation of this nature applied at the federal level.⁽³⁷⁾ From January 2019 onwards, a requirement was included in funding award notifications calling on institutions of cultural preservation which were in receipt of federal funding to "comply with any desire on the part of claimants to request mediation by the Advisory Commission".⁽³⁸⁾ The Bundestag welcomed this development and called on the Federal Government to put the issue of unilateral requests for mediation on the agenda of the six-monthly top-level cultural policy talks between the Federal Government, the federal states and the municipalities.⁽³⁹⁾ Despite repeated calls, however, the possibility of a unilateral request for mediation continued to be rejected in 2021 on the grounds that, together with the fact that the recommendations were to be of a more binding nature, this entailed the risk of violating the courts' monopoly on jurisdiction under Art. 92 GG [Article 92 of the Basic Law].⁽⁴⁰⁾

This justification is at best superficially convincing. The jurisdictional privilege of the judiciary may exclude the Advisory Commission being available for requests for mediation and issuing recommendations of a binding nature. Currently, however, neither of these apply. Despite the requirement of federally funded cultural heritage institutions and the threat of funding cuts, the obligation of public institutions remains a moral one and the consent of both parties is necessary.⁽⁴¹⁾ The Federal Government thus did no more than to send out a “political and moral signal”: it remains up to the body responsible for the respective public institution to decide in favour of or against proceedings before a panel which they themselves established as a mechanism for resolving disputes.⁽⁴²⁾ Likewise, the recommendations issued by the Advisory Commission continue to be binding solely in the moral sense. According to Section 3 (1) of the Rules of Procedure of the Advisory Commission, initiation of activity on the part of the Commission requires not only mutual agreement but also the willingness to follow the Commission’s recommendations; however, it does not impose a legal obligation to recognise any recommendation issued by the Commission as binding.⁽⁴³⁾

Ulf Bischof, a Berlin-based lawyer, and Wolf Tegethoff, a member of the Commission since 2009 and also deputy chair, summed up the crux of the discussion – independently of one another – when they separated the binding nature of the recommendations from the demand for a unilateral request for mediation, declaring the binding nature of the recommendations to be of secondary importance: after all, the obligation to request mediation by the Commission would at least result in an uninvolved third party being able to hear the facts and propose solutions.⁽⁴⁴⁾ As such, the much-demanded unilateral request for mediation need not stand in the way of an alternative resolution of the dispute, since there is little apparent reason why public institutions should not be required to agree to a binding mediation.⁽⁴⁵⁾ After all, the Washington Principles and the Common Statement do apply directly to such institutions, even though this is only “soft law”.⁽⁴⁶⁾ It is perfectly possible to conceive of the receipt of federal funds being directly linked to a binding declaration of willingness to engage in mediation in order to check for cultural property expropriated as a result of Nazi persecution – regardless of whether the owners of the cultural property are public or private.⁽⁴⁷⁾

Adequate substructure

All those in favour of the unilateral requests for mediation have also seen the need this entailed to ensure that competent staff are available to support volunteer Commission members.⁽⁴⁸⁾ The rhetorical question raised by Hermann Parzinger as to whether an “appropriate substructure” might not be conceivable in a new department of the German Lost Art Foundation was in fact no more than a proposal to expand a structure that already existed.⁽⁴⁹⁾ Since the establishment of the Advisory Commission in 2003, its management was the responsibility of the “Koordinierungsstelle in cooperation with the Federal Government Commissioner”.⁽⁵⁰⁾ The new version of the Accord on the establishment of the Commission of 2016 incorporated the structural changes to the Koordinierungsstelle [Coordination Office], now stating in paragraph 5: “The German Lost Art Foundation (Deutsches Zentrum Kulturgutverluste) shall serve as the secretariat of the Advisory Commission and look after administrative matters. A suitable staff member shall assume the role of executive secretary.”⁽⁵¹⁾ In order to underline the independence of the Commission, the previously stipulated cooperation with the Federal Government Commissioner was omitted in connection with this new development.

Nevertheless, the question of whether the independence of the Commission is actually ensured by linking its office to the German Lost Art Foundation is still being discussed.⁽⁵²⁾ The Foundation provides funding for provenance research, and it is the Commission that, in case of doubt, has to arrive at decisions regarding the outcomes of this research – something that has repeatedly been perceived as difficult to reconcile with the Commission’s neutrality and independence.⁽⁵³⁾ In the opinion of the parliamentary group BÜNDNIS 90/DIE GRÜNEN, it is not acceptable to run the Commission’s secretariat as a department of the German Lost Art Foundation.⁽⁵⁴⁾ On this point, it supports the Commission chair, Prof. Hans-Jürgen Papier, in his call for an independent, organisationally restructured secretariat, as conveyed to the Standing Conference of Ministers of Education and Cultural Affairs in June 2019.⁽⁵⁵⁾

This desired reorientation of the secretariat was carried out to some extent from May 2020 onwards with the relocation of the headquarters from Magdeburg to Berlin, as well as through the appointment of new staff.⁽⁵⁶⁾ According to the demands of the Bundestag, it had to be ensured in terms of staffing that the sec-

retariat was able to carry out its administrative tasks independently, act in a competent advisory capacity to the Commission on scholarly issues, and provide support for it in contextualising and assessing the specific facts of any given case.⁽⁵⁷⁾ The scope of activities of the secretariat was therefore expanded from dealing with purely organisational tasks to primarily providing support in terms of subject matter.⁽⁵⁸⁾ Despite its continued affiliation with the German Lost Art Foundation, it was emphasised that the Advisory Commission itself did not form part of the Foundation in organisational terms, even though its staff were employees of the Foundation under labour law. The function of the Foundation was said to be purely service-related, since all decisions – whether substantive or procedural – were made by the Commission, and the secretariat was exclusively subordinate to the chair of the Commission in all matters.⁽⁵⁹⁾

Closing remarks

The establishment of an Advisory Commission as an “alternative mechanism for resolving disputed property issues” in the spirit of the Washington Principles suggested that its function should be that of a mediation panel – in other words an offer of mediation wherever it was not otherwise possible to arrive at a settlement; as explained by Stuart E. Eizenstat, head of the delegation at the time, the aim was less to resolve disputes by legal verdict than to create opportunities for settling other disputes.⁽⁶⁰⁾ This fundamental idea is to be welcomed, yet it becomes a farce if, when in doubt, the bodies responsible for the public institutions refuse to engage with the panel they themselves have established.⁽⁶¹⁾ It is not acceptable that criticism of the self-chosen “alternative mechanism” should result in refusal: there should at least be an obligation to engage in dialogue.

Legitimacy is not only established through judicial proceedings: it also derives from procedures that find acceptance in society.⁽⁶²⁾ Acceptance of a voluntary, non-binding dispute resolution mechanism can be achieved by means of factual persuasion.⁽⁶³⁾ This is in itself sufficient justification for dialogue to be pursued in an area that has been evolving continuously since 1998. For this reason, a stronger link between the Commission and scholarly debate is definitely desirable.

The 2021-2025 coalition agreement also offers an assurance that the Advisory Commission is to be strengthened⁽⁶⁴⁾, and the current Rules of Procedure contain some leeway for this. Since 2016, the procedure before the Commission has been explicitly aimed at reaching an amicable settlement, while the issuing of a recommendation is said to be merely optional.⁽⁶⁵⁾ The emphasis on arriving at an amicable settlement does not obviate the need to consider restitution; regardless of this, however, it stimulates reflection on the issue of whether or not the current procedure has become excessively quasi-judicial.⁽⁶⁶⁾ Commission proceedings are often preceded by years of litigation, usually conducted by lawyers, and this often makes it more difficult to resolve a dispute. Representation by lawyers is not only cost-intensive, it also fosters a culture of antagonism that cannot be mitigated by an Advisory Commission.⁽⁶⁷⁾ In order to promote a more cooperative approach, it might be helpful not to leave the exchange of arguments to the parties’ legal representatives, but instead ensure that the proceedings are primarily focused on a neutral, expert assessment of research findings. It also seems questionable as to whether the current de facto need for legal representation is actually compatible with point 7 of the Washington Principles, which requires that “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”.⁽⁶⁸⁾ In this way, it would be possible to support the facilitation of claim submission not solely based on a unilateral request for mediation but also by the very nature of the procedure itself. The 20th anniversary of the Advisory Commission would be a good occasion to jointly implement reforms.

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Beratende Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogenen Kulturguts, insbesondere aus jüdischem Besitz

- (1) 294. Plenarsitzung der Kultusministerkonferenz, 10 May 2002, Hamburg <https://www.kmk.org/aktuelles/artikelansicht/294-plenarsitzung-der-kultusministerkonferenz-am-10mai-2001-in-hamburg.html>.
- (2) Ibid.
- (3) Cf. *ibid.*
- (4) Cf. Absprache zwischen Bund, Ländern und kommunalen Spitzenverbänden zur Einsetzung einer Beratenden Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogenen Kulturguts, insbesondere aus jüdischem Besitz [Accord between the Federation, the federal states and the national associations of local authorities on the establishment of an Advisory Commission], resolution passed by the Standing Conference of the Ministers of Education and Cultural Affairs on 5 December 2002: https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen_beschluesse/2002/2002_12_05_Kulturgutschutz_Kommission.pdf; Matthias Druba: Die "Beratende Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogenen Kulturguts, insbesondere aus jüdischem Besitz", in: Julius H. Schoeps and Anna Dorothea Ludewig (eds.): Eine Debatte ohne Ende? Raubkunst und Restitution im deutschsprachigen Raum, Berlin 2014 (revised and updated new edition, 1st edition 2007), pp. 180-188, p. 182. For the new version of the Accord, cf. <https://www.beratende-kommission.de/en/commission#s-accord>.
- (5) Cf. Einrichtung einer "Beratenden Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogenen Kulturguts" [Establishment of an 'Advisory Commission on the return of cultural property seized as a result of Nazi persecution], Pressemitteilung Nr. 157/03, Presse- und Informationsamt der Bundesregierung, 9 April 2003.
- (6) For the history of the membership, see <https://www.beratende-kommission.de/en/commission#s-members>.
- (7) Kommission für Rückgabe von NS-Raubkunst nimmt ihre Arbeit auf [Commission for the return of Nazi-looted art begins its work], Pressemitteilung Nr. 327/03, Presse- und Informationsamt der Bundesregierung, 14 July 2003.
- (8) Cf. *ibid.*
- (9) Cf. Statement by the Federal Government, the Länder and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property (Common Statement), December 1999.
- (10) The then Minister of State for Culture and the Media Christina Weiss issued this statement regarding the establishment of the Advisory Commission: "Es geht dabei um rechtlich schwierige Einzelfälle, die sich eher durch moralisch und ethische Kategorien als durch juristische Schritte lösen lassen." Cf. Pressemitteilung Nr. 157/03, as in note 5; 294. Plenarsitzung der Kultusministerkonferenz, as in note 1.
- (11) Christina Weiss, quoted from: Pressemitteilung Nr. 327/03, as in note 7.
- (12) Cf. Accord as in note 4; Pressemitteilung Nr. 327/03, as in note 7.
- (13) Cf. Recommendations 2003 to 2013: <https://www.beratende-kommission.de/en/recommendations>.
- The only exception is the Recommendation of the Advisory Commission in the case of the heirs of Paul Westheim v. Stadt Neuss, which only concerned an informal notification. Cf. *ibid.*
- Up until 2020, the name of the Commission erroneously appears in the original German version of the recommendations as Beratende Kommission für [sic!] die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, insbesondere aus jüdischem Besitz [Advisory Commission for [sic!] the return of cultural property seized as a result of Nazi persecution, especially from Jewish property].
- (14) Cf. Druba 2014, as in note 4, p. 180, p. 186 and p. 187.
- (15) Cf. Esther Tisa Francini: 13 Jahre "Fluchtgut": Begrifflichkeit, Interpretationen und Fallbeispiele, in: Peter Mosimann and Beat Schönenberger (eds.): Fluchtgut - Geschichte, Recht und Moral, Referate zur gleichnamigen Veranstaltung des Museums Oskar Reinhart in Winterthur vom 28. August 2014, Bern 2015, pp. 25-35, p. 31.
- (16) Cf. Einsicht in die Unterlagen der Beratenden Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, Verwaltungsgericht Magdeburg, Urteil vom 31. März 2015 - 6 A 81/15, in: KUR - Journal für Kunstrecht, Urheberrecht und Kulturpolitik, 5/2015, p. 145-148.
- (17) *Ibid.*, p. 145.
- (18) *Ibid.*, p. 145.
- (19) Cf. *ibid.*, p. 146ff.
- (20) Jutta Limbach: Die Kriterien der Beratenden Kommission, in: Peter Mosimann and Beat Schönenberger (eds.): Fluchtgut - Geschichte, Recht und Moral, Referate zur gleichnamigen Veranstaltung des Museums Oskar Reinhart in Winterthur vom 28. August 2014, Bern 2015, pp. 161-167, p. 167.
- (21) Cf. Recommendations issued by the Advisory Commission <https://www.beratende-kommission.de/en/recommendations>.
- Various efforts are made to compare the Commission's published recommendations with each other, but it is worthwhile observing here that such an undertaking should be viewed critically, not least because of how the practice of publishing the recommendations has evolved over time.
- (22) Cf. Chronology of the Schwabinger Kunstfund task force <https://www.taskforce-kunstfund.de>
- (23) Limbach 2015, as in note 20, p. 167.
- (24) Rüdiger Mahlo: Anforderungen an die Provenienzforschung aus jüdischer Sicht, speech at the German Lost Art Foundation conference entitled Neue Perspektiven der Provenienzforschung in Deutschland on 28 November 2015, pp. 1-7, p. 6 https://www.kulturgutverluste.de/Content/01_Stiftung/DE/Veranstaltungsnachlese/2015/15-11-27_Konferenz-Neue-Perspektiven-der-Provenienzforschung-in-Deutschland.html. Cf. also Hermann Parzinger: Kulturgüter und ihre Provenienz - Forschung, Aufklärung, Lösungen. Erfahrungen aus der Sicht der Stiftung Preußischer Kulturbesitz, speech at the German Lost Art Foundation conference entitled Neue Perspektiven der Provenienzforschung in Deutschland (27-28 November 2015), p. 1-20, p. 19 https://www.preussischer-kulturbesitz.de/fileadmin/user_upload_SPK/documents/presse/news/2015/151128-Provenienzforschung_Rede-P-final-korr.pdf.
- (25) Parzinger 2015, as in note 24, p. 19.
- (26) Weiterentwicklung der Beratenden Kommission ["Further development of the Advisory Commission"] Pressemitteilung, Die Beauftragte der Bundesregierung für Kultur und Medien, 10 November 2016.
- Christina Berking believes that the staffing of the Commission means that is not suited to addressing issues of restitution from private ownership. Cf. Christina Berking: Wem gehört die Kunst?, in: Interessengemeinschaft Deutscher Kunsthandel (ed.): Fair und gerecht? Restitution und Provenienz im Kunstmarkt. Praxis - Probleme - Perspektiven, Köln 2021, p. 89-100, p. 96.
- (27) Cf. Accord between the Federation, the federal states and the national associations of local authorities on the establishment of an Advisory Commission of 2003, New edition 2016 <https://www.beratende-kommission.de/en/commission>.
- (28) Cf. Pressemitteilung Nr. 327/03, as in note 7.
- (29) Cf. Rules of Procedure of the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property as of 2 November 2016 <https://www.beratende-kommission.de/en/procedure>.
- (30) Cf. Pressemitteilung, 10 November 2016, as in note 26.
- (31) Cf. Members of the Advisory Commission <https://www.beratende-kommission.de/en/commission#s-members>
- (32) Cf. Rechtliche Rahmenbedingungen für die Arbeit der Beratenden Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, insbesondere aus jüdischem Besitz, Sachstand, Wissenschaftliche Dienste Deutscher Bundestag, WD 10 - 3000 - 006/19, 4 April 2019, pp. 1-9, p. 8 with reference to Michael Franz: Die Verantwortung dauert an. Eine Zwischenbilanz der bisherigen Arbeit der Beratenden Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, insbesondere aus jüdischem Besitz, in: Koordinierungsstelle Magdeburg (ed.): Die Verantwortung dauert an - Beiträge deutscher Institutionen zum Umgang mit NS-verfolgungsbedingt entzogenem Kulturgut, Magdeburg 2010, p. 445-461, p. 456.
- (33) Parzinger 2015, as in note 24, p. 19.
- (34) *Ibid.*, p. 19.
- (35) Monika Grütters, quoted from: Pressemitteilung, 10 November 2016, as in note 26.
- (36) Cf. *ibid.*
- The wording gives the impression that the museums themselves would decide against requesting mediation by the Commission. Ultimately, however, it is up to the bodies responsible for the museums to opt in favour of or against such a request.

- (37) Monika Grütters: Grußwort, in: Stiftung Deutsches Zentrum Kulturverluste (ed.): Provenienz & Forschung 02/2019, pp. 5–7, p. 7.
- (38) Washingtoner Erklärung – Stand der Auffindung und Rückgabe NS-verfolgungsbedingt entzogenen Kulturgutes, insbesondere aus jüdischem Besitz, Deutscher Bundestag Drucksache 19/6921, 9 January 2019, p.1–24, p. 14.
- (39) Cf. 20 Jahre Washingtoner Prinzipien – Restitution von NS-Raubkunst fortsetzen und “Beratende Kommission” weiterentwickeln, Deutscher Bundestag Drucksache 19/13511, 24 September 2019, p. 1–8, p. 4. The coalition agreement between the CDU, CSU and SPD of 2018 likewise merely appealed in a non-binding manner “not to rule out the possibility of a request for mediation by the ‘Advisory Commission’ [...]” Cf. 20 Jahre Washingtoner Prinzipien – Restitution von NS-Raubkunst fortsetzen und “Beratende Kommission” weiterentwickeln, Deutscher Bundestag, Drucksache 19/6014, 26 November 2018, pp. 1 – 8, p. 2 with reference to Koav 2018, p. 169.
- (40) Cf. Reform der Beratenden Kommission zur Rückgabe NS-verfolgungsbedingt entzogenen Kulturguts, Deutscher Bundestag Drucksache 19/26788, 18 February 2021, p. 1–4, p. 2.
- (41) Cf. Struktur, Arbeitsweise und Unabhängigkeit der Beratenden Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, Deutscher Bundestag Drucksache 19/10058, 10 May 2019, p. 1–20, p. 10. On the consistency of the cuts, see Monika Grütters, in: 20 Jahre Washingtoner Erklärung – Wirksamere Aufarbeitung der NS-Raubkunst durch Restrukturierung und Digitalisierung, BT-Drucksache 19/5423, Wortprotokoll der 22. Sitzung, Ausschuss für Kultur und Medien, 20 February 2019, p. 1–30, p. 11 and p. 21.
- (42) Cf. BT-Drucksache 19/10058, 10 May 2019, as in note 41, p. 10.
- (43) Cf. *ibid.*, p. 6; Rules of Procedure of the Advisory Commission, as in note 29.
- (44) Cf. Ulf Bischof: Editorial, in: KUR – Journal für Kunstrecht, Urheberrecht und Kulturpolitik, 6/2007; Wolf Tegethoff, in: Wortprotokoll der 22. Sitzung, Ausschuss für Kultur und Medien, 20 February 2019, as in note 41, p. 10.
- (45) Cf. Stefanie Pferdenges: Gerechte und faire Lösungen – ist ein Restitutionsgesetz der beste Weg?, in: KUR– Journal für Kunstrecht, Urheberrecht und Kulturpolitik, 2/2021, p. 50–59, p. 57. Cf. also Julius H. Schoeps: Wem gehört Picassos “Madame Soler”? Der Umgang des Freistaates Bayern mit einem spektakulären NS-Raubkunstfall (Studien zur Provenienzforschung vol. 4), Berlin 2022, p. 128 and p. 129.
- (46) “Public institutions which hold cultural property and to which the Washington Principles of 1998 and the Common Statement of 1999 between the Federation, the federal states and the national associations of local authorities to implement the Washington Principles directly apply may lodge a request for mediation [...]” Accord between the Federation, the federal states and the national associations of local authorities on the establishment of an Advisory Commission of 2003, New edition 2016, Paragraph (1) <https://www.beratende-kommission.de/en/commission#-accord>.
- (47) According to current funding requirements, claimants commit to following the Washington Principles and the goals of the Common Statement by submitting their claim. Cf. Richtlinie für die Förderung der Provenienzforschung (NS-verfolgungsbedingt entzogenes Kulturgut), Deutsches Zentrum Kulturverluste, last revised: 1 December 2021, p. 1 – 9, p. 5. This funding requirement could be supplemented with a binding declaration of willingness to engage in mediation.
- (48) Cf. Georg Heuberger: Aspekte der Rückerstattung und Forderungen für die heutige Praxis, in: Julius H. Schoeps and Anna Dorothea Ludewig (eds.): Eine Debatte ohne Ende? Raubkunst und Restitution im deutschsprachigen Raum, Berlin 2014 (revised and updated new edition, 1st edition 2007), p. 190–200, p. 200; Parzinger 2015, as in note. 24, p. 20.
- (49) Parzinger 2015, as in note 24, p. 20.
- (50) Accord 2003, as in note 4.
- (51) Cf. Accord between the Federation, the federal states and the national associations of local authorities on the establishment of an Advisory Commission of 2003, New edition 2016 <https://www.beratende-kommission.de/en/commission>.
- (52) Cf. Aktueller Stand der geplanten Reform der Beratenden Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, insbesondere aus jüdischem Besitz (Limbach-Kommission), Deutscher Bundestag Drucksache 18/9936, 7 October 2016, p. 1–8.
- (53) Cf. 20 Jahre Washingtoner Erklärung – Wirksamere Aufarbeitung der NS-Raubkunst durch Restrukturierung und Digitalisierung, Deutscher Bundestag Drucksache 19/5423, 1 November 2018, p. 1–4.
- (54) Cf. Beschlussempfehlung und Bericht des Ausschusses für Kultur und Medien (22. Ausschuss), Deutscher Bundestag Drucksache 19/14901, 7 November 2019, p. 1–12, p. 10. Cf. also Schoeps 2022, as in note 45, p. 129.
- (55) Cf. Künftiger Umgang mit NS-Raubkunst, Abgeordnetenhaus Berlin Drucksache 18/3046, 23 September 2020, p. 1–47, p. 5. The deputy chair Prof. Wolf Tegethoff called for the same thing. Cf. Wortprotokoll der 22. Sitzung, Ausschuss für Kultur und Medien, 20 February 2019, as in note 41, p. 29.
- (56) As of May 2020, the office was equipped with two staff members, with jurisprudential and (art)historical reference.; it has also had an assistant since September 2022. Prof. Benjamin Lahusen was head of the secretariat from May 2020, Dr. Gesa Vietzen took over as acting head from October 2022 to January 2023, and Julia Albrecht has been in charge since January 2023.
- (57) Cf. BT-Drucksache 19/13511, 24 September 2019, as in note 39, p. 5.
- (58) Regarding the fact that the support was originally to be primarily organisational in nature, see the Statute of the German Lost Art Foundation §2 paragraph 6. www.kulturgutverluste.de/Webs/DE/Stiftung/Grundlagen/Satzung/Index.html
- (59) Cf. BT-Drucksache 18/9936, 7 October 2016, as in note 52; BT-Drucksache 19/10058, 10 May 2019, as in note 41, p. 11.
- (60) Cf. BT-Drucksache 19/10058, 10 May 2019, as in note 41, p. 3; Pferdenges 2021, as in note 45, p. 50 and p. 55.
- (61) „Es ist schlicht unverständlich, dass ein Staat den Mediationsmechanismus ablehnt, den er selbst geschaffen hat.“ [“It is simply incomprehensible for a state to be able to reject the mediation mechanism that it has itself created.”] Hans-Jürgen Papier, in: Catherine Hickley: Was this Picasso lost because of the Nazis? Heirs and Bavaria Disagree, New York Times, 8 June 2021.
- (62) Cf. Pferdenges 2021, as in note 45, p. 52.
- (63) Cf. Druba 2014, as in note 4, p. 188.
- (64) Cf. Koalitionsvertrag 2021–2025 zwischen SPD, BÜNDNIS 90 / DIE GRÜNEN und FDP, p. 125.
- (65) “At every stage of the procedure it shall be the Commission’s task to work towards an amicable settlement. As a result of its work, the Commission may issue recommendations that will be published together with their explanations. Public institutions and private parties are expected to follow these recommendations.” Accord between the Federation, the federal states and the national associations of local authorities on the establishment of an Advisory Commission of 2003, New edition 2016, paragraph 2 <https://www.beratende-kommission.de/en/commission>
- As early as 2014, Georg Heuberger argued in favour of strengthening the Advisory Commission, while also noting that just and fair procedures were required in order to restore peace (and justice) on a lasting basis. According to Heuberger, the goal must be for the parties involved to arrive at an amicable settlement: the result of this settlement was irrelevant, he said; Heuberger 2014, as in note 48, p. 200.
- (66) According to Stefanie Pferdenges, the procedures are increasingly reminiscent of judicial proceedings and rulings. Cf. Pferdenges 2021, as in note 45, p. 51 and p. 59.
- (67) Cf. also Pferdenges 2021, as in note 45, p. 55f. Schoeps 2022, as in note 45, p. 129.
- (68) Cf. Washington Conference Principles on Nazi-Confiscated Art. Released in connection with the Washington Conference on Holocaust-Era Assets, Washington, DC, 3 December 1998.

Mediation by the German Advisory Commission – idea and realisation

The German Advisory Commission was founded in April 2003 based on principle 8 of the Washington Principles. In accordance with principle 11, it was assigned to act as a mediator in cases in which the parties failed to arrive at a solution on their own.

During the twenty years of its existence, the Commission has often been criticised for various reasons. Some of the criticisms have been taken on board as reforms, while others still remain. The baseline of most of the lasting criticism is possibly to be found in its procedural design. A closer look at this point could help identify the problem and potentially serve as an initial step in solving it.

The Washington Principles: catalyst and point of reference

In his presentation, Secretary Stuart E. Eizenstat, the leader of the American Delegation at the Washington Conference, explained the idea behind the conception of the Washington Principles, and especially the principle concerning the finding of “just and fair solutions”. According to him, the principles were not, in themselves, a solution. Instead, they were rather a means by which nations can fashion their own solutions consistent with their own legal systems. Regarding principle 11, he said that for him it spoke to the need to give the other principles vitality, for example by making use of alternative dispute resolution mechanisms. He strengthened the notion that art claims do not have to be winner-take-all propositions that produce prolonged struggles in the courts and drain the resources of both parties. Instead he emphasised that in an atmosphere of good-will a wide range of solutions was there to be found.

As a result of the non-binding character of the Washington Principles, the participating nations have always been free to act within their different legal systems to implement the shared ideas set down. In Ger-

many, up to that time, the return of cultural property, where it actually took place, was generally based on US and western military government law, subsequent federal law and German civil law as applied by the courts.

Even though it was declared to be non-binding, principle 11 of the Washington Principles implies a tendency towards the establishment of alternative dispute resolution mechanisms, but it does not support any specific approach, whereas Stuart E. Eizenstat concretely named mediation, arbitration and negotiated settlements.

Alternative dispute resolution is not a legally defined term, but it is commonly perceived as an alternative to court-related dispute resolution. It can be subdivided into methods that aim to solve the dispute by the parties themselves, e.g. negotiation or mediation, and those that are to be solved by a neutral third person, e.g. arbitration. The methods that seek to have the dispute resolved by the parties themselves can again be divided into those in which the parties negotiate the dispute solely by themselves (negotiation) and those where a third person supports the parties at a level jointly requested by the parties to arrive at their own solution (e.g. mediation). Within this scale of differentiation there are other methods which can be seen as a mixture of the methods mentioned, such as e.g. med-arb dispute resolution, or those which resemble such methods to a certain extent but have their own additional characteristics, such as conciliation.

The procedural construction of the German Advisory Commission – mediation?

From the moment of its public presentation, the German Advisory Commission was intended to act as a mediator. As we have seen, there were alternatives to mediation, but there is no evidence of any discus-

sion taking place regarding the design of Commission's procedures. The designation as "mediator" was accompanied – likewise from the very beginning – by the commission's competence to sum up its deliberations in a recommendation. Initially this was not phrased as being optional. Since that time, the conclusion of the procedure by recommendation has become mandatory, even though every one of the twenty-two cases to date has ended with a recommendation being issued, and the procedure is designed to end in a recommendation, in line with the Rules of Procedure.

The fact that the Commission was given the title of Advisory Commission and declared to be a mediation panel, given the power, or at least the option, of issuing a concluding recommendation is a good reason to take a somewhat closer look at the construction of the procedure it follows. The question is whether the German Advisory Commission really acts as a mediator and whether the nature of the procedure it follows really can be qualified as mediation.

According to its polymorphism, its wide range of fields of application and its transdisciplinary nature, the term "mediation" can be qualified in various ways. Nonetheless, the context in which it is used by the German Advisory Commission can be characterized as a judicial one.

Requirements of the European mediation directive and MediationsG

Even in the judicial context, there is no general definition for the term "mediation". In international law there have been several attempts to provide one to date (e.g. UNCITRAL Model Law or ICC Mediation Rules). At the time the Advisory Commission was installed, no such general definition was available in German legislation either. The German law on mediation (*Mediationsgesetz – MediationsG*) entered into force in 2012. In section 1 of this law, "mediation" is defined as a confidential and structured procedure in which the parties, with the help of one or more mediators, voluntarily and autonomously seek an amicable resolution of their conflict.

MediationsG is based on the European mediation directive. According to article 3 of the European directive, "mediation" means a structured process, however it is

named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement to settle their dispute with the assistance of a mediator.

The regulation of mediation in European and in German jurisdiction does not have the effect that with their promulgation, only issues can be called mediation which are covered by the definition. But in a judicial field, they at least set a landmark – both for the parties concerned and the public at large.

In order to obtain an idea of the material sense of the term "mediation" in the jurisdiction in which the German Advisory Commission is situated, the focus here will be put on its material scope of application and its main characteristics corresponding to the relevant definitions. The material scope of application of the European mediation directive is specified in its recital 11, which states that, among other things, it should not apply to processes administered by persons or bodies issuing a formal recommendation, whether or not it be legally binding as to the resolution of the dispute. Given that the procedure of the German Advisory Commission is not obligatory but regularly ends with a recommendation, this shows that in its actual design, the procedure followed by the German Advisory Commission is not covered by the material scope of the European mediation directive.

Leaving this behind and looking solely at the definition of mediation in this directive, the picture becomes more differentiated yet clearer still. In order to qualify a process as mediation in this sense, there has to be a structured process. A particular structure is not required, so given the regulations in section 3 to 6 of the Rules of Procedure, this requirement is met. In addition, this process requires two or more parties to a dispute to attempt by themselves, on a voluntary basis, to reach an agreement to settle their dispute with the assistance of a mediator. Regarding recital 13 of the mediation directive, the mediation provided for in this directive is to be a voluntary process in the sense that the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time. A key point here is that the parties have to be in a position to act autonomously concerning the arrangement and termination of the process as well as the choice of the

mediator. The role of the mediator is to assist them to find their own solution to an extent designated by the parties.

The process of the German Advisory Commission is mainly composed of a written procedure supplemented by a hearing. According to Jutta Limbach, the first chair of the German Advisory Commission, the hearings provide an opportunity for the parties to make their view clear and for the Commission to verify unresolved points or clarify contradictions. The outcome of this is that the process of the German Advisory Commission is not directed to provide a platform for the parties to address the case and jointly resolve their dispute on their own. On the contrary, the interaction is always directed from one party to the Commission and vice versa, with a copy being provided for the other party (cf. section 4 (5) of the Rules of Procedure). In this respect, the procedure resembles an arbitration or court procedure. At the very most, it is vaguely reminiscent of a so-called caucus mediation, in which the mediator merely acts as a shuttle between the parties. But even in a caucus mediation, the development of the resolution and the design of the process itself is entirely in the hands of the parties themselves, which is not the case in the process followed by the German Advisory Commission.

The autonomy of the parties is one of the characteristic features of mediation; from the point of view of some representatives it is in fact the crucial characteristic feature. For this reason, this lack of autonomy as determined means that the process in this case cannot be qualified as mediation.

Concerning the definition of mediation as set out in the European mediation directive, besides being autonomous in character, the process has to be voluntary. According to recital 13 of the mediation directive, voluntariness in this context means that the parties are to be able to terminate the process at any time. The Rules of Procedure of the German Advisory Commission do not include a specific regulation concerning the time or the conditions of the termination of the process. In accordance with this, the process followed by the German Advisory Commission would initially seem to be

voluntary. In fact, however, a differentiation has to be made here according to the holder of the cultural property. Public institutions are de facto obliged to consent to the process if requested, because if they refuse to do so, they are denied public subsidies. The same would apply in the case of a withdrawal from the process, so participation cannot actually be classified as voluntary. Regarding private holders of cultural property, there are no such financial constraints. But as seen in the twelfth recommendation (*Heirs of Alfred Flechtheim v. Stiftung Kunstsammlung Nordrhein-Westfalen*), even on the side of the applicants as a private party, there was ambiguity regarding this point. The applicants in this case withdrew their participation in the proceedings, but the Commission pointed out that the proceedings had already been properly concluded, having involved the hearing of the parties and the Commission's discussion and decision. The result of this was that the declaration of withdrawal from the proceedings by this party had no effect on the subsequent publication of the Commission's recommendation. This shows that the applicant party in this case was not able to terminate the process at any time. Here again, the structure of the process cannot be classified voluntary.

As demonstrated, the proceedings followed by the German Advisory Commission do not comply with the fundamental characteristics of the definition provided by the European mediation directive of the term mediation, leaving aside that it does not even fit in terms of its material scope of application due to the fact that it regularly issues final recommendations.

Given that section 1 *MediationsG* is based on the European mediation directive, the main characteristics of the definitions of mediation in the two are similar. This is true in the case of the requirement for a structured procedure as well as the requirement that the parties in the procedure voluntarily and autonomously seek an amicable resolution of their conflict. In addition to this, section 1 *MediationsG* states that the procedure has to be confidential. Even though it is not incorporated in the definition itself, the European mediation directive deals with the confidentiality of mediation in its whole section 7. However, in both regulations, confidentiality as an expression of the autonomy of the parties

can be waived and is therefore mostly not seen as an essential characteristic of mediation. Despite this, in accordance to the requirements of the European mediation directive the procedure followed by the Advisory Commission likewise fails to comply with the essential characteristics of the definition of mediation as set out in *MediationsG*.

The German Advisory Commission – a mediator?

Besides the designation of the procedure, it can be called into question as to whether the German Advisory Commission can be qualified as a “mediator” in the sense of the European directive and *MediationsG*.

A “mediator” in the context of the European mediation directive is termed as any third person who is asked to conduct a mediation in an effective, impartial and competent way, regardless of the denomination or profession of that third person in the Member State concerned or the way in which the third person has been appointed or requested to conduct the mediation. In accordance with section 1 (2) *MediationsG*, a “mediator” means an independent and neutral person without authority to decide who guides the parties through the mediation.

Taking into account solely the concordant characteristics according to these definitions, a mediator has to be a “person” and this person has to act in an “impartial” way, or rather has to be “independent and neutral”.

Pursuant to a prevailing view, the term “person” in this context means a natural and not a legal person or institution. Irrespective of the concrete legal nature of the German Advisory Commission, it is clear that it can by no means be qualified as a natural person. In this light, the designation of the German Advisory Commission as mediator in section 1 (2) of the Rules of Procedure is at least questionable. Beyond this, acting as a mediator is predominantly seen as a function in person. Particularly in the light of the fact that it is not clear and not incorporated in the Rules of Procedure how many members of the Commission participate in each case and that, in addition, e.g. in the twelfth recommendation, it became obvious that not all of the members were present during the whole proceedings, it can be noted

that the German Advisory Commission fails to comply with the basic requirements of a mediator in the above sense.

Regarding impartiality or independence on the one hand and neutrality on the other, impartiality or independence mostly is regarded as a personal characteristic, whereas neutrality is mostly regarded as process-based. Impartiality and independence apply to the personal autonomy of the parties. Neutrality, on the other hand, means, that the mediator is obliged to treat the parties equally. Corresponding to section 3 *MediationsG*, these characteristics are not constitutive. In that event though, the mediator has to instruct the parties regarding the relevant circumstances (for the European level, see sec. 2.1 of the European code of conduct for mediators).

Where *MediationsG*, in addition to the European directive, requires that a mediator must not have the authority to decide, this complies with the above findings in relation to the material scope of application of the European directive of mediation.

Conclusion and key vision

In conclusion it can be stated that the proceedings of the German Advisory Commission are not covered by the term “mediation” either in the sense of the European mediation directive or the *MediationsG*. In addition, the German Advisory Commission cannot be qualified as a mediator in this context. So what conclusion can ultimately be drawn from this?

In answering this, it is useful to be aware of the role of procedural law and the use of a correct designation of a proceeding. Acting upon a basic understanding, procedural law helps arrive at a (legally based) decision which can be accepted by the disputants and the general public, i.e. provide legal certainty and legal peace. The parties involved trust the procedure, so that even a disadvantageous result can be accepted. In view of the above, an incorrect designation of a procedure and a confusion of procedures is likely to lead to irritation, a lack of confidence and ultimately to doubts as to the

accuracy of the substance of the resolution being just and fair.

Although this conclusion might appear surprising at first sight, the above analysis itself contains the key to the solution: the procedure has to be clarified. A clear procedure can help banish the pure appearance of arbitrariness, which is to be expected given that the procedure in this case in particular is led by a non-governmental body. This applies even more given that it establishes its recommendations among other things based on moral and ethical considerations (see section 1 (2) of the Rules of Procedure).

How can this be done? The first step requires a clear decision to be made about what kind of procedure is fitting to resolve the disputes in question. The second step involves ensuring that the procedure followed by the German Advisory Commission is clearly and comprehensibly designed according to this decision.

As to the first step, the finding of a fitting procedure to deal with the disputes in question, it is necessary to be aware of the different procedures and their basic distinguishing criteria as well as clarify what is to be the central objective of the procedure and who it is to

be directed at. For example, a central objective might be to advise someone, arrive at a resolution which the parties agree with or achieve some external goal such as legal certainty or the acknowledgement of historical injustice.

There is no procedure which meets all demands uniformly. The current design of the German Advisory Commission can be seen as a well-meant attempt to do so. But it has at least to be acknowledged that, though it may be an admirable endeavour, an all-in-one solution is not a realistic option. So maybe it is time to come to terms with the hard but fundamental and constructive reality and create a procedure that corresponds to the specific nature of the disputes in question that can act as a clear guideline for all those concerned.

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Views of Restitution: Gutmann Family and Museum Boijmans Van Beuningen

In the autumn of 2022 Museum Boijmans Van Beuningen restituted six sixteenth-century majolica plates to the heirs of the Jewish Gutmann family. The children of Fritz and Louise Gutmann, who were murdered by the Nazi regime, made efforts after the Second World War to recover the family's art collection.

Last year the Restitutions Committee advised the museum and the Gutmann heirs to engage in discussion. It was decided in fruitful consultation to divide the eleven plates. The family received six plates and the museum is keeping five.

A video has been made of this special story of the Gutmann family and the process of restituting the majolica plates.

Use the following link to watch the video

<https://www.youtube.com/watch?v=z5HHQNRfMNE>



SIMON GOODMAN LOOKS AT THE MAJOLICA PLATES
IN DEPOT BOIJMANS VAN BEUNINGEN

Dick Oostinga Vice-Chair of Restitutions Committee



DICK OOSTINGA
PHOTOGRAPH: SERGE LIGTENBERG

With effect from 1 February 2023 Dick Oostinga will supervise the Restitutions Committee temporarily as vice-chair. The Restitutions Committee was established in 2001 and advises the State Secretary about applications for the restitution of items of cultural value that were looted or lost involuntarily in some other way during the Nazi regime.

Lawyer and former notary Dick Oostinga has been a member of the Restitutions Committee since 2018. The State Secretary is responsible for appointing committee members and she will initiate the process of selecting a new chair and a new committee member in the near future.

Use the following link to read the complete press release <https://www.restitutiecommissie.nl/en/news/dick-oostinga-vice-chair-rc/>

Round Table on the Evaluation of Bührle Collection Provenance Research – Final Report

At the end of August 2022, the City and Canton of Zurich and the Zürcher Kunstgesellschaft set up a Round Table to define the content of the mandate for an independent evaluation of the provenance research conducted to date into the Emil Bührle Collection, and to propose to the City and Canton of Zurich and the Zürcher Kunstgesellschaft an expert or team of experts to carry out that evaluation. An interim report on these works have been published in the [Newsletter of January 2023 – N°15](#). The Round Table has now completed its work. It has precisely defined the matters to be considered within the mandate and proposed Prof. Raphael Gross as the expert (<https://www.ius.uzh.ch/de/staff/professorships/alphabetical/uhlmann/KKR.html>). The City and Canton of Zurich

and the Zürcher Kunstgesellschaft have welcomed these recommendations. They will communicate separately about the granting of the mandate, probably at the end of March 2023. For now, the Round Table's work is complete. It will take delivery of the results of the evaluation and assess whether the mandate has been fulfilled; it will not, however, conduct its own appraisal of its content.

The report of the Round Table is [public and available](#) in German (original), French and English. It may be of some general interest as it is the product of an intensive discussion what questions must be covered by provenance research and what standards must be satisfied. The Round Table proposed:

I. Content of the mandate

[...]

1. Review of the existing research

Sources: Have all the authoritative sources been included and evaluated correctly (overall or with respect to individual works)? Are the source materials sufficient to allow reliable statements to be made about the Bührle Collection? What other sources (e.g. from art dealers, the Bührle family private archive) may also need to be consulted, and how could this take place?

Methodology: How do you assess the methodology used to compile the historical information in the Bührle provenance research? Were the sources evaluated completely and in accordance with generally recognised methods (overall or with respect to individual works)?

Correctness: Is the historical information in the Bührle provenance research correct? Can any statements be made regarding the correctness of the information overall or with respect to individual works?

Context: Have the history of the previous Jewish owners and the historical context of the transactions been adequately appraised, and have the relevant documents been incorporated completely, and in a methodologically and factually correct way (overall or with respect to individual works)?

Standards: What standards of national and international provenance research exist? How have they changed over time? Does the Bührle provenance research meet those standards (overall or with res-

pect to individual works), having regard in each case to the time at which the research was carried out and by present-day standards? Appropriate account should be taken of this perspective with regard to the preceding questions as well.

Responsibility: What is your assessment of the fact that staff of the Bührle Foundation carried out their “own” provenance research (issue of partiality)? How do you assess the independence of the researchers commissioned by the Bührle Foundation (and their results)?

Collaboration with the mandatee(s): Did the Bührle Foundation and the Kunsthaus Zürich make available to you the documents you needed to fulfil this mandate? Do you have any further comments on the collaboration?

2. Assessment

Classification: What is your assessment of the classification undertaken in the Bührle provenance research, with regard to both the classification itself and the categorisation of individual works?

Cultural property confiscated as a result of Nazi persecution: Have you identified substantiated indications that there are works in the collection which may constitute cultural property confiscated as a result of Nazi persecution? If so, disclose the normative basis you used to arrive at this conclusion (civil law, Washington Principles, follow-up declarations, German Guidelines [“Handreichung”], etc.) and explain the choice as well as the reasons for any categorisation as cultural property possibly confiscated as a result of Nazi persecution. Does your assessment change depending on whether or not you disregard a certain basis? What is the importance of individual aspects of the Washington Principles (burden of proof, period and geographical scope of validity, etc.) in your assessment? Answer the question with particular reference to the works previously owned by Jewish people.

3. Presentation of results and further work

Presentation of the results: Can you make any comments on the way in which the results of the provenance research are presented by the Bührle Foundation and the Kunsthaus Zürich?

Further work: If you have identified gaps and omissions when reviewing the existing research (point I.1): can you, within the scope of this mandate, make any recommendations for remedying those gaps and omissions (resources required, time horizon, people), insofar as you are not able to remedy them yourself within the scope of the mandate?

Outlook and solutions: Do you have any further comments? Are there any other questions that need to be answered, and if so, what procedure do you recommend, if you are not able to answer the questions directly yourself? What aspects in particular should further provenance research pay attention to? Do you have any further recommendations regarding the procedure?

II. Framework for the mandate

[...]

One must keep in mind that the mandate concerning the Bührle collection is not the typical case as it bases on already existing research. Still, its standards may be applied *mutatis mutandis* for further research.

The mandate tries to separate the quest for sound historical facts from ethical and normative judgements, knowing that these fields are closely linked as one may neither assess without proper factfinding nor

search for facts without guidance what are the normative questions. The Round Table formulated in this respect (report, n. 18):

“One of the most difficult issues within this mandate concerns the demarcation line between historically objective and normative statements. It touches on the concept of provenance research and its limits. One example of this is in classification, where aspects that at least in part

constitute value judgements are involved. For this reason, this issue is raised in the second part of the mandate description. This also takes up the Kunsthaus's central demand that no works should be displayed where there are substantiated indications of cultural property confiscated as a result of Nazi persecution. In this regard, the Commissioning Bodies refer to the Terezin Declaration [...]. Its applicability is uncontested. Other legal sources are less apparent and their possible applicability must be analyzed and decided by the mandatee(s). It is important that value judgements be reliably supported and justified from a normative perspective. It should be borne in mind here that the settlement of actual claims cannot be part of the mandate, because the Bührle Foundation is ultimately the owner of the works [...]."

The Round Table has also included questions of presentations of the research in the mandate.

The Round Table discussed the required disciplines on a number of occasions, including when selecting the potential mandatees. It assumed that "[h]istorical knowledge and experience in dealing with provenance issues appear indispensable [and that] a knowledge of law for issues of value judgement is at least desirable" (report, n. 20).

This question is linked to the question whether a single person or a committee would be preferable. The report states (report, n. 32):

"A clear majority of the Round Table preferred a single individual, in order to avoid the time-consuming processes of reaching agreement among a group of people. Collaboration was viewed as potentially difficult because those on the shortlist were drawn from different disciplines; though a minority actually viewed this as an advantage. The Round Table was unanimous in believing that a single individual would also have to work across disciplines and make use of specialist expertise. The relatively tight schedule was another argument for mandating a single individual."

Of course, in other settings one may easily come to other conclusions.

A last comment concerns the functioning of the Round Table. It was no doubt a courageous decision to pose such delicate questions, including the proposal for an

expert, in the hand of the Round Table, a procedure that has little predecessors. Many procedural aspects must be decided (report, n. 8 seq. and n. 23 seq.). From a slightly biased perspective as delegate, I would contend that the Round Table has worked so far. Of course, the substantial works on the provenance research are yet to begin. I hope for the best and wish to thank the members of the Round Table for their great dedication and constructive involvement, and also Prof. Raphael Gross for his willingness to take on the mandate.

The members of the Round Table are as follows (in alphabetical order):

Valérie Arato (Swiss Federation of Jewish Communities)
 Tobia Bezzola (ICOM Switzerland)
 Konrad Bitterli (Association of Swiss Art Museums)
 Thomas Buomberger (IG Transparenz)
 Yves Fischer (Federal Office of Culture)
 Moritz Hany (Assistant Delegate)
 Tanja Hetzer (former member of the Independent Commission of Experts Switzerland – Second World War)
 Erich Keller
 Markus Knauss (IG Transparenz)
 Jacques Lande (Israelitische Cultusgemeinde Zürich)
 Ralph Lewin (Swiss Federation of Jewish Communities)
 Tessa Rosebrock (Schweizerischer Arbeitskreis Provenienzforschung)
 Esther Tisa Francini (Schweizerischer Arbeitskreis Provenienzforschung)
 Benno Widmer (Federal Office of Culture)

FELIX UHLMANN

Lehrstuhl für Staats- und Verwaltungsrecht sowie Rechtsetzungslehre, Universität Zürich. Head of Round Table

The Commission for the Compensation of Victims of Spoliation (CIVS) changes management in spring 2023



JÉRÔME BÉNÉZECH, DURING A SPEECH AT THE FRENCH EMBASSY IN BERLIN, LAST FEBRUARY

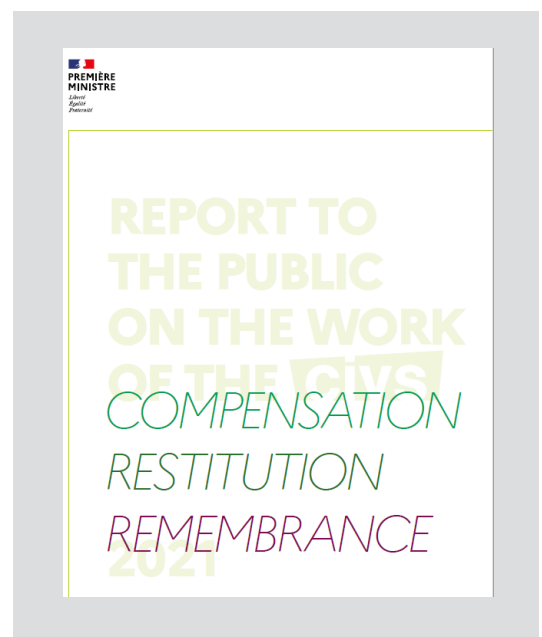
Mr. Jérôme Bénézech is leaving his position as Director of the CIVS at the end of March. After more than eight years at the head of this service, Mr. Bénézech will join the Ministry of the Armed Forces on 3 April 2023. His successor at the CIVS will be appointed shortly.

Publication of the 2021 activity report

The CIVS activity report has been published and can be downloaded online in English, German and French. It has been completely renewed both in form and in substance. The report reflects a new dynamic for the CIVS, a modernization of its approach that makes it more attractive and can reach a wider audience. The report is structured in 4 parts with a focus on the role of the principal rapporteur.

The first part (COMPENSATION) reports on the compensation paid, loss by loss, to the families of victims of anti-Semitic spoliations. The second part (RESTITUTION) recounts the restitution of cultural property that took place during the past year. The third part (RECALL) shows how the CIVS' action contributes to the work of remembrance, and the fourth part details the resources (budgetary, HR, technical) available to the CIVS to carry out its mission. The Report concludes with a selection of outstanding recommendations made by the Commission in 2021. This selection of recommendations responds to the recurrent request of our partners for several years.

Download the 2021 CIVS report, enjoy your reading: <http://www.civs.gouv.fr/news/2021-activity-report-has-just-been-published/>



“A la trace”

Stories of artworks looted during the Nazi regime

The podcast “A la trace” literally “On the trail” takes us into the world of research into looted artworks, the politics of reparation of looted property and long-term investigations. The artwork is no longer just an object of contemplation or study, it carries the history of its owners, the persecuted Jewish families. The object becomes a witness. And when these witnesses – until now silent – start to speak, it is the voice of the missing that we hear. Tracing the itinerary of a painting or an archive means restoring the memory of those whom Nazi ideology wanted to annihilate.

A documentary series proposed by the Ministry of Culture Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945 - M2RS, Mission for Research and Restitution of Spoliated Cultural Property (1933-1945), written by Léa Veinstein, narrated by Florence Loiret Caille and directed by Arnaud Forest.

Each episode tells the story of one or more works looted in Paris, Vienna, Bordeaux or Munich, whose provenance had to be traced and whose owners, and sometimes the rightful owners, had to be identified. Each episode gives the opportunity to speak to the descendants or representatives of the looted persons, to provenance researchers, to the museums that kept the works and to a member of the M2RS.

The series will be available on all platforms from 15 March.

<https://www.mahj.org/fr/media/histoires-de-spoliations>



Episode 1: On the other side of the painting
Nudes in a landscape, Max Pechstein looted from Hugo Simon

Episode 2: The Shadow of Klimt
Roses under the trees, Gustav Klimt stolen from Nora Stiasny

Episode 3: Unknown at this address
Still life with ham, Floris van Schooten (MNR 708) and Dishes, fruit and glasses on a table, Pieter Benoit (MNR 709) stolen from Mathilde Javal. This episode includes an interview with the president of the CIVS, Michel Jeannoutot, who was specially invited for the occasion.

Episode 4: The seven differences
The Smell, Royal Mortlake Manufactory, tapestry, looted from the Drey family

Episode 5: Twice Stolen Letters
Literary and personal archives looted from Michel Georges-Michel

Episode 6: The surviving paintings
Poplars (R26P), Trees (R27P) and Composition (R28P) by Fedor Löwenstein looted from the artist

A Museum – An Object – A Story

Virtual gallery on Nazi provenance research and restitution in Austrian museums, collections and libraries



DESIGN DETAIL OF THE VIRTUAL GALLERY BY
ALTHALER+OBLASSER © VOLKSKUNDEMUSEUM WIEN

On the occasion of the 25th anniversary of the enactment of the Austrian Art Restitution Act in 2023, the [Volkskundemuseum Wien](#) initiated a project to collect stories of already restituted artefacts or such which are subject to provenance research from Austrian (federal) collections. These stories are presented in a digital museological framework in order to make them publicly and internationally available. All Austrian institutions that are obliged to execute provenance research according to the Art Restitution Act were invited by the Volkskundemuseum Wien to contribute to this project in a freely chosen form. The contributions are thus very diverse: The virtual gallery provides audios, videos and illustrated text material to inform about objects that were once looted by the Nazis, later investigated by provenance researchers and recommended to be returned by the Austrian Art Restitution Advisory Board. The respective contributions will be published successively between 20 January and 18 April 2023.

The release of each contribution will be announced on [Facebook](#), [Twitter](#) and [Instagram](#).

The call for contributions was addressed to the managers of the following institutions:

- Art Collections of the Academy of Fine Arts Vienna
- Albertina
- Museum of Military History
- Furniture Museum Vienna
- Kunsthistorisches Museum Vienna
- Leopold Museum, Museum of Applied Arts
- mumok - Museum of Modern Art Ludwig Foundation Vienna
- Natural History Museum Vienna
- Austrian Gallery Belvedere
- Austrian National Library
- Technical Museum Vienna
- Theatre Museum Vienna,
- Vienna University Library
- Weltmuseum Vienna



OPENING PAGE OF THE CONTRIBUTION OF THE MUSEUM OF
MILITARY HISTORY BY STEFAN KURZ
© VOLKSKUNDEMUSEUM WIEN

The virtual gallery is part of a larger project dealing with provenance research on Nazi-looted artefacts and restitution practices at the Volkskundemuseum Wien. At the centre of the project is the exhibition [Collected at any cost! Why Objects Came to The Museum through National Socialism and How We Deal with Them](#) that will open on 21 April 2023. In accordance with the virtual gallery, the exhibition is bilingual (German and English). The virtual gallery is accessible online and will be integrated into the exhibition via a dedicated media station.

Project team

Maria Raid
Kathrin Pallestrang
Magdalena Puchberger
Claudia Spring

Design and implementation

[Althaler+Oblasser](#)

This project was realized in partnership with the [Austrian Commission for Provenance Research](#)

Ein Museum – ein Objekt – eine Erzählung

HGM / MHI
Heeresgeschichtliches Museum
Militärhistorisches Institut



D | E

Stummelpfeifenkopf | Bestand Dr. Hanns Fischl

Autor:
Stefan Kurz

Sammlung Hanns Fischl

Das vorliegende Objekt entstammt der vielfältigen, vorrangig kultur- und militärhistorisch ausgerichteten Sammlung des Juristen Dr. Hanns Fischl (geb. 8. Juli 1883). Dieser arbeitete ab 1918 als Rechtsanwalt in Wien, war nach evangelischem Ritus verheiratet und Vater zweier Kinder. Neben seiner Tätigkeit als Rechtsanwalt war er schriftstellerisch tätig, publizierte Beiträge in Zeitungen und Zeitschriften und veröffentlichte sowohl belletristische Werke als auch juristische Fachliteratur. Nach dem „Anschluss“ wurde Fischl, der bereits 1918 aus der israelitischen Kultusgemeinde ausgetreten war, vom nationalsozialistischen Regime als Jude verfolgt. Aufgrund der diskriminierenden Bestimmungen der Fünften Verordnung zum Reichsbürgergesetz vom September 1938 konnte er seinen Beruf nicht mehr ausüben und wurde dadurch seiner Existenzgrundlage beraubt. Bereits zuvor hatte er im Mai 1938 in einem Auswanderungsfragebogen der Fürsorgezentrale der IKG Wien seine Absicht bekundet, nach Palästina zu emigrieren, um sich dort am Aufbau der Verwaltung und der Landesverteidigung eines zukünftigen Staates zu beteiligen. Im Frühjahr 1939 versuchte Hanns Fischl schließlich, nach Frankreich zu flüchten, was ihm jedoch nicht gelang. Wohl um seinen Lebensunterhalt und den seiner Familie zu bestreiten, begann er damit, Stücke aus seiner Sammlung an mehrere Wiener Museen und Bibliotheken zu veräußern.

▶ WEITERLESEN



Stummelpfeifenkopf, um 1917/18 / Foto: Rüdiger Weghaupt © HGM/MHI

Titel: Stummelpfeifenkopf aus weißem Porzellan
Inventarnummer: 1943/28 /N117795
Entstehungszeit: 1917/18
Herstellungsort: Unbekannt
Hersteller*in/Künstler*in: Unbekannt
Material: Porzellan
Maße in cm: 12 x 9; Durchmesser: 3,5

Objektbeschreibung

Die Bedeutung des Restitutionsfalles

Provenienzforschung am HGM

Beiratsbeschluss 2022

Ein Museum – ein Objekt – eine Erzählung
Virtuelle Galerie zur NS-Provenienzforschung und Restitution in österreichischen Museen, Sammlungen und Bibliotheken

Volkskundemuseum Wien
www.volkskundemuseum.at



VOLKSKUNDE
MUSEUM
WIEN

Kommission für Provenienzforschung
www.provenienzforschung.gv.at

Bundesministerium
Kunst, Kultur,
öffentlicher Dienst und Sport
Kommission für Provenienzforschung

Dieses Projekt des Volkskundemuseum Wien wurde in Kooperation mit der Kommission für Provenienzforschung umgesetzt.

ÜBER DAS PROJEKT | IMPRESSUM

OPENING PAGE OF THE CONTRIBUTION OF THE MUSEUM OF MILITARY HISTORY BY STEFAN KURZ
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The future of *Wiedergutmachung* records

“To feel what one sees, to give what one feels, is what defines the artist’s life.”

(Max Klinger)



MUSIC FROM THE FILES

Art in the archives: out-of-the-ordinary discoveries in *Wiedergutmachung* records

Buoyant, bright music and attempts to make amends for Nazi crimes: how does that fit together? Intellectually, not at all. As impossible as it is to achieve literal *Wiedergutmachung* (“making good again”) for the Nazi regime’s crimes, it would seem equally inconceivable to associate popular music, *chansons* from the 1920s and 1930s and jazz-inflected songs with the stodgy administrative procedures of the German public authorities who processed survivors’ applications requesting compensation payments for unspeakable atrocities and who continue to process these records today.

But this intersection does exist, because artists who applied for compensation often submitted compositions and sheet music as evidence of the professional and commercial damage they suffered. This included not only noted composers such as Friedrich Hollaender and Curt Lewinnek but also musicians who are known only to experts. Unfortunately, some of the-

se major and minor composers have been forgotten, their works hidden away in the files. But thanks to archival research, their artistry is once again coming to light, re-emerging from the records. The original works of art – some of which are unique artefacts – preserved in this manner are now, decades later, opening up new perspectives on the legacy of records compiled as part of Germany’s *Wiedergutmachung* process, while also suggesting new purposes for which this legacy might be used.

To expand and simplify the ways in which these archival records can be studied and used, a project is now underway to facilitate and digitise access to *Wiedergutmachung* records. The project aims to enable more variegated research into (a) the personal histories of persecuted individuals before 1945 and (b) the German public administration’s handling of these histories after 1945, and thereby to enhance our understanding of the interrelationships between personal destinies and state action. These objectives have led to the establishment of a new online platform for *Wiedergutmachung* hosted by the Deutsche Digitale Bibliothek (German Digital Library).

On 1 June 2022, an official ceremony took place on Petersberg Hill near Bonn, where officials from the Federal Ministry of Finance and various federal and regional archives signed a framework agreement to mark the launch of the online platform and to help point the way towards the future of *Wiedergutmachung* policy. At the event, musical compositions from the archives were performed and given a modern treatment before a large international audience. An initial version of the *Wiedergutmachung* website went online that same day. The online platform is a key component of what the Federal Ministry of Finance refers to as the “transformation” of Germany’s *Wiedergutmachung* policy. In the coming years and decades, the website will be continuously expanded in terms of both technical capacity and subject matter. In the

future, it will provide centralised access to all records and documents pertaining to the measures that the German government has taken to make amends for Nazi crimes.

The project, which has been in planning for a number of years, will enable the records to be studied and utilised in increasingly sophisticated and multifaceted ways.

The transformation of *Wiedergutmachung*

Wiedergutmachung – the term that Germany uses to describe its efforts to make amends for Nazi crimes – is one of the country’s most long-standing political tasks. Since 1952, over €82 billion in compensation has been paid to victims of Nazi crimes worldwide. This has been done on the basis of both statutory and non-statutory arrangements. In 2023, over €1 billion will be made available to remaining survivors. Nevertheless, it is increasingly clear that direct payments to survivors of the Holocaust, Porajmos and Nazi terror are gradually coming to a “natural” conclusion. As this watershed approaches, the German government knows that its moral responsibility does not have an end date, for example when the final payment is made to a victim. As Chancellor Konrad Adenauer emphasised in a September 1951 speech to the German Bundestag, Germany has not only a material responsibility but also – and especially – a moral responsibility to make amends for the Nazi past. In 2017, the Federal Ministry of Finance initiated the process of “transforming” German *Wiedergutmachung* policy, with the aim of gaining a better understanding of what it means when compensation pensions and home care services for Holocaust survivors eventually come to an end. This transformation process is designed to be open-ended. The intention is to identify and develop future follow-up tasks for German *Wiedergutmachung*.

The online platform for *Wiedergutmachung*

The online platform is already firmly established as one of the key future tasks of *Wiedergutmachung*. As the platform grows, it will provide continuously expanding access to the foundations of German *Wiedergutmachung* policy: namely, the huge and heterogene-

ous archive of records accumulated in over 70 years of administrative activity.



OFFICIAL LAUNCH OF THE ONLINE PLATFORM (THEME PORTAL)
WIEDERGUTMACHUNG ON 1 JUNE 2022

This “documentary legacy” stands as a testament to the state action that was taken to provide compensation and restitution to victims of Nazi persecution. The millions of records submitted by individual applicants who, in the context of an administrative procedure, described not only their own personal experience of persecution but also provided information on their family histories, including names, dates and places – as well as details on perpetrators and other victims – will serve as a valuable source of information not only for academic research but also for the relatives and descendants of victims and survivors worldwide. Every year, thousands of enquiries requesting this kind of information are submitted to archives and authorities in Germany and abroad, and the demand is likely to increase significantly in the foreseeable future.

The individuals who applied for compensation and restitution found the procedures to be highly bureaucratic, but the overall process produced a vast amount of information on individual histories of persecution as well as family backgrounds and connections. In the view of international partners such as the Israeli remembrance and research centre Yad Vashem, these autobiographical descriptions of persecution possess extraordinary value, and they are unique and underappreciated as a vehicle for the collective retelling of historical events. Moreover, these records not

only convey the history of the years before and after 1945 but also create a direct juxtaposition between the crimes that were committed and the measures that were taken to make amends for them.

Regardless of the outcome of individual applications, these records were (and continue to be) subject to government appraisal and a detailed, verifiable and well-grounded decision-making process that took place within the context of a highly bureaucratic, fact-driven administrative and assessment procedure. In many procedures, sworn statements were submitted and double-checked, expert opinions were requested, and information provided by applicants was verified or proven false. Appeals were lodged, and court proceedings were held that were sometimes adjudicated at the highest level before administrative or social courts at the federal or *Land* level. Decisions in some cases have been proven true or false on the basis of records that remain verifiable even after decades have passed. Political decisions were taken on the basis of positive and negative outcomes in administrative procedures and thereby became an integral part of theory and practice. Thus, in addition to providing in-depth information on individual cases, the records will also – for the first time, once they are pooled in a single platform – give extensive insight into political and internal administrative discussions, policy frameworks and decision-making processes.

Currently, there is still no single location in Germany or abroad where these documents can be accessed. The relevant documents are spread across a number of locations, including the Federal Archives, various *Land* archives, other locations in Germany and abroad, and sometimes even the offices that were responsible for processing them. For this reason, one of the main objectives for ongoing *Wiedergutmachung* efforts is to establish centralised online access to all relevant compensation and restitution records.

Institutions in Germany and around the world have been working with great dedication on this project in recent years. The Federal Archives, the Baden-Württemberg state archive, and the Leibniz Institute for Information Infrastructure in Karlsruhe have provided the Federal Ministry of Finance with highly motivated and skilled support in building and expanding the online platform. Over a period of decades, agreements will be concluded with additional archives and

record-keeping bodies in Germany and abroad, and the online platform's content will be gradually expanded. At the same time, the platform's technical capacities will be improved and upgraded on an ongoing basis. Because the content of some of the records is highly sensitive, the digitised material and information will not be made available outside of a “virtual reading room”, which will be operated on the basis of a carefully constructed rights management system. Additional factors that will facilitate the long-term development of the platform and expand the potential uses of the data it contains include the expiration of statutory and other deadlines as well as the integration of AI-based tools. The development of better and more efficient data analysis tools in the future may also make it possible to include documents that are not yet freely accessible due to data protection and privacy regulations.



THE MUSICIANS MARC SECARA, JONAS SCHOEN UND JOHANNES VON BALLESTREM DURING THE SIGNING-EVENT OF THE FRAME-CONTRACT FOR THE ONLINE PLATFORM WIEDERGUTMACHUNG

By providing new and comprehensive access to the primary sources behind Germany's compensation and restitution policies, the online platform will open up new and nuanced potential for school-based and civic education projects. The records contain detailed, comparable descriptions of individual histories of persecution, and through the use of critical textu-

al analysis, these descriptions can be understood as written testimonies by witnesses to history. The ability to access information on individual lives before, during and after persecution by the Nazi regime opens up a vast range of options for analysis and action within the context of educational projects. Who were the victims of Nazi persecution? What was done to them, and where did this happen? What happened after 1945? What conditions did they live in? Where did they live 10, 20, 30, 40 years after regaining their freedom? What compensation measures were available soon after the war, and what arrangements were adopted later? How did victims find out about these measures, and from whom? What decisions were taken in compensation and restitution cases, and for what reasons? Were these decisions positive or negative?

These questions are just meant as examples, because formulating multifaceted analytical questions is not the Finance Ministry's task, but rather the task of academics and researchers. Given the enormous volume

of records that have accumulated during a period that spans over 70 years, the opportunities opened up by pooling these archival collections will only become apparent over time.

Apart from their value for researchers and academics, these documents reveal facets of people's lives and work to families and the general public in ways that will always be painfully moving but that can also provide a sense of healing. For example, the re-emergence of the compositions written and performed by persecuted musicians is, in its own way, a small contribution to *Wiedergutmachung*. The art of these persecuted artists lives on.

KAI WAMBACH

Historian and Policy Officer at the Federal Ministry of Finance. He is responsible for the 'Theme Portal *Wiedergutmachung*' and the area of future tasks of *Wiedergutmachung*



VIEW OF THE AUDITORIUM / REPRESENTATIVES OF THE FEDERAL REPUBLIC AND THE LÄNDER DURING THE SIGNING-EVENT OF THE FRAME-CONTRACT FOR THE ONLINE PLATFORM WIEDERGUTMACHUNG

Art, Looting, and Restitution – Forgotten Life Stories

Friedrich Emil Guttsmann (1888-1959) was a successful businessman and sales representative. He lived with his wife Henriette and their two sons in Berlin. Due to antisemitic persecutions, he lost his employment and the family flat in Berlin after 1936. He was forced to take on menial factory jobs. For reasons of financial hardship he sold his valuables, furniture and art objects, among it the brush drawing *Auf Hiddensee* by the classicist German landscape painter Jakob Philipp Hackert. Out of fear for their safety

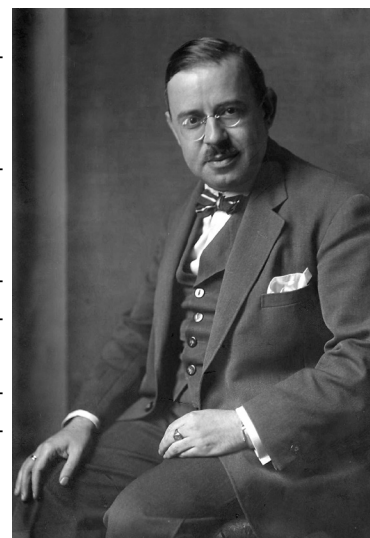


JAKOB PHILIPP HACKERT, AUF HIDDENSEE
BILDRECHTE: BPK / KUPFERSTICKKABINETT, SMB / JÖRG P. ANDERS

Friedrich Guttsmann and his wife Henriette took the heart-rending decision to send their teenage sons to Sweden. The family was reunited in 1948 when the parents emigrated to Sweden as well. They lived in modest circumstances, their health, wealth and career ruined by the Nazi Regime. In the course of a systematic provenance research of the holdings in the Kupferstichkabinett, Berlin's Museum of Prints and Drawings, it was discovered under which circumstances the brush drawing had changed ownership, namely that Guttsmann had sold it due to Nazi persecution. In consequence the work of [art was returned to the heirs](#) of Friedrich and Henriette Guttsmann in 2019.

In 1909, young art historian August Liebmann Mayer (1885-1944) began working for the Alte Pinakothek, Munich's renowned gallery. Having just finished his doctorate, he set out for a brilliant career in the art world both as curator and professor of art history. He was widely recognized as a leading expert of Spanish art and his expertise was much sought after in museums and the art trade.

In 1930 Mayer came under attack of fellow art historians who denounced him to the authorities. Although their claims that Mayer had issued false authentications to enrich himself were spurious he resigned from his positions. Within weeks of Hitler's rise to power Mayer was taken into "protective custody", his property



ART HISTORIAN AUGUST LIEBMANN
MAYER, CA. 1925 © PRIVAT

– amongst it Mayer's valuable art collection – was confiscated and sold in auction. After a suicide attempt in prison he was released. He fled with his wife and daughter to France, but after the German invasion he was eventually betrayed and arrested. In March 1944 Mayer was deported to Auschwitz and was murdered soon after his arrival. His only child, a fourteen-year old daughter, was left a stateless orphan. She emigrated to the USA.

In 2010, Bayerische Staatsgemäldesammlungen [restituted four paintings](#) from her father's collection to her.



RESTITUTION OF FOUR PAINTINGS FROM THE COLLECTION OF
AUGUST LIEBMANN MAYER, 2010
BILDRECHTE: BSTGS

Two different lives, two different fates. In the process of provenance research scholars frequently encounter stories like this – stories of men and women who owned works of art, as collectors or amateurs, patrons or art dealers, and who often played an active part in Germany’s art scene. They were expropriated and persecuted because of their Jewish descent. Due to their exclusion, persecution and extermination their contribution to German cultural life has been forgotten. The project *Kunst, Raub und Rückgabe – Vergessene Lebensgeschichten* (Art, Looting, and Restitution – Forgotten Life Stories) aims to reintegrate their names, their achievements and their fates in the collective memory. And it wants to show what it means for the descendants when works of art are restituted to them. Two teams of provenance researchers, science journalists, historians and art historians in Berlin and Munich work together to outline and realize this project.

Based on their provenance research, Stiftung Preußischer Kulturbesitz (SPK) and Bayerische Staatsgemäldesammlungen (BStGS) will feature 30 life stories on a website, portraying individual fates with multimedia contents – text, photographs, maps, and audio files. The cases are meant to represent a wide range of art ownership, from modest personal possessions to renowned large-scale collections.

Each portrait is supplemented by a short film, produced by the broadcasting corporations Rundfunk Berlin-Brandenburg (rbb) and Bayerischer Rundfunk (BR). The website will be accompanied by an outreach program to convey the significance of provenance research to a younger audience.

The website will go online in summer 2023, initially with five biographies, to be completed by the end of 2024. The project is funded by the Ministry of State for Culture and the Media.

On 23 February 2023 the project was presented to a large attentive audience in the Bode-Museum in Berlin (the recorded live-stream is available on [Youtube](#)). Claudia Roth, federal government commissioner for culture and the media, expressed her appreciation for the project’s focus on the life stories behind the objects stolen by the Nazi regime. She pointed out that stories connect to objects, are an inherent part of them, especially in the case of art works. Therefore the theft of a cultural object entails a violation of the narratives of families, communities, and nations.



CLAUDIA ROTH, FEDERAL GOVERNMENT COMMISSIONER FOR CULTURE AND THE MEDIA, SPEAKING AT THE LAUNCH OF THE PROJECT, BODE-MUSEUM BERLIN

BILDRECHTE: SPK / PHOTOTHEK.DE / SEBASTIAN RAU.

ILLUSTRATION: BR / ULI KNORR, GESTALTUNG: CHRISTINA STORCH

Josef Schuster, president of the Central Council of Jews in Germany, stressed in his welcoming address the importance of remembrance:

“This project is important so that memory does not fade; so that the stories of Jews do not disappear. And what else can follow from this than a responsibility - not to ‚make amends‘ (Wiedergutmachung), as it is sometimes called complacently and inappropriately - but to restore justice; to restore ownership?”



JOSEF SCHUSTER, PRESIDENT OF THE CENTRAL COUNCIL OF JEWS IN GERMANY, DURING HIS WELCOMING ADDRESS AT BODE-MUSEUM

BILDRECHTE: SPK / PHOTOTHEK.DE / SEBASTIAN RAU

Hermann Parzinger, president of the SPK, referred to the 1998 Washington Conference. A quarter of a century later a lot remains to be done, as the Nazi’s art theft was such an enormous crime: “The Nazis wanted to obliterate the memory of the former owners



and their families. With this project we want to commemorate as many people as possible, and we want to stand up against antisemitism. This is a pioneering project. Other institutions could and should participate.”

Bernhard Maaz, director general of Bayerische Staatsgemäldesammlungen, emphasised the importance of linking the results of provenance research to the individual fates. He highlighted the special obligation of the cultural institutions in Berlin and Munich: “Berlin, former ‘capital of the German Reich’ and Munich as the so-called ‘capital of the NS movement’ have more reason than other cities for an active historical reappraisal.”



MODERATOR SHELLY KUPFERBERG SPEAKING WITH KATRIN VERNAU, DIRECTOR OF RBB, ELLEN TRAPP, HEAD OF BR CULTURE PROGRAMME, BERNHARD MAAZ, DIRECTOR GENERAL BSTGS AND HERMANN PARZINGER, PRESIDENT SPK
BILDRECHTE: SPK / PHOTOTHEK.DE / SEBASTIAN RAU

The design on the big screen above the podium showed a still from the film on the Guttsmann family, the moment when Friedrich Emil Guttsmann takes Hackert’s drawing off the wall, having to part with it due to the dire economic circumstances the Nazi’s persecution brought him into. The picture shows a stormy scene at the Baltic coast, with three sailing ships battling their way through the rough seas, almost a symbol of the threatening and uncertain situation the Guttsmann family found themselves in. Friedrich and Henriette Guttsmann’s granddaughter, Ann-Charlott Henriette Mörner from Stockholm was on the podium. She described her emotions when Hackert’s drawing *Auf Hiddensee* was returned to her. Although she spoke in Swedish, with her statement translated consecutively by an interpreter, it was clearly understood what she meant when she recounted that it was an “andäktig”, a reverent moment. As her parents and grandparents rarely spoke about the



ANN-CHARLOTT HENRIETTE MÖRNER IN DIALOGUE WITH SHELLY KUPFERBERG
BILDRECHTE: SPK / PHOTOTHEK.DE / SEBASTIAN RAU

past, the picture and the restitution process were to her and her family like some pieces in a puzzle that suddenly fitted together.

The project *Kunst, Raub und Rückgabe – Vergessene Lebensgeschichten* is intended to commemorate the life and fate of Friedrich Emil Guttsmann, of August Liebmann Mayer, and many others. Their cases show that we are not only dealing with stolen art, but also with stolen souls, as Israel ambassador Avraham Nir-Feldklein aptly put it at the DZK conference on the occasion of the 20th anniversary of the Washington Principles in Berlin in November 2018.

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JULIA DEVLIN

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Projects of the Bonner Center of Reconciliation Studies

Politics of remembrance under the sign of ambiguity tolerance

The possibilities and impossibilities of reconciliation is one of the most relevant topics of our time. The Bonn Center for Reconciliation Research (BCR; Bonner Zentrum für Versöhnungsforschung) addresses the outstanding social significance of reconciliation. Reconciliation is a central topic in peace and conflict research, which enables interdisciplinary approaches to the entire range of humanities and social sciences. The BCR strives to develop a theoretically and methodologically sophisticated approach to reconciliation. Debates about post-colonial legacies and slave relationships' (cf. the cluster Beyond Slavery and Freedom: Asymmetrical Dependencies in Pre-Modern Societies) indicate the need for the observation of cultures in a comparative perspective. Scientists from different disciplines of the humanities and text sciences collaborate within the projects of the BCR to enable an empirically based and trans-cultural concept of 'reconciliation' and a theoretically sophisticated analysis of reconciliation processes based on empirical research. Which terms are used in other cultures and religions instead of the Christian or secularised, political, and 'Western' term 'reconciliation'? How, when, and why is 'reconciliation' achieved in different cultures: after a ceasefire or as a first public commitment to peace? How, when, and why are the terms 'reconciliation' and 'peace' used in different cultural and historical contexts? Is lasting reconciliation possible because of conflict transformation processes? All these questions are discussed against the background of the tension between reconciliation and irreconcilability.

In some research approaches, a 'paternalism-free' working definition of reconciliation is being developed. These working definitions aim to enable dialogue between cooperation partners and future-oriented cooperation in the area of development policy and political advice. In addition, reconciliation research raises the critical-reflexive question of the theological, philosophical, theoretical, and political traditions of the concept of reconciliation. The members of the

BCR assume that reconciliation has an 'added value' in relation to the concept of peace: whilst 'peace treaties' end armed conflicts, reconciliation is understood as a complex process in which competing memories clash. This is where research on the 'narrativity of reconciliation processes' comes in. In terms of a basic definition, researchers at The BCR assume that reconciliation could be understood as follows: 'The transformation of long-term hostilities between nations and states into free relationships of acceptance that have the character of trust and friendship.' However, what does 'reconciliation' mean? In practice, it must be determined on a case-by-case basis whilst considering the historical and cultural contexts in which conflict transformations are translated into reconciliation processes. The center does not seek a universal formula for reconciliation but rather observes and continually updates cross-culturally empirical research of the phenomenon and the semantics of 'reconciliation'. Thus, it promotes close cooperation with many international cooperation partners.



PROF. HANS-GEORG SOEFFNER, SPOKESPERSON OF THE NEW CENTER FOR RECONCILIATION RESEARCH, WELCOMED THE GUESTS IN THE UNIVERSITY'S FESTIVAL HALL
© BARBARA FROMMANN/ UNI BONN

For several years, interdisciplinary reconciliation research has been particularly important at the University of Bonn. The Center coordinates all activities in

the field of reconciliation research. Various university institutions, such as the Research Center for Provenance Research, Art and Cultural Property Protection Law (Die Forschungsstelle Provenienzforschung, Kunst- und Kulturgutschutzrecht), the Center for Historical Peace Research (Zentrum für historische Friedensforschung, ZhF), and the cluster Beyond Slavery and Freedom: Asymmetrical Dependencies in Pre-Modern Societies, are networked at the Center. In addition, intensive cooperation with the Institute for Advanced Study in the Humanities of North Rhine-Westphalia, Essen (Kulturwissenschaftliches Institut Essen) and non-university research centers: The German Institute of Development and Sustainability (IDOS) and the Bonn International Center for Conflict Studies (BICC) is promoted. Other international cooperation partners include the DAAD centers in Israel and Japan and the Democracia y Derechos Humanos research institute at the PUCP of the University of Lima.

The BCR is managed by Prof. Hans-Georg Soeffner as spokesman. The center's board of directors also in-

cludes Prof. Christine Krüger (modern and contemporary history), Prof. Stephan Conermann (Islamic studies) and Esther Gardei (sociology) as managing director. Members of the Center work in different projects of the research Areas (A. Conflict Transformation; B. Provenance Research; C. Cultural Heritage and Slavery, D. Peace Research). Prof. Matthias Weller and Prof. Christoph Zuschlag (Research Centre for Provenance Research, Art and Cultural Property Protection Law) are taking an in-depth look at the issues of 'restitution' and Nazi looted art in the role of reconciliation processes within the research Area Provenance Research.

Memory Politics and Ambiguity Tolerance

One project of the Center, lead by Hans-Georg Soeffner, Benno Zabel and Esther Gardei focuses the role of 'ambiguity tolerance' and 'memory politics'. An interdisciplinary working group, including Natan Sznaider (Tel Aviv), Moshe Zimmermann (Jerusalem), Constantin Goschler (Bochum), Birgit Münch (Bonn), Klaus Günther (Frankfurt), Takemitsu Morikawa (Tokyo) and many others, took off the current debate



MANY GUESTS FROM THE PARTICIPATING FACULTIES AND BEYOND ATTENDED THE CEREMONIAL OPENING. PROF. MOSHE ZIMMERMANN (HEBREW UNIVERSITY) GAVE THE OPENING LECTURE © BARBARA FROMMANN/ UNI BONN

as an opportunity for an interdisciplinary discussion. A joint publication by Wallstein Verlag is currently being published (forthcoming 2023).

Politics of remembrance and their political instrumentalization are more present than ever. Attempts to politically control collective memory characterize the public handling of historical events – particularly crimes against humanity – and the struggle for an identity-forming and integrative culture of memory. At the same time, however, the ideas about how memory policy should be discussed in society – and what it can achieve – differ widely.

Due to political differences, different ways of life and ideologies, there is a need for a common grand narrative in heterogeneous societies. According to the ideas of a politically guided imagination, a collective and cultural memory should find visible expression in it. The collective semantics articulated in this narrative marks the hope of being able to filter and channel memories and put them at the service of the identity politics of a ‘believed community’ (Max Weber). Collectively anchored symbolism should ensure cohesion, guide social action and give direction to shaping a common future. Such a politics of memory counters the fragility of heterogeneous societies and the insecurities associated with it by combining fictions of the past, consensus and identity.

Realistic alternatives to the imagination of community and to community imaginations turn against the hegemony of such fictions. Instead, they rely on the ability of social subjects to recognize their own and other stereotypes and to be able to endure ambiguity. The focus is on the ability to reciprocate perspectives. This ability opens the possibility of soberly comparing and evaluating one’s own world views and competing ideas of a successful life. It is the foundation of a reflective sociality and the core of democratic constitutions. In this way, reflective sociality and tolerance for ambiguity enable not only dealing with competing narratives, but also designing and discussing alternative future scenarios. This creates a multi-optional decision-making horizon for political action, which combines historical experiences and future designs and guides social design processes.

The normality of political action looks different. Here, reference is primarily made to collectively modeled

standard narratives, which can be used both for politics of memory and for controlling ideas about the future. The stronger emphasis on social and political reflexivity, on the other hand, should open the opportunity to resist such control mechanisms, i.e., to create an open and plural politics of memory. Such reflexivity is the basis of that rationally justified ‘responsibility ethics’ (Max Weber) to which every democratically legitimized political action must be based.

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Educational trip to Poland, September 2022

After the pandemic situation finally allowed it, the Commission for Provenance Research went on an educational trip to Krakow, the Auschwitz/Auschwitz-Birkenau Memorial and Museum in September 2022. The journey led through southern Poland, formerly occupied by the German Reich, to the sites of remembrance of the victims of the Nazi regime, and thus also to places of murder of those people whose fates are the focus of the Commission's work.



THE SCIENTIFIC COORDINATOR OF THE COMMISSION FOR PROVENANCE RESEARCH, BIRGIT KIRCHMAYR AT THE AUSCHWITZ MEMORIAL
© KONSTANTIN FERIHUMER

Short after the arrival in Krakow the group went up to the Wawel Castle, which was the former residence of the Polish kings and later, during the Nazi occupation, seat of the Generalgouverneur Hans Frank, who was sentenced to death during the Nuremberg trials. The collection exhibited at the Wawel mainly comprises artworks from the Italian Renaissance; several of them were donated by Karolina Lanckorońska (from the collection of her father, Karl Lanckoroński) after their restitution by the Republic of Austria in 1948. In 1939, before the Gestapo confiscated it, the Lanckoroński Collection had contained around 3,600 objects, including works of fine and ancient art as well as arts and crafts. Karolina Lanckorońska was an art historian who joined the Polish armed forces during the war and was imprisoned and deported to the concentration camp for women at Ravensbrück, which she survived. The gallery's curator Dr Joanna Winiewicz Wolska, who has been in contact with the office of the Commission for Provenance Research since 2000 due to her research on the Lanckoroński Collection, gave a well-informed guided tour through the exhibition.

On the second day, the group visited the memorials in Auschwitz and Auschwitz-Birkenau as the central point on the agenda. Ewa Pasterak guided the participants through the State Museum Auschwitz-Birkenau in a both informative and touching way. Ewa Pasterak sensitively narrated the fate of the people sentenced to extermination and contextualized what happened there in a political-historical framework. Dr Birgit Johler guided the group through the new Austrian national exhibition in Block 17, which she co-curated. The exhibition was opened the year before on behalf of the National Fund of the Republic of Austria for Victims of National Socialism.

Since the Middle Ages, the city of Krakow was a melting pot representing all religious, social and political groups and was strongly influenced by a unique mixture of Yiddish, Hebrew and Polish-Jewish culture. Between the First and the Second World War, 65.000 Jews lived there and made up about 25 percent of the city's population. In Kazimierz, the "Jewish quarter" of Krakow, the third day of the trip began with a guided tour through the city led by Sylwia Jeruzal. The group visited the old synagogue, now a museum of the city of Krakow, and then crossed the Vistula to reach the Podgorze district, the site of the ghetto built under Hans Frank between 1941 and 1943. During the war, the 20 hectares of the ghetto were crowded with 19.000 people. On the way to the Schindler Museum, which is located in the area of the former ghetto, the group visited the Ghetto Heroes' Square.



EWA PASTERAK GUIDED THROUGH THE AUSCHWITZ-BIRKENAU MEMORIAL
© KONSTANTIN FERIHUMER

During the German occupation, the place served as a roll call and selection place before the deportations to the concentration camps where expropriations and shootings took place. An installation of empty metal chairs lined up in several rows has won many awards and is one of the most poignant places of reflection in Krakow.

Later that afternoon, the group went to Płaszów, the district that gained international fame through the Spielberg film, Schindler’s List. From 1940, the area was the site of the Nazi labour camp and, from 1944 until the end of the war, of the Płaszów concentration camp. Today, a few ruins and memorial plaques still commemorate the terror of the camp commander Amon Göth and the suffering of his countless victims. Afterwards, the group went up the hill to the Memorial of the Victims of Fascism, colloquially known in Krakow as the “Memorial of Broken Hearts”, to silently commemorate the victims.

At the end of the trip, the group visited the Czartoryski Collection, which includes the painting The Lady with the Ermine by Leonardo da Vinci that had been confiscated by the Nazis in 1939 and was restituted after the war.



AT THE MEMORIAL OF THE VICTIMS OF FASCISM, COLLOQUIALLY- KNOWN IN KRAKOW AS THE “MEMORIAL OF BROKEN HEARTS” © KONSTANTIN FERIHUMER

The members of the Commission reflected the educational tour as a highly valuable and moving experience for them personally as well as their work, which contributes significantly to the historical reappraisal of the looting of artworks and artefacts by the Nazis.

ANITA STELZL-GALLIAN

Art historian, member Commission for Provenance Research since 1998, who organized the trip to Poland



GROUP PHOTO OF THE COMMISSION FOR PROVENANCE RESEARCH IN FRONT OF WAWEL CASTLE © KONSTANTIN FERIHUMER



Update: A German family hands over to France two paintings stolen in Brittany during the Occupation

Initial research undertaken by the CIVS identified several clues pointing to the commune of Audierne. However, the origin of the property could not be fully clarified, nor the rightful owners found. Pending these identifications, under the aegis of the CIVS, the municipality of Audierne and the German family wishing to return the paintings then reached an agreement authorising the exhibition of the paintings in the marriage hall of the Breton port's town hall, which then undertook to guarantee the proper conservation of the property. The official award ceremony was held on 19 September 2022 in Audierne.

The joint research carried out by the CIVS and the Ministry of Culture's Mission for Research and Restitution of Spoliated Cultural Property (1933-1945) (M2RS) made it possible to clarify the provenance of the works and identify the spoliated person.

The investigations revealed that R. J. had filed a claim with the *Commission de récupération artistique*, which was set up between 1944 and 1949 to receive claims from dispossessed owners, and with the *Office des biens et intérêts privés* (Office for Private Property and Interests - O.B.I.P.), which was attached to the Ministry of Foreign Affairs and which also received reports of theft and looting of all types of property. In his application, R. J. mentioned his villa in Audierne,

which had been occupied from February 1941 to August 1944, and declared the theft of several works of art on 7 October 1945: 3 oils, 2 large charcoals and 5 sketches by Lionel FLOCH.

From this research, it emerges that 3 oils by Lionel FLOCH claimed by "R. J." are listed in the *Répertoire des biens spoliés en France durant la guerre 1939-1945* (RBS) published between 1947 and 1949 by the Bureau central des restitutions. They were not restituted in 1961 and, in the case of two of them listed:

- *Scène de marché à Guarda*, 65 x 50 cm
- *Vue de la côte sud de la baie de Douarnenez*, 65 x 50 cm

The Ministry of Culture's Mission for Research and Restitution of Spoliated Cultural Property (1933-1945) (M2RS) concludes that their subject matter and dimensions correspond to the works deposited in Audierne.

Once the owner of the works had been identified, the CIVS conducted genealogical research and established the rightful owners.

Following mediation and agreement between the heirs, the works will be returned at a ceremony organised at the Audierne town hall on 1 April 2023.

This original arrangement corresponded perfectly to the spirit of the Washington Principles (1998).



AUDIERNE - TWO PAINTINGS BY THE FRENCH PAINTER LIONEL FLOCH EXPROPRIATED DURING THE OCCUPATION WERE RESTITUTED TO THEIR RIGHTFUL OWNERS IN APRIL 2023



Restitution to heirs of Dr. Erich Stern

On 16 September 2022, during a plenary session of the *Commission pour l'Indemnisation des victimes de spoliations* (CIVS) in Paris, the case of the spoliation of 19 books belonging to Erich Stern, currently in the custody of the *Zentral- und Landesbibliothek Berlin*, was examined.

The facts

Erich Stern was a psychiatrist and psychologist, renowned for his work on psychosomatics. In 1933, because of his Jewish origins, he was forced into retirement and dismissed from his position in Germany. He emigrated with his wife and daughter to Paris at the end of 1933 and worked as a foreign assistant in the child neuropsychiatry clinic at the Sorbonne while at the same time running a clinic for Jewish immigrants. He obtained French nationality in 1938, which was withdrawn in 1943. He lived with his family in Boulogne-Billancourt (Hauts-de-Seine), near Paris.

When France was invaded by German troops in June 1940, the Stern family took refuge in Salagnac in the Dordogne, where Dr. Stern worked at the Clairvivre health centre. The family stayed in Salagnac until 1948 before returning to the Paris suburbs.

During the Occupation, the flat in Boulogne-Billancourt was completely emptied of its contents. Dr. Stern's rich library of more than 6,000 books was put in boxes and transported to Germany.

On a date that remains unknown, his books were transferred to Germany and stored in the *Reichssicherheitshauptamt* (Reich Central Security Office – RSHA) warehouse in the Berlin district of Schöneberg. This is where the RSHA had stored the books stolen from all over Europe. At the end of the war, some of these books were distributed to various Berlin libraries, including the ZLB.

After the war

Dr. Stern took various steps both with the French authorities of the *Commission de récupération artistique* (Artistic Recovery Commission – C.R.A.) and the *Office des biens et intérêts privés* (Office for Private Property and Interests – O.B.I.P.) and with the German

authorities under the BRÜG Act, with a view to obtaining the return of his library and compensation for his furniture.

In July 1946, he refused 27 legal books as compensation, explaining that he was only interested in this type of work if it was related to his speciality and research. At the same time, some twenty books in German on philosophy and psychology were returned to him. In addition, in October 1947, he was able to recover four boxes of books from the Central Collecting Point in Munich.

The procedure

In accordance with the provisions of Article 1-2 of Decree no. 99-778 of 10 September 1999, as amended, by decisions of the Chairman of the CIVS dated 14 May 2020 and 10 July 2021, the CIVS took over the restitution of 19 medical and psychological books that belonged to Dr. Erich Stern, following a report on the existence of his books at the *Zentral- und Landesbibliothek Berlin*.

Dr. Erich Stern had an only daughter, who did not marry and died childless.

The doctor's daughter Stern had, by holographic will, instituted the *Fonds social juif unifié* (United Jewish Social Fund – FSJU) as her universal legatee, and several legatees in particular, namely, on the one hand, four persons to whom she bequeathed sums of money as well as her furniture, clothes and other belongings, and on the other hand, the association called *Groupe toulousain de la société psychanalytique de Paris* (Toulouse Group of the Paris Psychoanalytical Society), to which she bequeathed all the psychiatric and psychoanalytical books and journals that she owned.

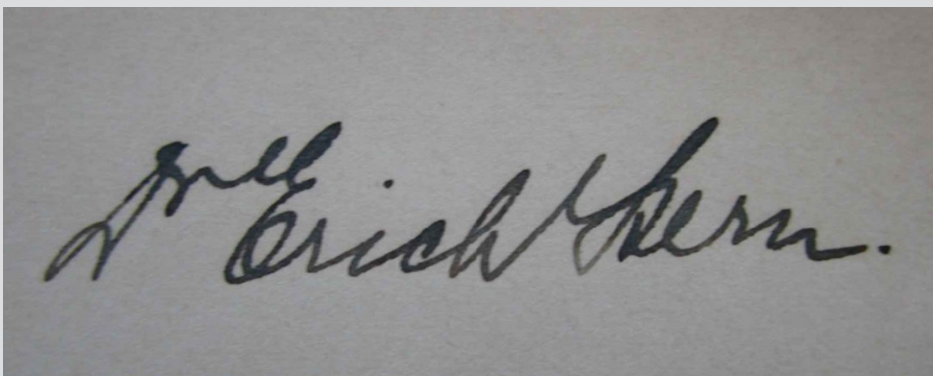
In his declaration of 22 September 1949 addressed to the Office for Private Property and Interests (O.B.I.P.) Erich Stern estimated the value of his library at 500,000 French francs (about 17000 euros), of which he gave a general description, specifying that the catalogues had disappeared at the same time as the books, and explaining that it was divided into 16 sections, each corresponding to a subject (dictionaries

and encyclopaedias, medicine, psychoanalysis and individual psychology, sciences, philosophy, law, economics, politics and history, religion, etc.), specifying that most of the books do not bear any mark or exlibris, but that on one part of the books his name appears, on another part his initials.

CIVS recommendation

There is no longer any doubt about the provenance of these books. The books, which were found during provenance research carried out at the *Zentral- und Landesbibliothek Berlin*, were part of the library belonging to Dr. Erich Stern and were stolen from his home in Boulogne-Billancourt by the German authorities as part of the anti-Semitic legislation in force in France during the Occupation. They correspond to the description of Dr. Stern's library given to the O.B.I.P. Consequently, the *Zentral- und Landesbibliothek Berlin* having expressed its intention to return these books to Dr. Stern's heirs, and the administrative authorities having been consulted having given a favourable opinion, the works are currently being restored by the ZLB, and the return of the 19 books should soon be organised with the association "Groupe toulousain de la société psychanalytique de Paris", Hilde Stern's universal heir.

This research effort and the future restitution (in spring 2023) is once again an example of the excellent and successful French-German cooperation between the CIVS and the *Zentral- und Landesbibliothek Berlin* (ZLB).



SIGNATURE BY DR. ERICH STERN

The painter Hirschenhauser and a special work of art

When searching for works of art in museums and collections that were seized as a result of Nazi persecution, experience has shown that provenance research falls back on inventory books and in-house documents in order to obtain initial basic information on the origin of the work of art under investigation: namely, when and from whom the object was acquired.

Acquisitions during the Nazi period (in Austria March 1938 - May 1945), but also immediately thereafter, repeatedly include exhibits whose acquisition methods are questionable and whose provenance is only incompletely clarified. Also in the case of the print *Shepherd Scene with Ruins* by Gerhard Janssen (1636-1725), acquired in 1939, the inventory book lacked more detailed information about the circumstances of the acquisition.



PRINT BY GERHARD JANSSEN (1636-1725) FROM THE FORMER HIRSCHENHAUSER COLLECTION
© THE ALBERTINA MUSEUM, VIENNA

Made around 1720, the print which at first glance looks like an aquatint, was created by etching the printing plate twice. The significance of Janssen's prints lies in a special technical process in which the figures appear white against a black background. This particular form of execution may also have aroused the Albertina's interest in purchasing the work. The first clues to the acquisition were found by consulting the in-house archival records. The purchase of these and other works had been financed in 1939 by the office of the Reichsstathalter, then held by Baldur von Schirach, through an allocation in the amount of 10,000 Reichsmark. The preserved invoices and receipts showed that the Albertina had purchased the

print created by Janssen from Rudolf Hirschenhauser for 30 Reichsmark on 29 March 1939. In the course of further research, it turned out that the seller was the academic painter Rudolf Paul Hirschenhauser (1882-1951), who had completed his training from 1901 to 1907 at the Academy of Fine Arts in Vienna (General School of Painting and Special School of Graphic Arts). His marriage to Hedwig Karoline Sofie Mina Marx, which took place in 1914, produced two daughters. From 1924 to 1930 the couple lived in the third district in Vienna. In 1932, the marriage was divorced due to "insurmountable aversion," and Hedwig married the lawyer Adolf Rziha in the same year. Between 1930 and 1932 Rudolf Hirschenhauser was then resident in Mödling near Vienna. The next registration is noted from October 1932 until August 1939 in Eitelberggasse in the thirteenth district of Vienna. After that, he was registered as having left for London. Persecuted as a Jew by the National Socialist regime, Rudolf Hirschenhauser was targeted by the Property Transaction Office at the end of 1938. Since he received a monthly pension from his divorced wife and had not disclosed these assets in accordance with the so-called declaration of assets, charges were filed with the Provincial Court for Criminal Matters in January 1939. According to the indictment, Rudolf Hirschenhauser was visibly in need of money to cover the upcoming costs of his emigration. During his interrogation in early March 1939, Hirschenhauser stated for the record that he had left works of art to his former wife in exchange for money that he had needed for passport procurement, living expenses and various other expenses, as well as for the advance payment to the Vienna Foreign Exchange Office. The subsequent sale of the print and possibly other works of art at the end of March 1939 seems to have been motivated by the existing financial emergency. At the end of June 1939, Rudolf Hirschenhauser finally applied to the Central Office for the Protection of Monuments for the export of his own works and other art objects to London. He settled in Harrogate/North Yorkshire, where he died on 1 November 1951. He kept in touch with one of his daughters but never returned to Vienna. Thanks to proactive provenance research on the part of the Commission for Provenance Research, it was

possible to determine the circumstances of the sale and the further fate of Rudolf Hirschenhauser. In its decision of 5 October 2017, the Austrian Art Restitution Advisory Board recommended the return of the print from the Albertina collection to the legal successors *causa mortis* to Rudolf Hirschenhauser. At the request of the competent Ministry, the Jewish Community Vienna (IKG Vienna) identified the legal successors. The community of heirs finally decided to offer the print to the Albertina for repurchase. The return to the authorized representative of the community of heirs, Ludwig Popper, and the repurchase of the sheet finally took place on 20 January 2023 in the Albertina.

At the handover by the Albertina's Director General, Klaus Albrecht Schröder, Ludwig Popper, nephew of Rudolf Hirschenhauser, told of his own family history. He was born shortly before the annexation of Austria to the German Reich. A few months later, his father Ludwig, a Jewish doctor, fled to Switzerland, while his mother Friederike, a nurse by profession, prepared the escape with her two sons. In 1939 the family emigrated to Bolivia, where Ludwig Popper spent his childhood until the age of nine. In 1947 they all returned to Vienna, where hardly any relatives were still alive. These had either also fled, died, committed sui-

cide because of the pending deportation, or had been murdered in the Shoah. Popper studied medicine after graduating from high school. With his wife Helga he has two children. From 1973 he worked as a specialist in Oberwart, Burgenland. Popper's self-image as a physician was influenced by the socio-medical orientation of his father, whose biographical notes *Bolivien für Gringos. Exil-Tagebuch eines Wiener Arztes* (2005) and *Briefe aus einer versinkenden Welt. 1938/39* (2008) he published. Today, as a contemporary witness, Ludwig Popper often speaks publicly, including at schools, about his family history. He never met his uncle Rudolf Hirschenhauser, a brother of his father.

www.provenienzforschung.gv.at/beiratsbeschluesse/Hirschenhauser_Rudolf_2017-10-05.pdf

<https://www.weitererzaehlen.at/interviews/ludwig-popper>

JULIA EßL

Provenance researcher at the Albertina on behalf of the Commission for Provenance Research at the Federal Ministry for Art, Culture, the Civil Service and Sport



RETURN OF THE PRINT TO DR. LUDWIG POPPER (ON BEHALF OF THE COMMUNITY OF HEIRS) AND SUBSEQUENT REPURCHASE BY THE ALBERTINA; FROM LEFT: DIRECTOR GENERAL OF THE ALBERTINA KLAUS ALBRECHT SCHRÖDER, YVONNE POPPER, LUDWIG POPPER, DIRECTOR OF THE COMMISSION FOR PROVENANCE RESEARCH PIA SCHÖLNBERGER, CHIEF CURATOR CHRISTOF METZGER, HEIR RESEARCHER MATHIAS LICHTENWAGNER, PROVENANCE RESEARCHER JULIA EßL, PROVENANCE REPRESENTATIVE OF THE ALBERTINA ALEXANDER POINTNER, HEAD OF COLLECTION SERVICES MIA METZLER

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The Fritz Illner collection

Provenance research in the Natural History Museum Vienna

Since the Art Restitution Act was passed in Austria in 1998, the collections of the Natural History Museum in Vienna (NHM) have been examined for objects confiscated by the Nazis. In the course of research undertakings in the Geological-Palaeontological Department in 2018/19, the researchers of the Austrian Commission for Provenance Research discovered concrete evidence of the confiscation of the Fritz Illner collection as a result of Nazi persecution and were ultimately able to reconstruct this case. The case study below provides an overview of Fritz Illner's tragic fate, the historical background of his collection and its eventual restitution.

Fritz Illner was born in Vienna in 1885. He married Anna Glas in 1920; the couple had two daughters, Herta and Rita. Fritz Illner worked as a road construction engineer and apparently stayed abroad for long periods of time for professional reasons, for example in Turkey from 1928 onwards. The four fossils from his collection that were acquired by the NHM in 1938 also came from Turkey, which is why it can be assumed that he collected these objects during his work stay there between 1928 and 1931. Fritz Illner was most likely not a trained geologist and only had rudimentary geological and palaeontological knowledge. His collection items come from the same site, but their composition does not correspond to the principles of a scientific collection – for example in the sense of a taxonomic order. In addition, a handwritten note accompanying the objects could indicate that Illner himself may have misdated the fossils. While the note says the finds were Jurassic, department staff correctly dated the objects to the Cretaceous period.

Since 1933 Anna and Fritz Illner had been deregistered to France, where they lived in Nice. Their daughters initially remained with their aunt Irma Bondy in Vienna. As a result of the "Anschluss" of Austria to the German Reich, the family was subjected to anti-Semitic persecution in Vienna. In November 1938 the children left Vienna with their aunt and fled to Nice. It is not known whether Irma Bondy also fled there. In June of the same year, she had sold her brother-

in-law's fossils for 20 Reichsmark to the Geological-Palaeontological Department at the NHM.

With the beginning of the Second World War, the situation of the reunited Illner family in France became increasingly difficult. As German-speaking foreigners, the Illners were now considered "citizens of the enemy powers" (*ressortissants ennemis*) and were temporarily detained in the Gurs internment camp (Camp de Gurs) in May 1940. They were soon released from the camp and could live in Nice again, but only under police surveillance. From the end of September to the beginning of October 1942, Herta and Rita Illner were interned in a barracks in Nice before they



THE FRITZ ILLNER COLLECTION INCLUDING LABELS AND ACCOMPANYING NOTES
PHOTO: © NHM VIENNA, MARCUS RÖSSNER

were granted further residence permits after their release under the retention of police surveillance. With the occupation of Nice by the Nazis in September 1943, the situation for the Illners escalated dramatically: On 18 March 1944, the parents were arrested by the Gestapo and subsequently deported to Drancy. The children had apparently learned about the arrest in advance and went into hiding with forged documents. On 13 April 1944, Anna and Fritz Illner were deported from Drancy to Auschwitz concentration and extermination camp, where they were most likely murdered immediately upon arrival. In 1959, they were declared dead at the request of their daughter Rita.

According to Anna Illner`s brother Otto Glas, Irma Bondy is said to also have been deported to Auschwitz and murdered there. In fact, the name Irma Bondy appears in the deportation list for transport no. 27 of 2 September 1942, but dates of birth and information on origin are missing, which is why an unequivocal identification is not possible yet. There is no official declaration of death for Irma Bondy. While her name is listed in the „Wall of Names“ in the *Mémorial de la Shoah* in Paris to commemorate the Jews deported from France, there is an entry for Anna and Fritz Illner in the “Walls of Names” of the Viennese Memorial to the Jewish children, women and men from Austria who were murdered in the Shoah.

Herta and Rita Illner survived Nazi persecution by going into hiding. Both returned to Nice in April 1945. Rita married and immigrated to Israel with her husband. Herta stayed in Nice until 1958 and then followed her sister to Israel. In 1960, Herta returned to Vienna, where she died in 1993.

The tragic story behind the Fritz Illner collection could be reconstructed through the research of the provenance research team. The research led to a dossier, on the basis of which the Art Restitution Advisory

Board recommended the return of the objects to the legal successors of Fritz Illner in October 2019 which was followed by the Minister of Culture. After extensive research, heir researcher Mathias Lichtenwagner was able to locate the legal successors, Fritz and Anna Illner`s grandchildren and great-grandchildren in Israel. The Commission for Provenance Research would like to thank the Austrian Embassy in Tel Aviv, namely the Deputy Director of the Austrian Cultural Forum, Maria Gierlinger-Landa, who organised the handover in December 2022. In the course of the restitution ceremony at the Austrian Embassy the family presented the fossils directly to representatives of the Steinhardt Museum of Natural History at Tel Aviv University – as a loan, *in memoriam* of Fritz Illner.

https://provenienzforschung.gv.at/beiratsbeschluesse/Illner_Fritz_2019-10-18.pdf

DARIO ALEJANDRO LUGER

Provenance researcher at the NHM on behalf of the Commission for Provenance Research since 2017



FAMILY MEMBERS ARE HANDING OVER THE FOSSILS TO REPRESENTATIVES OF THE STEINHARDT MUSEUM OF NATURAL HISTORY IN TEL AVIV AT THE AUSTRIAN EMBASSY TEL AVIV
PHOTO: © AUSTRIAN CULTURAL FORUM TEL AVIV

 Bundesministerium
Kunst, Kultur,
öffentlicher Dienst und Sport
Kommission für Provenienzforschung

 CIVS



Beratende Kommission
im Zusammenhang mit der Rückgabe
NS-verfolgungsbedingt entzogenen Kulturguts,
insbesondere aus jüdischem Besitz

 Spoliation
Advisory
Panel

 Restitutions Committee

IMPRINT

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