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## THE ACTIONS OF THE FEDERAL REPUBLIC OF GERMANY IN THE YEARS 1998-2014 FOR THE RESTITUTION OF CULTURAL PROPERTY STOLEN FROM THE VICTIMS OF NATIONAL SOCIALISM<sup>1</sup>

### INTRODUCTION

Many collectors of works of art and other cultural goods, and those of Jewish descent in particular, lost their property as a result of robbery, expropriation or other forms of deprivation such as the imposition of sequestration or obtaining a waiver in connection with the persecution based on race, political beliefs or world view during the rule of the National Socialists in Germany. Others were forced to sell their collections at undervalued prices or leave them behind when fleeing the country or emigrating. People were reminded of it by the third government of the Federal Republic of Germany under the leadership of Angela Merkel by describing, on its website, the actions of the Federal Government Commissioner for Culture and

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<sup>1</sup> Despite a distinction made between the terms “restitution” (recovery of cultural property illegally taken away, stolen from its rightful owner) and “return” (return of cultural property to the country of origin), they are used interchangeably in the present paper, but in fact the restitution is the intended meaning. The German government, however, use a general term “return of cultural property confiscated as a result of Nazi persecution” (*Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter*), which directly relates to the restitution of cultural goods seized from the victims of National Socialism. Similarly, for example, E. Krzysztofik and K. Zeidler equate restitution with return (E. Krzysztofik, *Wsparcie pokoju we współczesnych stosunkach międzynarodowych*, Warszawa 2008, p. 37; K. Zeidler, *Prawo ochrony dziedzictwa kultury*, Warsaw 2007, pp. 78-79; K. Zeidler, *Restytucja dóbr kultury ze stanowiska filozofii prawa*, Warsaw 2011, p. 37). On distinguishing between the terms “restitution” and “return” see, e.g. P. Gwoździewicz, *Przedawnienie roszczeń o zwrot dóbr kultury*, in: W. Kowalski, K. Zalasinska (ed.), *Rynek sztuki. Aspekty prawne*, Warsaw 2011, p. 214 ff; W. Paczuski, *Handel dziełami sztuki w Unii Europejskiej*, Kraków 2005, pp. 165-166. This last author points out that restitution equals return (W. Paczuski, *op. cit.*, p. 166) in a civil law which regulates how stolen goods are returned to their rightful owner. In the present paper – following K. Zeidler – restitution is understood as restitution in kind of the object illegally taken to the entity entitled to it, possibly providing equivalent value if restitution is not possible or the parties agreed to this (K. Zeidler, *Restytucja dóbr kultury...*, p. 37). On the term “cultural goods” see, e.g. A. Gerecka-Żołyńska, *W kwestii definicji dobra kultury i dzieła sztuki*, Prokuratura i Prawo no. 9, 1999, p. 104 ff.

Media (*Beauftragte der Bundesregierung für Kultur und Medien*) Monika Grütters<sup>2</sup> concerning the return of the cultural goods belonging to the victims of Nazi persecutions and recalling the achievements of Germany in this area since 1998.<sup>3</sup> However, it is the last three cabinets of Angela Merkel that have a chance to go down in history as those who have taken long-awaited, decisive and effective steps to investigate the fate of cultural goods of unclear legal status, located in the territory of the Federal Republic of Germany, in both public and private hands, and returning them, if necessary, to their rightful owners.<sup>4</sup> At the beginning of the first decade of the twenty first century, despite the passage of several decades since the end of World War II and steps taken during that time, the problem of the return of cultural property stolen from the victims of National Socialism was still waiting for a systemic solution that would allow for the closure of this shameful and painful page in the history of Europe and its cultural heritage. What is more, recent years have brought about an important development in this field and today all interested parties, i. e. the victims of National Socialism, or rather their heirs, the modern German State as a legal successor of the Third Reich as well as scholars, politicians and the public in Germany and in all the countries affected by the crimes of the National Socialists can hope that they are finally on the road to achieve the real and not just the stated or repeatedly delayed goal.<sup>5</sup> This is not going to happen quickly due to the objective difficulty in accurately reconstructing of the history of many cultural goods of obscure origin. However, the right institutional conditions for the implementation of this project have been created.

The present paper presents the most important political, legal, organizational and financial measures taken at all institutional levels of the German state from the end of the twentieth century in order to intensify the research on the origins of cultural property in the possession of the German public institutions as well as citizens, businesses and other private entities. In particular, it will address the issue of research on the identification of cultural property seized from their rightful owners by the Nazis, including recent projects for which the immediate impulse was the so-called Schwabing (Munich) art discovery (*Schwabinger Kunstfund*). The paper also discusses the most famous restitution cases of recent years and

<sup>2</sup> On Monika Grütters see, e.g. M. Wagińska-Marzec, *Priorytety w polityce kulturalnej RFN na szczeblu federacji*, Biuletyn Instytutu Zachodniego no. 176, 2014, p. 1 ff.

<sup>3</sup> *Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter*, the Bundesregierung website, [http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung\\_ns\\_raubkunst/\\_node.html](http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung_ns_raubkunst/_node.html) (20.12.14).

<sup>4</sup> On the situation with respect to the issue discussed still prevailing in late 2006, see, e.g. Ch. Hoffmans, *Kein Geld für Forschung*, Die Welt from 12.11.2006, <http://www.welt.de/print-welt/article93736/Kein-Geld-fuer-Forschung.html> (30.12.14).

<sup>5</sup> On “actions providing an alibi” see, e.g. N. Maak, *Dies Erbe geht nicht nur uns an*, Frankfurter Allgemeine Zeitung from 07.08.2008, <http://www.faz.net/aktuell/feuilleton/kunst/kunst-und-recht-dies-erbe-geht-nicht-nur-uns-an-1682760.html> (01.01.15).

their evaluation in Germany, as examples of the implementation of the new state restitution policy, and also as a gauge of changes in public opinion with reference to this particular issue.

#### INTERNATIONAL POLICY FRAMEWORK

The Conference on Holocaust Era Assets organised in Washington in 1998 (henceforth the Washington Conference)<sup>6</sup> contributed to the intensification of the research on the provenience of Nazi-confiscated art over a dozen or so years. As a result of its proceedings, 44 countries, including the FRG, adopted the “Principles on Nazi-Confiscated Art” (henceforth referred to as the Washington Principles or the Washington Declaration).<sup>7</sup> In this document, the Washington Conference participants committed themselves, among other things, to identifying works of art confiscated by the Nazis and not restituted, providing resources and personnel to perform this task, opening the catalogues and archives and making them accessible to researchers, publicizing the information about each identified item of artistic value in order to facilitate the process of finding its pre-War owners or their heirs, making efforts to set up a central registry of such information, encouraging the pre-War owners and their heirs to come forward and lay claims to works of art that were confiscated by the Nazis and thus far not restituted. According to the Washington Principles, if the pre-War owners of art that is considered to have been confiscated by the Nazis and not restituted or their heirs are identified, the state should immediately take steps to find a just and fair solution to the problem. It should be noted that solutions which meet these conditions may vary in particular cases, depending on the circumstances surrounding a specific case. Also, the state is obliged to take immediate action to ensure a just and fair solution to the problem in a situation where it is not possible to find the pre-War owners or their heirs.<sup>8</sup> The Washington Conference did not specify what is meant by a just and fair solution, leaving the participating countries the freedom of interpretation in this regard, which, on the one hand, was justified due to the differences in legal systems of the countries involved as well as the individual character of each case related to the restitution of the cultural items stolen by the Nazis from the victims of National Socialism, but, on the other hand, downplayed

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<sup>6</sup> On the origins of the conference, see e.g. B. Demarsin, *Let's Not Talk about Terezin: Restitution of Nazi Era Looted Art and the Tenuousness of Public International Law*, Brooklyn Journal of International Law, Vol. 37, Issue 1, 2011, pp. 136-137.

<sup>7</sup> M. Palica, *Problem badania proveniencji dzieł sztuki. Przypadek Dolnego Śląska*, Muzealnictwo, no. 53, 2012, p. 38.

<sup>8</sup> The Washington Conference Principles on Nazi-confiscated art, released in connection with The Washington Conference on Holocaust Era Assets, Washington, 3.12.1998, website of the National Institute for Museums and Public Collections, [http://nimos.pl/upload/Badania\\_proveniencji/Zasady\\_Konferencji\\_Waszyngtonskiej.pdf](http://nimos.pl/upload/Badania_proveniencji/Zasady_Konferencji_Waszyngtonskiej.pdf) (20.12.14).

the significance of political commitments made by the participating nations at an international level.

A similar conference was held in Prague and Terezin, i.e. the Prague Conference “Holocaust Era Assets” in 2009, which was attended by 46 countries, including Germany. The result of this event was “The Terezin Declaration on Holocaust Era Assets and Related Issues” (henceforth referred to as the Terezin Declaration), which recalled the significant progress made in research, identification and restitution of cultural property which had been made in the first decade after the Washington Conference thanks to the decisions made then. At the same time it was admitted that only part of the property confiscated by the Nazis had been recovered or compensated for. The participating states also affirmed an urgent need to sustain and double the efforts to ensure just and fair solutions regarding works of art, including Judaica, that were stolen or displaced during the Holocaust or as a result of it. In addition, there is a separate part in the Terezin Declaration, i.e. “Nazi-Confiscated and Looted Art”, in which the participating states reaffirmed their support for the Washington Principles and encouraged all parties involved (public and private institutions as well as individuals) to apply them. The states also stressed the importance of continuing and supporting intensified systematic provenance research, in both public and private archives, and where relevant to make the results of this research and their subsequent updates available via the internet, with due regard to privacy rules and regulations. The states which have not done this yet should establish mechanisms to assist claimants and others involved in the restitution of the cultural property. While taking into account different local traditions, legal systems or alternative processes should facilitate just and fair solutions with regard to Nazi-confiscated and looted art and ensure the immediate satisfaction of the claims based on the facts and merits of the claims and the documents submitted by all interested parties. The states committed themselves to examining the restitution related issues with respect to various legal provisions that may impede the process, in order to find just and fair solutions, as well as alternative dispute resolutions, where appropriate under law.<sup>9</sup> Thus, with regard to the signatories, the Terezin Declaration is more precise and demanding in its provisions than the Washington Principles, which is the result of years and years of experience in the application of the latter by the states that adopted them and the evidence of a shift in the mindset of the decision makers and the public.

It should be noted, however, that the findings of the two international conferences are legally non-binding principles and, as such, are implemented by the participating countries entirely voluntarily. Actions taken as a result of such commitments are an expression of a genuine belief that art stolen by the Nazis should be restored to their rightful owners or their heirs in compliance with the law of the country and provi-

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<sup>9</sup> The Terezin Declaration on Holocaust Era Assets and Related Issues, 30.06.2009, website of the National Institute for Museums and Public Collections, [http://nimos.pl/upload/Badania\\_proweniencji/Deklaracja\\_Terezinska%2C\\_2009.pdf](http://nimos.pl/upload/Badania_proweniencji/Deklaracja_Terezinska%2C_2009.pdf) (20.12.14)

sions of the international law in order to reach a state that is fair and satisfactory for all concerned. However, the non-binding nature of the commitments means that they do not provide a sole basis for laying and satisfying legal claims relating to restitution. What is more, the addressees of such claims may still, in accordance with the law, invoke the statute of limitations or prescription unless, which is very rare, this is precluded by the provisions of the Civil Code (*Bürgerliches Gesetzbuch*, henceforth referred to as BGB)<sup>10</sup>, for example, § 985<sup>11</sup> or § 138 (1).<sup>12</sup> After the expiration of terms of time of the post-War Allied and West Germany regulations as well as the German post-Unification laws<sup>13</sup>, restitution based on this specific legislation is no longer possible. Having signed the Washington Principles, the country is politically or morally ready to relinquish, in specific cases, the right to use charges of preclusion, statutes of limitations or prescription and to satisfy the claims even though there are legal possibilities to avoid actions leading to the achievement of this aim. It is not always the case that satisfying the claims in the form and scope expected by

<sup>10</sup> Bürgerliches Gesetzbuch vom 18.08.1896 in der Fassung der Bekanntmachung vom 2.01.2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 1 des Gesetzes vom 22.07.2014 (BGBl. I S. 1218) geändert worden ist.

<sup>11</sup> The provision § 985 of the BGB provides that the owner may require the possessor to return the thing. However, in order to follow this provision, the collector or his successor must prove that he is still the owner of a particular work of art or other cultural goods. In addition, the claim based on § 985 of the BGB is statute-barred after thirty years in accordance with § 197 (1) of the BGB.

<sup>12</sup> In accordance with § 138 (1) of the BGB, a legal action which violates public decency is void. The principle of the presumption of deprivation of ownership adopted by the Allies after World War II should be used when defining “violation of decency” in regard to the victims of National Socialism. According to this principle and in the case of the Jewish possessor, a legal action taken in times of National Socialism means depriving the possessor of ownership and therefore, violates public decency. A present possessor of the sold artwork or any other cultural asset can lodge a claim against this presumption stating that a fair price was paid, as evidenced by a receipt. If the sale took place after 15 September, 1935 (the date of the adoption and announcement of the first Nuremberg laws), such evidence is not enough to rebut the presumption. It is necessary to prove that the acquirer took into account the interests of the seller in a special and effective way or that the sale would also have taken place in spite of the Nazi regime. However, in the case of subsequent sale and purchase transactions, the one who purchased a work of art or other cultural assets from a person not entitled to dispose of ownership, remains the possessor if he acted in good faith (§ 932 (1) of the BGB) unless the original owner of the thing lost it against his will as a result of theft, loss or in any other way (§ 935 (1) of the BGB), which refers to victims of the Nazi persecution. The exception to § 935 (2) protecting purchasers in good faith does not apply in the case of the aforementioned victims because such protection was ruled out by the post-War Allied regulations. Another option for the purchasers in good faith is invoking prescription as described in § 937 of the BGB, according to which a person who has a movable thing in his proprietary possession for ten years acquires the ownership unless the acquirer on acquiring the proprietary possession was not in good faith or if he later discovered that he was not entitled to the ownership. If prescription was not possible and the original collector retained ownership of the thing, he or his heirs are entitled to a claim based on § 985 of the BGB. For more on this subject, see H. Hartung, *Kunstraub in Krieg und Verfolgung*, Berlin 2005, p. 275 ff.; S. Rudolph, *Restitution von Kunstwerken aus jüdischem Besitz*, Berlin 2007, p. 115 ff.

<sup>13</sup> These acts were listed in the “Joint Declaration on the tracing and return of Nazi-confiscated art, especially Jewish property”, which will be discussed later in the paper.

the entity making them will be a just and fair solution from the point of view of all stakeholders involved and their interests. Therefore the wording of the Washington Principles excludes automatism and leaves a lot of freedom to the entities applying them, which is a characteristic feature of all political or moral obligations.<sup>14</sup>

#### INTERNAL POLICY FRAMEWORK

In December 1999 the federal government, the federal states and the national associations of local authorities signed the “Joint Declaration on the tracing and return of Nazi-confiscated art, especially Jewish property” (henceforth referred to as the Joint Declaration). The Joint Declaration concerns archives supported with public funds, museums, libraries and their inventory. However, private legal entities (organizations and individuals) were also called upon to respect the rules and procedures set out in this document. In its introduction the Joint Declaration reminds us that after World War II the Federal Republic of Germany satisfied the legitimate claims pertaining to the assets confiscated as a consequence of persecution. This was done in accordance with the requirements of the Allied restitution provisions<sup>15</sup>, the Federal Act on Restitution of 1957<sup>16</sup> and the Federal Indemnification Act of 1953.<sup>17</sup> The Federal Republic of Germany also set up the necessary procedures and institutions so that all entities obliged to return the confiscated property could satisfy the claims of those entitled to such indemnification. The direct victims and their legal successors or, in the case where heirs cannot be traced or claims to the specific Jewish property were not submitted, the organizations recognised as legal successors set up in the Western zones and Berlin were primarily entitled to the claims. Compensation was paid on a case-to-case basis or in accordance with a global settlement. The restitution law and the general civil law of the Federal Republic of Germany finally and comprehensively provided for the restitution and indemnification of any cultural property stolen from its rightful owner due the Nazi persecution, especially when

<sup>14</sup> Cf. S. J. Frankel, E. Forrest, *Museums' Initiation of Declaratory Judgment Action and Assertion of Statutes of Limitations in Response to Nazi-Era Art Restitution Claims - A Defense*, *Journal of Art, Technology & Intellectual Property Law*, Vol. 23, Issue 2, 2013, p. 296 ff.

<sup>15</sup> For more on this subject, see, e.g. Th. Armbruster, *Rückerstattung der Nazi-Beute*, Berlin 2008, p. 207 ff.

<sup>16</sup> Bundesgesetz zur Regelung der rückerstattungsrechtlichen Geldverbindlichkeiten des Deutschen Reichs und gleichgestellter Rechtsträger (Bundesrückerstattungsgesetz - BRüG) in der im Bundesgesetzblatt Teil III, Gliederungsnummer 250-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 10 des Gesetzes vom 23.07.2013 (BGBl. I S. 2586) geändert worden ist.

<sup>17</sup> Bundesgesetz zur Entschädigung für Opfer der nationalsozialistischen Verfolgung (Bundesentschädigungsgesetz - BEG) in der im Bundesgesetzblatt Teil III, Gliederungsnummer 251-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 11 des Gesetzes vom 23.07.2013 (BGBl. I S. 2586) geändert worden ist.

it constituted part of the Jewish property. The introduction of the Joint Declaration also states that repairing the damage perpetrated by National Socialist regime on the basis of the Allied regulations did not go beyond its initial phase in the German Democratic Republic. In the course of German unification, the Federal Republic of Germany committed itself to applying the restitution principles and indemnification law to its enlarged territory, i.e. the eastern countries of the federation as well. Nazi-confiscated art was returned or compensated for in accordance with the provisions of the Property settlement Act of 1990<sup>18</sup> and the Federal Indemnification Act of 1994<sup>19</sup> concerning people persecuted by the Nazis. Thanks to the general declaration of the Conference on Jewish Material Claims against Germany, which brings together organizations that are successors of legal entities and individuals who fell prey to the Nazi persecution under one roof, it was possible to satisfy the claims advanced in the newly acquired areas. Similarly, as formerly in the old countries of the federation, indemnification on a case-to-case basis was sought as far as it was possible; where this was not possible, compensation was effected by global settlement.<sup>20</sup> It is emphasised in Section One of the Joint Declaration that the Federal Republic of Germany, irrespective of the compensation already paid, reiterated its readiness, already expressed at the Washington Conference, to look further, on the basis of the principles adopted there and according to its legal and actual capabilities, for the Nazi-confiscated cultural property and if necessary take appropriate steps in order to find a just and fair solution. From this perspective, the resolution of the Board of the Prussian Cultural Heritage Foundation (*Stiftung Preußischer Kulturbesitz*) of 4 June 1999<sup>21</sup> was most welcomed. Next, the Federation and its individual states and the

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<sup>18</sup> Gesetz zur Regelung offener Vermögensfragen (Vermögensgesetz - VermG) in der Fassung der Bekanntmachung vom 9.02.2005 (BGBl. I S. 205), das zuletzt durch Artikel 6 des Gesetzes vom 1.10.2013 (BGBl. I S. 3719) geändert worden ist.

<sup>19</sup> NS-Verfolgtenentschädigungsgesetz (NS-VEntschG) in der Fassung der Bekanntmachung vom 13.07.2004 (BGBl. I S. 1671), das zuletzt durch Artikel 4 Absatz 42 des Gesetzes vom 22.09.2005 (BGBl. I S. 2809) geändert worden ist.

<sup>20</sup> Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände zur Auffindung und zur Rückgabe NS-verfolgungsbedingt entzogenen Kulturgutes, insbesondere aus jüdischem Besitz, the *Lost Art* website - Koordinierungsstelle Magdeburg, <http://www.lostart.de/Webs/DE/Koordinierungsstelle/GemeinsameErklaerung.html> (23.12.14).

<sup>21</sup> As a rule, the Foundation returns those works of art which were confiscated as a result of the Nazi persecution to the former owners or their heirs. However, in its resolution of 4 June 1999, in addition to the laws and regulations adopted in the Washington Declaration, the Foundation established special rules of conduct in the case of the cultural property which used to belong to Jewish people. Namely, the Foundation Board authorized its president to undertake negotiations with the victims or their heirs in order to find common solutions, which would also include the possibility of returning once confiscated works of art. In its resolution the Foundation Board agreed to such returns despite the fact that the laws no longer provide for them. In practice, since the adoption of the resolution the Foundation has returned some works, while others still remain in its collection on the basis of the agreements with the heirs or as a result of re-purchasing (*Umgang mit NS-Raubgut*, the *Stiftung Preußischer Kulturbesitz* website, <http://www.preussischer-kulturbesitz.de/schwerpunkte/provenienzforschung-und-eigentumsfragen/eigentumsfragen/umgang-mit-ns-raubgut.html> (23.12.14)).

national associations of local authorities committed themselves, in accordance with the Washington Declaration, to doing whatever they can, through the representative bodies of relevant public institutions to ensure that the works of art which can be identified as the Nazi-confiscated property and whose rightful owners or their heirs can be traced, are returned to them upon individual examination. Such a procedure should also include the cases already compensated. It allows to verify who is really entitled to the compensation and prevent double payment of it. The Joint Declaration recommended that negotiations on the extent and procedure of the returning of art or other material indemnification be conducted with those who are undoubtedly the earlier rightful owners or their heirs. This could be done in the form of a long-term deposit or financial and material compensation unless it had already been regulated otherwise (e.g. by way of a settlement on compensation)<sup>22</sup>.

Section Two of the document states that German public institutions such as museums, archives and libraries already supported tracing art confiscated by the Nazis from their rightful owners. The document mentions that this was done by means of revealing and giving access to the information, documents or reports on the development of research; conducting their own research in response to the inquiries or in the case of new acquisitions; initiating their own searches because such is the goal of a particular institution; drawing attention to the provenience of the Nazi-confiscated art in the collections, exhibitions and publications. These efforts should be continued. Following the Washington Principles Section Three of the Joint Declaration announces that the signatories will consider the introduction of an internet tool which would allow its users to do the following: disclose information on the cultural assets of dubious provenance by the participating institutions when it is suspected that they might be Nazi-confiscated works of art, give access to a search list where each authorised person could put names of the items they are searching for and this way make the relevant institutions and the public interested in them, give information about Nazi-confiscated cultural property which was transferred abroad during the war, set up an internet forum through which the participating public institutions as well as the third parties could exchange information on Nazi-confiscated works of art that they are currently looking for in order to avoid duplication of research work<sup>23</sup>.

So, the Introduction and Section One of the Joint Declaration give a clear picture of the legal and actual relations in the Federal Republic today pointing towards a general solution to the problem of Nazi-confiscated cultural property. However, the key issue leading to a successful outcome of the challenge in question has been omitted, i.e. the issue of knowledge about both the provenance of cultural property whose location is known and the location of the items of unquestionable proveni-

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<sup>22</sup> Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände...

<sup>23</sup> *Ibid.*



ence. Practically, however, the level of such knowledge is still low. Even in 1999, the authors of the internal German declaration lacked full awareness of the situation and the size of tasks resulting from it. Although the tasks listed there were a step in the right direction, they were suggested with great caution as if there was not sufficient belief in their indispensability and, what is more, their sufficiency.

It is worth noting that the coalition agreement underlying the actions of the Federal Government formed for the 18th term of the Bundestag (2013-2017), consisting of the CDU (the Christian Democratic Union, *Christlich Demokratische Union Deutschlands*), the CSU (the Christian Social Union of Bavaria, *Christlich-Soziale Union in Bayern*), and the SPD (the Social Democratic Party of Germany, *Sozialdemokratische Partei Deutschlands*) in the section referring to culture mentions that the location of the works of art and other cultural goods lost by their owners due to the Nazi persecution has not yet been clearly identified. Moreover, it was admitted that the effects of the unlawful actions of the Nazis still persist. The coalition government has expressed its willingness to increase funding for the provenance research in order to satisfy the claims relating to the restitution of looted art.<sup>24</sup> The first coalition government agreement of 2005 that included the same parties under the leadership of Chancellor Angela Merkel did not address these issues at all.<sup>25</sup> In the coalition agreement of 2009 signed by the two Christian Democratic parties and the FPD (the Free Democratic Party, *Freie Demokratische Partei*) which formed the second of Angela Merkel's government, there was one sentence referring to the issue in question, claiming that these parties affirm their commitment to "supporting provenance research according to the Washington Principles" in the future.<sup>26</sup> It should also be added that the coalition agreements of the 'red and green' government under the leadership of Gerhard Schröder in 1998<sup>27</sup> and 2002<sup>28</sup> did not mention the issue of the restitution of cultural property lost as a result of the Nazi persecution,

<sup>24</sup> Deutschlands Zukunft gestalten. Koalitionsvertrag zwischen CDU, CSU und SPD. 18. Legislaturperiode, the Bundesregierung website, [http://www.bundesregierung.de/Content/DE/\\_Anlagen/2013/2013-12-17-koalitionsvertrag.pdf?\\_\\_blob=publicationFile&v=2](http://www.bundesregierung.de/Content/DE/_Anlagen/2013/2013-12-17-koalitionsvertrag.pdf?__blob=publicationFile&v=2) (24.12.14), p. 130.

<sup>25</sup> See Gemeinsam für Deutschland. Mit Mut und Menschlichkeit. Koalitionsvertrag von CDU, CSU und SPD, the CDU website, [http://www.cdu.de/sites/default/files/media/dokumente/05\\_11\\_11\\_Koalitionsvertrag\\_Langfassung\\_navigierbar\\_0.pdf](http://www.cdu.de/sites/default/files/media/dokumente/05_11_11_Koalitionsvertrag_Langfassung_navigierbar_0.pdf) (24.12.14).

<sup>26</sup> Wachstum. Bildung. Zusammenhalt. Koalitionsvertrag zwischen CDU, CSU und FDP. 17. Legislaturperiode, the Bundesministerium des Innern website, [https://www.bmi.bund.de/SharedDocs/Downloads/DE/Ministerium/koalitionsvertrag.pdf?\\_\\_blob=publicationFile](https://www.bmi.bund.de/SharedDocs/Downloads/DE/Ministerium/koalitionsvertrag.pdf?__blob=publicationFile) (24.12.14), p. 96.

<sup>27</sup> See Aufbruch und Erneuerung – Deutschlands Weg ins 21. Jahrhundert. Koalitionsvereinbarung zwischen der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die Grünen, the Bundesverband von Bündnis 90/Die Grünen website, [https://www.gruene.de/fileadmin/user\\_upload/Bilder/Redaktion/30\\_Jahre\\_-\\_Serie/Teil\\_21\\_Joschka\\_Fischer/Rot-Gruener\\_Koalitionsvertrag1998.pdf](https://www.gruene.de/fileadmin/user_upload/Bilder/Redaktion/30_Jahre_-_Serie/Teil_21_Joschka_Fischer/Rot-Gruener_Koalitionsvertrag1998.pdf) (24.12.14).

<sup>28</sup> Koalitionsvertrag 2002 – 2006: Erneuerung – Gerechtigkeit – Nachhaltigkeit. Für ein wirtschaftlich starkes, soziales und ökologisches Deutschland. Für eine lebendige Demokratie, the GenderKompetenzZentrum website, [http://www.genderkompetenz.info/w/files/gkompzpdf/koalitionsvertrag\\_2002.pdf](http://www.genderkompetenz.info/w/files/gkompzpdf/koalitionsvertrag_2002.pdf) (24.12.14).

even though they coincided with a revival of the discussion on this topic at the international level.

The overview of the coalition government agreements over the past few years clearly shows that if political declarations at a national level are taken into consideration, a significant increase in the importance of this issue occurred only in the most recent period, under Chancellor Angela Merkel. This is evidenced by the organizational and financial changes made in Germany in the past few years. Partly the cause and partly the effect of these changes was a strong development of the awareness of the existence and scale of the problem which politicians and lawyers as well as a large section of the public considered already solved. Such a belief can be found even in the Joint Declaration of the Federal Government, federal states and the national associations of local authorities of 1999 mentioned earlier. In addition to the international initiatives, the fate of the individual works of art or the entire collections which became known at that time gave an incentive to revive the discussion and make some actions in Germany more dynamic.

#### THE ORGANISATIONAL AND FINANCIAL STEPS TAKEN TO FIND AND RESTITUTE CONFISCATED CULTURAL PROPERTY

The first action was already taken by the ‘red and green’ government coalition. In connection with the Washington Principles and the internal Joint Declaration all public institutions in Germany were asked to verify their collections of cultural goods and report the cases where the way in which the artworks were acquired was unclear or, even more importantly, “suspicious”. In the case of the institutions which in whole or in part belong to the Federation, The Federal Government Commissioner for Culture and Media called for a rapid and comprehensive examination of their collections. The first concrete steps towards determining how to implement the Washington Principles were taken in April 2000 by creating the Lost Art Internet Database (*Lost Art-Internet-Datenbank*). The Coordinating Unit in Magdeburg, formed by the federal government and the federal states, was responsible for this database. So far, more than 154,000 works of art stolen from their Jewish owners during the Nazi regime or lost during the Second World War have been described in detail in the Lost Art database and another several millions just generally. More than 1,400 national and international institutions as well as individuals entered the information on the item they have been looking for or have already found into the Lost Art database. While in the years 2000-2008 the database registered a total of 6,750 entries reporting finding the works of art stolen by the Nazis, their number increased more than fourfold between 2008 and 2014, exceeding 29,000 reports. According to the Coordinating Unit, more than 12,200 items were restored between 1998 and mid-December 2014. These included more than 4,000 posters from the Sachs collection, more than 7000 books from different libraries and about 87 archive items. The number of “suspicious” cases reported and recorded in the Lost Art database has

increased more than four times since 2008 and reached the number over 30,000.<sup>29</sup> In February 2001 in order to implement the Joint Declaration, the Federal Government Commissioner for Culture issued the Guidelines, which were then fundamentally changed in October 2007.<sup>30</sup> Since 2013 their online version allows for fast and technologically advanced queries as it comprises numerous collections of documents and databases as well as searching tips, for example, lists of Jewish collectors and art dealers who were the victims of the Nazi persecution and expropriation, offices and persons involved in the robbery of works of art and the most famous places of storage and transfer of the stolen works of art, the art auctions and cultural assets database comprising the years 1933-1945, and the information on how to use the Lost Art database.<sup>31</sup> The document which currently comprises more than 100 pages is not, as its name suggests, binding but it is a guide for independent searches and provenience research of the museums, libraries and archives. The information on processing the restitution applications and providing just and fair solutions is an important part of the document. The first three annexes to the Guidelines are the Washington Declaration, the Joint Declaration and the Terezin Declaration, and the last of these – the specimen agreement for the return of the works by institutions to the heirs of a specific person. It has been proposed in the introduction to the agreement that an institution should make a statement expressing its wish to return the work to its heirs, regardless of whether and how it is legally obliged to do so.<sup>32</sup>

In 2003, having the approval of the federal states and the national associations of local authorities, the Federal government established the Advisory Commission<sup>33</sup> in order to apply one of the Washington Principles and to mediate in cases of dispute involving the restitution of cultural assets which were confiscated during the Third

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<sup>29</sup> *Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter*, the Bundesregierung website, [http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung\\_ns\\_raubkunst/\\_node.html](http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung_ns_raubkunst/_node.html) (27.12.14).

<sup>30</sup> Handreichung zur Umsetzung der “Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände zur Auffindung und zur Rückgabe NS-verfolgungsbedingt entzogenen Kulturgutes, insbesondere aus jüdischem Besitz” vom Dezember 1999, the *Lost Art* website - Koordinierungsstelle Magdeburg, [http://www.lostart.de/Content/09\\_Service/DE/Downloads/Handreichung.pdf;jsessionid=2CFBA6DC65B13A0BE4B1E6291E0EC624.m0?\\_blob=publicationFile](http://www.lostart.de/Content/09_Service/DE/Downloads/Handreichung.pdf;jsessionid=2CFBA6DC65B13A0BE4B1E6291E0EC624.m0?_blob=publicationFile) (26.12.14).

<sup>31</sup> Kulturstaatsminister Bernd Neumann: Suche nach NS-Raubkunst wird erleichtert. Pressemitteilung vom 10.05.2013, the Bundesregierung website, <http://www.bundesregierung.de/ContentArchiv/DE/Archiv17/Pressemitteilungen/BPA/2013/05/2013-05-10-bkm-ns-raubkunst.html> (27.12.14).

<sup>32</sup> Handreichung zur Umsetzung der “Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände zur Auffindung und zur Rückgabe NS-verfolgungsbedingt entzogenen Kulturgutes, insbesondere aus jüdischem Besitz” vom Dezember 1999, vom Februar 2001, überarbeitet im November 2007, the *Lost Art* website- Koordinierungsstelle Magdeburg, <http://www.lostart.de/Webs/DE/Koordinierungsstelle/Handreichung.html> (27.12.14).

<sup>33</sup> The full name of the Commissions is: “Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property” (*Beratende Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, insbesondere aus jüdischem Besitz*).

Reich from persecuted Jewish citizens in particular, and now held by museums, libraries, archives or other public institutions in the Federal Republic of Germany. Jutta Limbach, the former President of the Federal Constitutional Court became its chairwoman. The Commission, consisting of eight members, includes, among others, Rita Süßmuth, the former President of the Bundestag. Richard von Weizsäcker, the President of the Federation, who passed away in 2015, was also a member of the Commission. The Commission may, after thorough examination of individual cases, make recommendations as to just and fair solutions, if such are desired by both the public institutions involved and the former owners or their heirs. The Commission does not take decisions which are legally binding. It issued nine recommendations by the end of 2014. According to the Commission, the right ways to resolve the dispute in the cases examined by it would be:

- returning three paintings by Karl Blechen and a watercolour by Anselm Feuerbach to the heirs of Julius and Clara Freund by the Federal Government<sup>34</sup>;
- leaving the poster collection of Hans Sachs in the German Historical Museum (*Deutsches Historisches Museum*);<sup>35</sup>
- paying compensation amounting to 10,000 Euros to Karl Ernst Baumann, the grandson of Laura Baumann by the State of Hessen<sup>36</sup>;
- returning the painting “Peasant girl without a hat and with a white head cloth” by William Leibl (*Bauernmädchen ohne Hut mit weißem Halstuch*, 1897) to the heirs of Alexander Lewin by the Federal Government<sup>37</sup>;
- returning two paintings by Karl Schmidt-Rotluff “Farm in Dangast” (*Gutshof in Dangast*, 1910) and “Self-portrait” (*Selbstbildnis*, 1920) to Robert Graetz, the heir of the art collector of the same name and surname by the Land Berlin;<sup>38</sup>

<sup>34</sup> Pressemitteilung vom 12.01.2005. Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter - Erste Empfehlung der Beratenden Kommission, the *Lost Art* website - Koordinierungsstelle Magdeburg, [http://www.lostart.de/Content/06\\_Kommission/05-01-12-Erste-Empfehlung-der-Beratenden-Kommission-DL.pdf?\\_\\_blob=publicationFile](http://www.lostart.de/Content/06_Kommission/05-01-12-Erste-Empfehlung-der-Beratenden-Kommission-DL.pdf?__blob=publicationFile) (02.010.15).

<sup>35</sup> Pressemitteilung vom 25.01.2007. Zweite Empfehlung der Beratenden Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, the *Lost Art* website - Koordinierungsstelle Magdeburg, [http://www.lostart.de/Content/06\\_Kommission/07-01-25-Zweite-Empfehlung-der-Beratenden-Kommission-DL.pdf?\\_\\_blob=publicationFile](http://www.lostart.de/Content/06_Kommission/07-01-25-Zweite-Empfehlung-der-Beratenden-Kommission-DL.pdf?__blob=publicationFile) (02.01.15).

<sup>36</sup> Pressemitteilung vom 12.06.2008. Empfehlung der Beratenden Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, the *Lost Art* website - Koordinierungsstelle Magdeburg, [http://www.lostart.de/Content/06\\_Kommission/08-06-12-Dritte-Empfehlung-der-Beratenden-Kommission-DL.pdf?\\_\\_blob=publicationFile](http://www.lostart.de/Content/06_Kommission/08-06-12-Dritte-Empfehlung-der-Beratenden-Kommission-DL.pdf?__blob=publicationFile) (02.01.15).

<sup>37</sup> Pressemitteilung vom 27.01.2009. Empfehlung der Beratenden Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter – Professor Dr. Wolf Tegethoff neues Kommissionsmitglied, the *Lost Art* website - Koordinierungsstelle Magdeburg, [http://www.lostart.de/Content/06\\_Kommission/09-01-27-Vierte-Empfehlung-der-Beratenden-Kommission\\_download.pdf?\\_\\_blob=publicationFile](http://www.lostart.de/Content/06_Kommission/09-01-27-Vierte-Empfehlung-der-Beratenden-Kommission_download.pdf?__blob=publicationFile) (02.01.15).

<sup>38</sup> Pressemitteilung vom 18.11.2011. Empfehlung der Beratenden Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter. Dr. Hans Otto Bräutigam neues Kommissionsmitglied, the *Lost Art* website - Koordinierungsstelle Magdeburg, [http://www.lostart.de/Content/06\\_Kommission/11-](http://www.lostart.de/Content/06_Kommission/11-)

- reaching a settlement between the city of Neuss and Margit Frenk, the heir of Paul Westheim, stating that the painting “Roof Garden for the Insane” by Joachim Ringelnatz (*Makabre Szene – Dachgarten der Irrsinnigen*, 1925) will remain in the collections of the Museum of Clemens Sels in Neuss, and Margit Frenk will receive 7,000 euros from the City of Neuss;<sup>39</sup>
- returning “Portrait of Tilla Durieux” by Oskar Kokoschka (*Bildnis Tilla Durieux*, 1910) to the heirs of Alfred Flechtheim by the city of Cologne;<sup>40</sup>
- refusing to return the so-called Guelph Treasure to the heirs of four art dealers or possibly its earlier owners by the Prussian Cultural Heritage Foundation due to the fact that the sacred art making up the treasure was not a forced sale;<sup>41</sup>
- refusing to return the painting “Three Heirs by Lovis Corinth” (*Drei Grazien*, 1902/1904) to the heirs of Clara Levy by the Bavarian State Painting Collections due to the fact that the painting was not lost as a result of the Nazi persecution.<sup>42</sup>

The return in 2006 of such a well-known work of art as “Berlin Street Scene” by Ernst Ludwig Kirchner (*Berliner Straßenszene*) led to intense discussions on the future of German restitution practices. A group of experts commissioned by the Minister for Culture debated in the autumn of 2007 on how to make these practices more transparent, coordinated and understandable. An important result of the debate was establishing the Bureau for Provenance Research at the Institute for Museum Research of the Berlin State Museums – the Prussian Cultural Heritage Foundation (*Arbeitsstelle für Provenienzforschung beim Institut für Museumsforschung der Staatlichen Museen zu Berlin – Stiftung Preußischer Kulturbesitz*). The Bureau for Provenance Research supported public museums, libraries and archives in identifying cultural assets which

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11-18-Empfehlung%20der%20Beratenden%20Kommission\_download.pdf?\_\_blob=publicationFile (02.01.15).

<sup>39</sup> Pressemitteilung vom 28.03.2013. Beratende Kommission empfiehlt Vergleich, the *Lost Art* website - Koordinierungsstelle Magdeburg, [http://www.lostart.de/Content/06\\_Kommission/13-03-28%20BerKomm%20zu%20Westheim-Neuss.pdf?\\_\\_blob=publicationFile](http://www.lostart.de/Content/06_Kommission/13-03-28%20BerKomm%20zu%20Westheim-Neuss.pdf?__blob=publicationFile) (02.01.15).

<sup>40</sup> Pressemitteilung vom 9.04.2013. Empfehlung der Beratenden Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, the *Lost Art* website - Koordinierungsstelle Magdeburg, [http://www.lostart.de/Content/06\\_Kommission/13-04-09%20BerKomm%20zu%20Flechtheim-Köln.pdf?\\_\\_blob=publicationFile](http://www.lostart.de/Content/06_Kommission/13-04-09%20BerKomm%20zu%20Flechtheim-Köln.pdf?__blob=publicationFile) (02.01.15).

<sup>41</sup> Pressemitteilung vom 20.03.2014. Empfehlung der Beratenden Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, the *Lost Art* website - Koordinierungsstelle Magdeburg, [http://www.lostart.de/Content/06\\_Kommission/14-03-20-Empfehlung%20der%20Beratenden%20Kommission%20zum%20Fall%20Welfenschatz.pdf?\\_\\_blob=publicationFile](http://www.lostart.de/Content/06_Kommission/14-03-20-Empfehlung%20der%20Beratenden%20Kommission%20zum%20Fall%20Welfenschatz.pdf?__blob=publicationFile) (02.01.15).

<sup>42</sup> Pressemitteilung vom 21.08.2014. Empfehlung der Beratenden Kommission für die Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter zum Bild “Drei Grazien” von Lovis Corinth, the *Lost Art* website - Koordinierungsstelle Magdeburg, [http://www.lostart.de/Content/06\\_Kommission/14-08-21-Empfehlung%20der%20Beratenden%20Kommission%20zum%20Fall%20Levy-BSTGS.pdf?\\_\\_blob=publicationFile](http://www.lostart.de/Content/06_Kommission/14-08-21-Empfehlung%20der%20Beratenden%20Kommission%20zum%20Fall%20Levy-BSTGS.pdf?__blob=publicationFile) (02.01.15).

were looted from their lawful owners during the Nazi period. The work of the Bureau and the Coordinating Unit in Magdeburg is continued by the newly formed (on 1 January 2015) German Lost Art Foundation (*Deutsches Zentrum Kulturgutverluste*).<sup>43</sup>

Since 2008 the Federal Government Commissioner for Culture and Media designated one million euros a year for decentralised provenance research and 2 million euros from 2012 on. The amount was doubled again in 2014 and it now amounts to 4 million euros a year. Since its foundation the Bureau for Provenance Research received financial support of about 12 million euros to use on 109 long-term and 61 short-term projects. Along with 1.7 million euros that the Office received from the Cultural Foundation of the Federal States and the complementary funds in the amount of 7.7 million euros donated by the sponsors of individual projects, a total of 21.4 million euros, only for the Bureau's own projects, were collected for decentralised search for stolen works of art. The recipients of this financial support were 89 museums, 27 libraries, 5 research institutes and university institutions and 5 archives. The provenance of more than 90,000 items in the museums (mostly paintings, drawings and graphic works) and more than 520,000 books, prints and archives in the libraries has been, or will be examined as part of the funded projects. As the Institute's analysis performed in the autumn of 2013 and comprising about half of all German museums reveals, in 60% of these museums there are collections which should be examined as possibly being Nazi-confiscated art as they were set up before 1945 and became part of the museums' collections after 1933. Only 10% of the museums surveyed have been involved in provenance research, which shows the scale of the still unresolved problem and the enormity of the tasks for the coming years in terms of restitution of cultural property that once belonged to the victims of National Socialism.<sup>44</sup>

#### RESTITUTION OF CULTURAL ASSETS ILLUSTRATED WITH AN EXAMPLE OF A PAINTING BY KIRCHNER AND THE SACHS COLLECTION

Restitution of the painting by Ernst Ludwig Kirchner, called by the *Frankfurter Allgemeine Zeitung* "the most dramatic restitution case in Germany so far,"<sup>45</sup> came as a surprise to both the public and friends and sponsors of the Brücke Museum

<sup>43</sup> *Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter*, the Bundesregierung website, [http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung\\_ns\\_raubkunst/\\_node.html](http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung_ns_raubkunst/_node.html) (27.12.14).

<sup>44</sup> *Ibid.*

<sup>45</sup> Cf. M. Anton, *Illegaler Kulturgüterverkehr*, Berlin - New York 2010, p. 748; A. von Bülow, *Der „Fall Kirchner. Provenienz und Restitution von Ernst Ludwig Kirchners „Berliner Straßenszene“*, in: U. Fleckner, *Das verfemte Meisterwerk. Schicksalswege moderner Kunst im „Dritten Reich“*, München 2009, p. 543.

in Berlin, because they learned about the results of the more than two-year-long negotiations only from the press. However, this was not the only fact that caused strong protests and led to the evaluation of the restitution as an “unjustified gift.”<sup>46</sup> Three factors were responsible for that. First, the history of the artwork could not be reliably reconstructed. It has long been considered unknown and not providing a clear basis for questioning the painting’s provenance as unrelated to the Nazi persecution. Hence, the surprise caused by the restitution claim and the lack of faith in its correctness were great. Second, the knowledge of the Washington Principles and above all the importance of their adoption by the Federal Republic of Germany, have not become widely known yet. Voluntary commitments of the state (at various levels) which have been made afterwards significantly influenced the nature, scope and results of the actions taken in new restitution cases. Finally, the history of each restituted well-known work of art arouses justified interest. The almost instantaneous putting a work up for sale with the obvious intention of making a quick and large profit which often becomes larger because of the ‘recent history’ of the item, is met with reluctance from the public in such cases.

The painting “Berlin Street Scene” by Ernst Ludwig Kirchner (1880-1938), a German painter and graphic artist who was one of the most important representatives of expressionism, one of the founders of the artistic group The Bridge, and regarded as the author of the “degenerate art” by the Nazis, has been part of the Berlin Brücke Museum’s (*Brücke-Museum*) collection since 1980. It is from here that the Federal State of Berlin handed the picture over to the heiress, living in the UK, of its former Jewish owner, Erfurt manufacturer Alfred Hess, a well-known collector and patron of arts who died in 1931, as part of restitution based on the Washington Principles.

The restitution sparked a wave of criticism in Germany, because according to the experts it was not clear whether the key work of German expressionism painted in 1913 was actually sold under duress at the time of National Socialism. Two years after Hess’ death in 1933, the family moved his collection to Switzerland, where it was shown first in Basel and then in Zurich, where it eventually remained. At the instruction of the family, seven paintings from the collection, including the “Berlin Street Scene”, were sent to Cologne in 1936 to an exhibition organised by the local Association of Fine Arts Enthusiasts. Thanks to this Carl Hagemann, an art collector living in Frankfurt, bought the “Scene” from Tekla Hess at the end of 1936 or at the beginning of 1937. After Hagemann’s death in 1940, his family gave the picture to Ernst Holzinger, then the Director of the Städel Museum in Frankfurt, as an expres-

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<sup>46</sup> R.-M. Gropp, *Ernst Ludwig Kirchner: Ein Bild für Christie’s*, Frankfurter Allgemeine Zeitung 16.08.2006, <http://www.faz.net/aktuell/feuilleton/kunst/ernst-ludwig-kirchner-ein-bild-fuer-christie-s-1355343.html> (28.12.14). See also *Rückgabe von Kirchner-Gemälde: Rückendeckung vom Zentralrat der Juden*, Spiegel Online 12.09.2006, <http://www.spiegel.de/kultur/gesellschaft/rueckgabe-von-kirchner-gemaelde-rueckendeckung-vom-zentralrat-der-juden-a-436704.html> (28.12.14).

sion of gratitude for rescuing the Hagemann collection containing – according to the Nazis - “degenerate art”. Holzinger hid this collection together with the collection of Johann Friedrich Städel. After the war, the painting was displayed in the museum in Frankfurt until the widow of Ernst Holzinger, who died in 1972, sold it in 1980 to the museum in Berlin for 1.9 million marks. In order to finance the acquisition, all of Berlin’s museums combined their resources and abandoned further purchases for two years. At this time there were no doubts as to the legal origin of the world-famous painting.

The restitution was made on the grounds that the work was “shipped to Switzerland as part of the collection belonging to a racially persecuted family” and acquired by Hagemann “for a purchase price of 3,000 Reich marks” in 1936 or 1937. Whether the money did make it into the hands of the Hess family could not be determined. The documents from the 1930s indicate that a coerced sale as a result of the Nazi persecution could have taken place. Jost von Trott zu Solz, the attorney of the Berlin state senate, took the position that although there is no legal basis to claim the return of the painting, still the principles of the Joint Declaration of 1999 should be applied. According to them, Berlin was obligated to prove that both the amount paid by Hagemann was adequate and the Hess family could freely dispose of that amount, i.e. that the painting was actually paid for. In these circumstances, Barbara Kisseler, Berlin state culture secretary, decided to return the painting “on the basis of »the Hess family’s regime-induced harm« and taking into account a significant role that »moral considerations« played”. This decision, however, prompted a number of questions about the new restitution policy in Germany which “allows for feeding the flourishing international art market with works of exceptional value, for which one has to pay two-digit million prices”. It should be added, that only a few days after its return the “Berlin Street Scene” appeared on the art market – the London auction house Christie’s announced putting it as the “icon of German expressionism” on auction in New York at an estimated price of 18-25 million dollars. Such a sequence of events gave rise to a suspicion that the restitution could be a cover for an earlier agreement between the heiress of Alfred Hess and Christie’s auction house, which even before the debate had enquired about the provenance of the painting in the Swiss Kirchner Archive.<sup>47</sup>

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<sup>47</sup> R.-M. Gropp, *Ernst Ludwig Kirchner: Ein Bild für Christie’s*, Frankfurter Allgemeine Zeitung 16.08.2006, <http://www.faz.net/aktuell/feuilleton/kunst/ernst-ludwig-kirchner-ein-bild-fuer-christies-1355343.html> (28.12.14). Cf. S. Kreuzmann, „Entartete Kunst: Kirchner-Gemälde wieder in Privatbesitz”, Spiegel Online 27.07.2006, <http://www.spiegel.de/kultur/gesellschaft/entartete-kunst-kirchner-gemaelde-wieder-in-privatbesitz-a-428888.html> (28.12.14); *Auktion bei Christie’s: Kirchner-Gemälde für 30 Millionen Euro versteigert Kirchner-Gemälde*, „Spiegel Online” 09.11.2006, <http://www.spiegel.de/kultur/gesellschaft/auktion-bei-christie-s-kirchner-gemaelde-fuer-30-millionen-euro-versteigert-a-447339.html> (28.12.14); S. Moll, *Rekordauktion in New York: Das doppelte Spiel des Ron Lauder*, Spiegel Online 09.11.2006, <http://www.spiegel.de/kultur/gesellschaft/rekordauktion-in-new-york-das-doppelte-spiel-des-ron-lauder-a-447362.html> (28.12.14); *Kirchner-Gemälde “Berliner*



From a legal point of view such a conduct is irreproachable - the owner of a thing has, after all, the right to dispose of it at his own discretion. It must be stressed that the heiress of Alfred Hess proposed that Berlin should buy the painting for 15 million euros, which, however, the state was not able to put up. The price reached later at the auction equaled 38.1 million dollars (almost 30 million euros at the time)<sup>48</sup> At the same time Christie's returned 1.9 million marks (€ 950,000), which the museum paid for the "Berlin Street Scene" in 1980 to the Land Berlin. All this happened in accordance with new principles on the restitution of stolen cultural assets, as confirmed by the conclusions of the special committee of the Berlin Parliament and prosecutorial activities conducted in connection with numerous reports of crimes allegedly committed by the government officials in Berlin and the heiress of Alfred Hess.<sup>49</sup> The loss of this particular work which was acquired lawfully and with great financial effort in 1980, was very painful and confusing, if not shocking for the Germans. However, the main source of the problem was the lack of in-depth provenance research which would explain the history of the picture.<sup>50</sup> Its original rightful owners, Tekla and Hans Hess (the wife and son of Alfred Hess) were considered to be the "victims of National Socialism" by Berlin Compensation Office already in 1961.<sup>51</sup> The correctness of this decision was confirmed by the historical studies carried out after the return of the "Berlin Street Scene".<sup>52</sup> Therefore, as has been already mentioned, the conclusions derived on the basis of this case gave rise to setting up the Bureau for Provenance Research which operated till the end of 2014. As rightly noted, the discussion on how to return Kirchner's painting "was hurtful and petty,

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*Straßenszene*": Sonderausschuss untersucht Rückgabe, Spiegel Online 12.02.2007, <http://www.spiegel.de/kultur/gesellschaft/kirchner-gemaelde-berliner-strassenszene-sonderausschuss-untersucht-rueckgabe-a-465938.html> (28.12.14).

<sup>48</sup> *Ernst Ludwig Kirchner (1980-1938). Berliner Strassenszene (recto); Bäume (verso)*, Christie's website, <http://www.christies.com/lotfinder/lot/ernst-ludwig-kirchner-berliner-strassenszene-baum-lume-4807488-details.aspx?intObjectID=4807488> (29.12.14); *Auktion bei Christie's: Kirchner-Gemälde für 30 Millionen Euro versteigert Kirchner-Gemälde*, Spiegel Online 09.11.2006, <http://www.spiegel.de/kultur/gesellschaft/auktion-bei-christie-s-kirchner-gemaelde-fuer-30-millionen-euro-versteigert-a-447339.html> (29.12.14).

<sup>49</sup> *Kirchner-Bild: Ermittlungen eingestellt*, Die Welt 12.03.2008, [http://www.welt.de/welt\\_print/article1789739/Kirchner-Bild-Ermittlungen-eingestellt.html](http://www.welt.de/welt_print/article1789739/Kirchner-Bild-Ermittlungen-eingestellt.html) (29.12.14)

<sup>50</sup> Cf. *Raubkunst - „Geschäft mit dem Erbe: Martin Roth, 51, Generaldirektor der Dresdner Kunstsammlungen, über den heiklen Umgang mit Werken aus ehemals jüdischem Besitz und die unstillbare Gier des Marktes nach Museumsware*, Der Spiegel no. 44, 2006, p. 210; *Interview. Museen in der Defensive. Dresdner Sammlungsdirektor mahnt zum Schutz kultureller Identität. Moderation: Klaus Remme*, Die Zeit Online 8.11.2006, <http://www.zeit.de/politik/dlf/2006/061108-Museen> (30.12.14).

<sup>51</sup> *Gerechte Rückgabe*, Der Spiegel no. 34, 2006, p. 150. On the history of the Hess family in 1930s see also T. Timm, *Warum der Kirchner in New York ist*, Die Zeit no. 45, 2006, [http://www.zeit.de/2006/45/Warum\\_der\\_Kirchner\\_in\\_New\\_York\\_ist](http://www.zeit.de/2006/45/Warum_der_Kirchner_in_New_York_ist) (30.12.14).

<sup>52</sup> The results of the research were discussed in G. Schnabel, M. Tatzkow, *Berliner Straßenszene - Raubkunst und Restitution. Der Fall Kirchner*, Berlin 2008.

but evidently it was urgently needed so that, at last, the restitution of artworks would be discussed, studied and debated in Germany".<sup>53</sup>

Another famous case which ended in the Federal Court of Justice in Karlsruhe in 2012, was a dispute over the ownership of the posters from the Sachs collection. The poster collection of Hans Sachs born in Breslau, a Berlin chemist and dentist of Jewish origin, a great art lover, consisted of 12,500 works at the time of its seizure by the Nazis in 1938. The artworks in this collection give a comprehensive overview of poster art from its beginnings around 1880 to the 1930s in terms of both their contents and artistic forms. The storage location of the collection was changed many times during and after the Second World War. The knowledge on the whereabouts of the collection was initially just fragmentary and based on speculation. It was only known that part of the Sachs collection discovered in a cellar in East Berlin was moved to the German Historical Museum, then in East Berlin. In 1961 the previous owner, suspecting that his collections had been destroyed during the war, agreed to a compensation of 225,000 marks from the Federal Republic of Germany. In 1966 he found out that the collection had survived the war and declared in writing that the compensation satisfies his claims provided that the posters would publically displayed. After the unification of Germany, in 1992, the German Historical Museum in Berlin estimated the number of Sachs posters in its collection to be about 8,000 and this is the number claimed by the heir of Hans Sachs living in the United States. A detailed analysis of the works themselves and their history revealed, however, that only 4259 posters can be unequivocally declared to come from the Sachs collection. After years of disputes over the restitution, in 2012 the Federal Court of Justice in Karlsruhe upheld the complaint filed by the heir of the pre-War owner which resulted in the German Historical Museum returning the artworks worth over 4 million euros in October 2012. Then the museum purchased several of them at two auctions in 2013.<sup>54</sup>

It should be particularly emphasised that it was in the case of the Sachs poster collection that the Federal Court of Justice, the highest civil court of the Federal Republic of Germany, passed a verdict unfavourable for the German museum for the first time. Peter Sachs, the son of the art collector, who died in 1974, claimed that he learned about the existence of his father's posters in the German Historical Museum in 2005 and then he demanded their restitution. The museum declined by referring

<sup>53</sup> U. Baier, *Verkauft, vererbt, verschenkt*, Die Welt 15.09.2008, [http://www.welt.de/welt\\_print/article2445059/Verkauft-vererbt-verschenkt.html](http://www.welt.de/welt_print/article2445059/Verkauft-vererbt-verschenkt.html) (29.12.14).

<sup>54</sup> *Plakate. Geschichte der Sammlung*, the Deutsches Historisches Museum website, <http://www.dhm.de/sammlung-forschung/sammlungen0/plakate/geschichte.html> (27.12.14); *Deutsches Historisches Museum*, the Arbeitsstelle für Provenienzforschung website, <http://arbeitsstelle-provenienzforschung.de/index.php/component/k2/item/247-deutsches-historisches-museum> (27.12.14); *Deutsches Historisches Museum verliert Plakat-Streit*, Die Zeit Online 10.02.2009, <http://www.zeit.de/online/2009/07/DHM-plakate-sachs-urteil> (30.12.14); K. Kohlenberg, *Im Namen meines Vaters*, Die Zeit Online 10.09.2009, <http://www.zeit.de/2009/04/Sammlung-Sachs> (30.12.14).

to, among other things, the limitation of the claims under the law on restitution and the compensation already paid. The heir's attorneys argued, however, that during the Cold War Hans Sachs could not see a realistic possibility of his posters being returned by the German Democratic Republic which considered itself a victim of fascism and rejected restitution claims of other victims. At the beginning of 2007 the dispute went to the Advisory Commission, which – “against the clearly expressed wish of the collector Hans Sachs” – recommended, for the first time in such cases, leaving the posters in the museum and committing the latter to display the collection appropriately and provide information about the first owner of the collection. Not agreeing with this opinion, Peter Sachs brought the case to the Berlin District Court, which agreed with him. The court of second instance decided that the claims of the heir were statute-barred.<sup>55</sup>

In the opinion of the court in Karlsruhe confiscating Hans Sachs' posters by the Nazis on behalf of the Reich Ministry of Propaganda was nothing more than theft and therefore Hans Sachs never lost title to the collection, which was not questioned by the court of second instance. Contrary to the view of the latter, the Federal Court of Justice took the position that the provisions of the Restitution Law of Allies containing limitation periods, have no priority over the general provisions of the civil law, and more specifically according to § 985 of the German Civil Code, if the asset confiscated as a result of Nazi persecution – as in the case of the Peter Sachs' revision plea and unlike the previous cases decided by the Federal Court of Justice – went missing after the war and the beneficiary obtained information of its whereabouts only after the expiry of the deadline for the submission of a restitution claim. The court in Karlsruhe stressed the paramount importance of the principle of restitution in kind on which the post-War specific provisions were based, too. According to the Federal Court of Justice, if in such a case even after finding the item it is to be assumed that it is no longer permissible to file restitution claims due to the expiry of the period permitted, the beneficiary and his legal successors would be permanently excluded from the primary pursued compensation by ways of restitution, although it would be, even at a later time, actually and – on the basis of the general laws – legally possible. Consequently, the Allied restitution provisions would deprive the beneficiary of any possibility of claiming the restoration of the legal status, thereby perpetuating the National Socialist injustice. Such a result is incompatible with the nature and purpose of these provisions which were to protect the interests of the victims. Moreover, the Federal Court did not hold that the plaintiff's father waived his rights to the poster collection in a letter written in 1966 to an employee in the

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<sup>55</sup> *DHM muss Plakat-Sammlung Sachs zurückgeben*, Die Welt 16.03.12, <http://www.welt.de/kultur/history/article13925851/DHM-muss-Plakat-Sammlung-Sachs-zurueckgeben.html> (30.12.14); *NS-Raubkunst: Museum soll enteignete Plakatsammlung behalten*, Der Spiegel Online 25.01.2007, <http://www.spiegel.de/kultur/gesellschaft/ns-raubkunst-museum-soll-enteignete-plakatsammlung-behalten-a-462378.html> (31.12.14).

German Historical Museum in East Berlin. The content of the letter was to help to allay the museum employee's fear that Hans Sachs would attempt to recover the works and to prevent the loss of contact with this institution. The fact that a claim for restitution against a public museum in the GDR during the Cold War must have seemed pointless to the plaintiff's father must also be taken into account. Therefore, the period before 3 October 1990 cannot be taken into consideration when assessing the validity of the statute of limitations with regard to restitution claims submitted on the basis of the German Civil Code. Finally, the Federal Court stated that it was not necessary to refer to the claimant's argument assuming that the museum as an institution of public law cannot invoke the charge that the claim for releasing the posters is forfeited according to the Joint Declaration adopted with reference to the Washington Declaration.<sup>56</sup> So in fact, the restitution of the posters from Hans Sachs collection was made following the "old" principles, i.e. solely on the basis of the mandatory provisions of the German civil law. However, the public at large seemed to assume that the new rules were applied. Since the judgment on Peter Sachs' revision coincides with the implementation of a new state restitution policy and the development of a new public attitude towards these issues, it can be assumed that the verdict is a part of the general political and social transformations concerning the matter in question in Germany.

It should be emphasised that the public reaction to the claims and arguments of Hans Sachs' heir as well as the final court judgment in this case were calmer than in the case of the dispute over the painting by Kirchner – they referred to the facts and did not focus on negative emotions. In the meantime, German museums returned other artworks to the heirs of the rightful owners and restitution of cultural property under the new rules was something to which the public became used to and regarded as a natural way of solving a really serious problem.<sup>57</sup> The voice of the conservative circles, reflected in the opinion of Ludwig von Pufendorf and Ulrik Michelbrink, the attorneys of the German Historical Museum before the Advisory Commission and the court of first instance, who wrote in the *Frankfurter Allgemeine Zeitung* that the judgment of the Federal Court of Justice is a "wrongly decided and dangerous judgment", cannot be considered representative for the assessment of the restitution of Sachs' posters in Germany. Despite special emphasis put on the cited description of the judgment – in the subheading of the analysis published in the *Frankfurter Allgemeine Zeitung* – its content is very factual and based solely on legal argu-

<sup>56</sup> BGH, Urteil vom 16. März 2012 - V ZR 279/10, the Bundesgerichtshof website, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2012-3-16&nr=59992&pos=3&anz=5&Blank=1.pdf> (01.01.15).

<sup>57</sup> Por. *Wertvolle Plakatsammlung: Museum muss NS-Beute zurückgeben*, Der Spiegel Online 16.03.2012, <http://www.spiegel.de/kultur/gesellschaft/dhm-muss-plakatsammlung-zurueckgeben-a-821738.html> (31.12.14); *Sammlung Emma Budges: Münchner Stadtmuseum gibt Nazi-Raubkunst zurück*, Der Spiegel Online 15.03.2012, <http://www.spiegel.de/kultur/gesellschaft/muenchner-stadtmuseum-gibt-nazi-raubkunst-an-erben-zurueck-a-821607.html> (31.12.14).

ments.<sup>58</sup> Two weeks after printing this text the FAZ published a reply by Matthias Druby, who fully accepted the judgment of the Federal Court and emphasised that it remained in compliance with both the existing law and the practice relating to repairing the damage characterised by continuity since 1945 and confirmed by the obligation based on the Washington Principles to return looted art, even if such an obligation does not apply under the law.<sup>59</sup>

In 2014 the German daily *Die Welt* in an article by Eckhard Fuhr drew attention to a fundamental change in Germany in public perception of matters relating to the restitution of works of art looted by the Nazis, comparing the history of the restitution of Ernst Ludwig Kirchner's "Berlin Street Scene" eight years previously to the current case of Oskar Kokoschka's "Pariser Platz in Berlin" from 1926. The author pointed out that the Washington Declaration which was already eight years old did not reach public awareness in 2006. At the same time Hermann Parzinger, the President of the Prussian Cultural Heritage Foundation, asked himself whether it is not a display of insensitivity to have a painting formerly belonging to a Jewish owner in his office. Having seen "Pariser Platz in Berlin" in his office after taking up the position as the President of the Foundation, Parzinger removed the painting from the wall as the possibility of it being a stolen work of art could not be excluded in this case. Anna Caspari, a Jewish art dealer, purchased it in the late 1920s. Until 2014 the Foundation assumed that Anna Caspari gave "Pariser Platz in Berlin" to the Dresdner Bank before 1933 as collateral for a loan. In 1935 Berlin State Museums bought the painting from the bank. The former owner was deported in 1939 and murdered. Now, in the course of research on the Dresdner Bank's role in the art trade at the time of National Socialism doubts were raised about whether Kokoschka's painting was actually in the bank before the takeover of power by the Nazis. It is also unclear whether the Caspari family ever tried to recover the pledged painting. It should be emphasised that no claims concerning the painting were lodged. According to the statement made by Hermann Parzinger, the Foundation will actively search for the heirs of Anna Caspari in order to start negotiations on the return or purchase of the painting in the case of a justifiable suspicion that the painting belongs to works of art looted by the Nazis. Until then the painting will remain in the warehouse, because the Foundation should not give rise to the allegations that it decorates its office walls with looted art. Informing that systematic provenance studies have already begun and the Prussian Cultural Heritage Foundation is debating on the course of action in this regard, the daily concluded its article as follows: "Now the work which was used for official representation must probably be re-evaluated. It hurts. And that shows

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<sup>58</sup> See L. von Pufendorf, U. Michelbrink, *Herausgabe um jeden Preis*, Frankfurter Allgemeine Zeitung 14.11.2012, <http://www.faz.net/aktuell/politik/staat-und-recht/hans-sachs-plakatsammlung-herausgabe-um-jeden-preis-11960653.html> (31.12.14).

<sup>59</sup> M. Druba, *Das Unrecht wiedergutmachen*, Frankfurter Allgemeine Zeitung 28.11.2012, <http://www.faz.net/aktuell/politik/staat-und-recht/hans-sachs-plakatsammlung-das-unrecht-wiedergutmachen-11975124.html> (01.01.15).

that you are on the right track.”<sup>60</sup> These words perfectly illustrate the change that has taken place in recent years in the minds of people who are active in public life and ordinary people in Germany in regard to the issue of restitution of works of art stolen from the victims of National Socialism.

#### THE SCHWABING (MUNICH) ART DISCOVERY AND ITS EFFECTS

Once again the issue of Nazi-confiscated art has become the center of German and international public attention starting in November 2013 due to the reports of the seizure of 1,280 artworks in an apartment in the Schwabing district of Munich by the District Prosecutor of Augsburg. Some of them were suspected to have been confiscated from the victims of the Nazi regime. The items were found in an apartment of the art collector Cornelius Gurlitt, the son of an art dealer Hildebrand Gurlitt, whom, in times of National Socialism, the Nazis ordered, among other things, to sell abroad the so-called “degenerate art” removed from the German museums.<sup>61</sup> As it was clearly stated by *Die Welt*, this was not just about an old man and his pictures, it was about law and morality, coming to terms with German guilt and finally the question who the Germans want to be, as individuals and as a society.<sup>62</sup> Also, the *Frankfurter Allgemeine Zeitung* concluded its article on the legal aspects of the Munich events with a telling comment: “What is (...) an existing and valid law in the case of Nazi-confiscated art, to whom it belongs and whether the claims became statute-barred must be determined by policy.”<sup>63</sup> Although the answers to these questions could invariably be provided by the law only, the statement quoted above perfectly captures the essence of changes concerning the restitution of cultural assets stolen from the victims of National Socialism. The solution of the problem was in the hands of politicians, supported by scholars, or at least that was the widespread belief.

In order to intensify research into the origin of the “Schwabing find” the Federal Government and the Government of Bavaria formed an international task force (*Taskforce Schwabinger Kunstfund*) in November 2013. Its task was to identify those works in the Gurlitt collection which were looted by the Nazis, as well as

<sup>60</sup> E. Fuhr, *Welche Bilder darf man überhaupt noch aufhängen?*, *Die Welt* from 12.04.14, [http://www.welt.de/print/die\\_welt/kultur/article126864698/Welche-Bilder-darf-man-ueberhaupt-noch-aufhaengen.html](http://www.welt.de/print/die_welt/kultur/article126864698/Welche-Bilder-darf-man-ueberhaupt-noch-aufhaengen.html) (01.01.15).

<sup>61</sup> *Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter*, the Bundesregierung website, [http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung\\_ns\\_raubkunst/\\_node.html](http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung_ns_raubkunst/_node.html) (27.12.14).

<sup>62</sup> H. Wefig, *Fluch des Schatzes*, *Die Zeit Online* 21.11.2013, <http://www.zeit.de/2013/48/gurlitt-kunstwerke-raubkunst> (3.01.15).

<sup>63</sup> J. Voss, *Welches Recht gilt im Fall Gurlitt?*, *Die Frankfurter Allgemeine Zeitung* 19.11.2013, <http://www.faz.net/aktuell/feuilleton/kunst/muenchner-kunstfund-welches-recht-gilt-im-fall-gurlitt-12671543.html> (03.01.15).

ensure a transparent way of dealing with specific items. The agreement signed on 24 November 2014 between the Federal Government, the Free State of Bavaria and the Bern Art Museum Foundation, the beneficiary named in the will of Cornelius Gurlitt who died in the meantime, provides for the continuation of research on artworks at the expense of the Federation and Bavaria as well as the inclusion of the paintings found in Cornelius Gurlitt's house in Salzburg and possibly later discovered works of art in this kind of research. The Federation will return the works that were looted immediately after their identification to the entity authorised to recover them. The information about the items whose provenance cannot be fully explained will be entered into the Lost Art database, and the items themselves will be displayed with the fullest possible description if the Bern Art Museum decides that it will not take responsibility for them. Otherwise, they, similarly to the works not recognised by the task force as looted art, will become the property of the Bern Art Museum, which will assume responsibility for them from this moment on.<sup>64</sup> In accordance with § 7 of the agreement on the restitution of works of art looted by the Nazis and legal disputes with third parties, the Federal Government will decide on restitution in accordance with the Joint Declaration whose aim is the implementation of the Washington Principles. At the same time it committed itself, along with Bavaria to strive as much as possible to avoid legal disputes and complaints against the Bern Art Museum by, firstly, indicating to the outside world that the Federal Government is the proper recipient of the claims to works from Gurlitt's collection and, secondly, the swift processing and, if necessary the satisfaction of the restitution claims which had been filed.<sup>65</sup>

Speaking on the occasion of signing the agreement Monika Grütters, the Federal Government Commissioner for Culture and Media, stressed that "there is always a unique story of a single person behind each confiscated or looted work of art". As she noted, the parties to the agreement while shaping its content wanted to live up to their responsibilities and show that they care about these life stories not only from a legal but also a moral standpoint – in accordance with the principles laid down in the Washington Declaration. According to the Commissioner, by signing the agreement on the Gurlitt collection Germany took on historical responsibility for the suffering and injustice which the people persecuted by the Nazi regime experienced, especially those of Jewish descent. At the time of signing the agreement it was already known that three works in this collection, i.e. "Rider on the Beach" (*Reiter am Strand*) by Max Liebermann and "Seated Woman" (*Sitzende Frau*) by Henri Matisse

<sup>64</sup> *Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter*, the Bundesregierung website, [http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung\\_ns\\_raubkunst/\\_node.html](http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung_ns_raubkunst/_node.html) (27.12.14).

<sup>65</sup> Vereinbarung zwischen der Bundesrepublik Deutschland, dem Freistaat Bayern und der Stiftung Kunstmuseum Bern, the Bundesregierung website, [http://www.bundesregierung.de/Content/DE/\\_Anlagen/BKM/2014-11-24-vereinbarung-bund-freistaat-bayern-stiftung-kunstmuseum-bern.pdf?\\_\\_blob=publicationFile&v=3](http://www.bundesregierung.de/Content/DE/_Anlagen/BKM/2014-11-24-vereinbarung-bund-freistaat-bayern-stiftung-kunstmuseum-bern.pdf?__blob=publicationFile&v=3) (02.01.15).

as well as the drawing “Playing the piano” (*Das Klavierspiel*) by Carl Spitzweg were Nazi-looted works. Pursuant to the agreement, Monika Grütters expressed her readiness for the immediate restitution of these works.<sup>66</sup> All in all, the provenance studies proved to be necessary in the case of 970 works from the Gurlitt collection. Three hundred and eighty items were initially described as those being part of the Nazi “Degenerate Art” action (*Aktion “Entartete Kunst”*).<sup>67</sup> A total of 590 items needed to be checked to determine whether they belonged to art looted by the National Socialists.<sup>68</sup> These figures show the scale of the challenges facing the researchers.

Because of “the Schwabing find” and the accompanying events and reactions in Germany and abroad, an important goal of the Federal Government is to strengthen and intensify provenance research relating to the looted art. Therefore, the Commissioner for Culture and Media increased federal funding on provenance studies and prepared, jointly with the Federal States and the National Associations of Local Authorities, the opening of the German Centre for Cultural Heritage Loss, which – as a private foundation – began its work on 1 January 2015 in Magdeburg. The centre combined the Coordinating Unit and the Task Force into one body, including further central institutions and instruments for provenance research into its work.

The idea behind the foundation of the Centre was further expansion and better communication among the decentralised centres for tracking the Nazi-confiscated art. The new institution serves as a central point of contact and offers advice to public and private cultural institutions, scholarly institutions and private collectors, as well as the claimants and their heirs from Germany and abroad on the matters related to the implementation of the Washington Principles and the Joint Declaration. The documents may be used voluntarily by private entities and the Centre is required to have a support “offer” for them, because it is in the public interest. The tasks of the Centre also include ensuring direct support for the Advisory Commission, maintaining multilingual and publicly accessible databases related to the areas which fall within the competence of the Centre and taking actions to encourage further education and training, being in regular contact with the media and the public, record keeping and publishing scholarly papers. It should be noted

<sup>66</sup> Kulturstaatsministerin Grütters zur Vereinbarung über den Umgang mit dem Erbe Gurlitts, 24.11.2014, the Bundesregierung website, <http://www.bundesregierung.de/Content/DE/Rede/2014/11/2014-11-24-gruetters-gurlitt-bern.html?nn=444460> (02.01.15).

<sup>67</sup> It is estimated that as part of this action up to 20 000 works by such artists as Max Beckmann, Pablo Picasso, Otto Dix and Ernst Ludwig Kirchner, has been removed from German museums since 1937 as a result of the Nazi seizures. Some of these works were sold abroad, many were destroyed, and the fate of others was enveloped in the mists of war and post-war history. (U. Fleckner, *Vorwort*, in: U. Fleckner (ed.), *Angriff auf die Avantgarde. Kunst und Kunstpolitik im Nationalsozialismus*, München 2007, p. 2).

<sup>68</sup> *Schwabinger Kunstfund*, the *Lost Art* website - Koordinierungsstelle Magdeburg, <http://www.lostart.de/Webs/DE/Datenbank/KunstfundMuenchen.html;jsessionid=A0FCAB63AE9C3D30DED6C14995E71.m1> (02.01.15).



that the overall objective of the Foundation – according to § 2 of its Statute – is “to promote art and culture, science and research regarding the loss of cultural assets and supporting international exchange, tolerance and the idea of understanding among nations”. Besides issues related to cultural goods looted as a result of persecution during the Nazi era, the activities of the new institution also include the matters of cultural property displaced or lost in the aftermath of World War II. In relation to the former, the Statute provides that “The Foundation advocates for fair and just solutions in the matters of cultural property confiscated due to Nazi persecution” (§ 2 (2)).<sup>69</sup>

## CONCLUSION

The Washington Conference of 1998 and the adoption of its “principles on Nazi-confiscated art” were the direct and most important impulse for the new restitution policy of Germany and actions taken as part of it. The initial pace of implementation of the new rules left much to be desired, and the low awareness of the scale of the challenge grew only gradually, which is reflected in the coalition agreements of the successive governments. The reality which revealed surprising and difficult restitution cases, made intensification of the organizational and financial activities necessary, especially for the Federal Government. The quoted figures show how much work has been done, but also what the needs and tasks of the provenance research are and these are now an essential precondition for any restitution process, because there are no clear and simple cases after seventy years since the end of World War II. There are many years of work ahead of cultural institutions and scholars before they reach their goals. In contrast, the change of the attitude of the German society towards the new state restitution policy occurred relatively quickly. As noted by Sabine Rudolph, a researcher on the restitution of works of art which earlier belonged to Jews, in the first years after the adoption and actual application of the Washington Principles almost all restitution cases of artworks of great importance were accompanied by heated disputes among politicians, officials, media representatives and ordinary citizens.<sup>70</sup> Nowadays, German society expects immediate and effective implementation of the new policy from its politicians and officials because changed from questioning its assumptions to its full acceptance, which is confirmed by the cases – entirely differently described and assessed – of Kirchner’s painting “Berlin Street Scene” and Kokoschka’s

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<sup>69</sup> *Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter*, the Bundesregierung website, [http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung\\_ns\\_raubkunst/\\_node.html](http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerKulturundMedien/kultur/rueckfuehrung_ns_raubkunst/_node.html) (27.12.14); *Suche nach NS-Raubkunst. Deutsches Zentrum Kulturgutverluste*, the Bundesregierung website, <http://www.bundesregierung.de/Content/DE/Artikel/2014/12/2014-12-17-deutsches-zentrum-kulturgutverluste.html?nn=444460> (03.01.15).

<sup>70</sup> S. Rudolph, *Das Recht kennt einen Anspruch auf Rückgabe*, *Die Zeit* 09.11.2006, p. 64.

“Pariser Platz in Berlin”. The media, which enhanced the atmosphere of reluctance towards returning the Nazi-looted art to its rightful owners or their heirs by their publications just a few years ago, demand that the purpose of the new state restitution policy be defined.

It cannot be denied that numerous problems have been found in the new current restitution practices of the Federal Republic of Germany. They include: a reluctance to part with the works, tardiness of some public museums in acting promptly, losing sight of the primary objective of the provenance research by scholars as defined in Washington, i.e. assisting the families whose relatives were robbed and murdered by the Nazis in search of their property, scarcity or low quality of provenance studies in some museums due to – as has been claimed by their directors and which is no longer true – lack of time, staff and money, insufficient actual knowledge of these institutions about institutional and financial resources made available by the Federal Government and lower level institutions, a sometimes still noticeable lack of transparency by denying access to the documents (mostly private as in the case of those belonging to Cornelius Gurlitt), an excessive number of centres taking decisions and interpreting research results and provisions of law. As has been rightly said after the sixteen years that elapsed since the adoption of the Washington Declaration “the assessment of what has been done in Germany on matters relating to the Nazi looted art is clearly more positive than it was a few years ago.”<sup>71</sup> Most, if not all, of these problems can be solved by the new German Centre for Cultural Heritage Loss, provided that it efficiently and effectively fulfills its goals under the leadership of a person or persons enjoying widespread recognition. There is no doubt, however, that the Washington Principles opened a new chapter in the restitution policy of the German Federal Republic and the awareness of its citizens in this regard, which should be considered a great success in both historical and moral terms.

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**Keywords:** restitution of cultural goods stolen from the victims of National Socialism, Washington principles on Nazi-confiscated art, German restitution policy and practice, restitution of the Kirchner’s painting, restitution of the Sachs collection, Schwabing art discovery

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<sup>71</sup> S. Koldehoff, *Stiftung zur Raubkunstauflklärung: Wann gibt es endlich Resultate?*, Frankfurter Allgemeine Zeitung from 09.10.2014, <http://www.faz.net/aktuell/feuilleton/kunst/stiftung-zur-raubkunstauflklaerung-wann-gibt-es-endlich-resultate-13194854.html> (03.01.15).

## ABSTRACT

*The paper presents the most important political, legal, organizational and financial measures taken at all levels of the German state since the end of the twentieth century in order to intensify provenance research regarding cultural goods that are currently held not only by the German public institutions, but also citizens, businesses and other private entities. The particular aim of this research is to identify cultural goods stolen by the Nazis from their rightful owners. The author describes the recent endeavours in this regard for which the immediate impulse was the so-called Schwabing (Munich) art discovery. The paper also discusses the most famous cases of restitution in recent years and their evaluation in Germany, as examples of the implementation of the new state restitution policy and also as yardsticks of changes in public attitudes to this issue.*

