

RESTITUTION AND COMPENSATION IN FOUR WESTERN EUROPEAN COUNTRIES**BELGIUM – FRANCE – LUXEMBOURG – THE NETHERLANDS****REVIEW AND OUTLOOK****by Jean-Pierre BADY (France)**

This summary reviews at first the key provisions introduced in each of the above countries in order to reconstitute, or compensate for, the spoliated works of art.

In its second part, it provides an overview of the current perspectives which are often shared by the countries in question.

I/ GLOBAL SUMMARY**A/ ANALYSIS BY COUNTRY****1/ BELGIUM**

The investigation, identification, restitution and compensation process was conducted in several phases.

a) General information :

A Study Commission carried out a research of the assets belonging to the victims of the persecution of Jews. As a result of the conclusions of the above Study Commission chaired by M. Buysse, which were included in its final report, an Indemnification Commission was set up. Following the negotiations with the Belgian Jewish Community's National Commission, the amounts identified and updated by the Study Commission were deposited by the State, the banks and the insurance companies into a special account of the National Bank of Belgium and made available to the Indemnification Commission in order to compensate the victims or the heirs up to third-degree relatives. The Indemnification Commission was set up by the Act of 20 December 2001 which also governs its activities. Its fundamental principle was to indemnify the victims in the form of compensation for the assets identified by the State, the banks and insurance companies. The compensation is not aimed to cover the value of the assets in the condition they were in on the eve of the WWII.

The mandate of both the above commissions was limited in time. The work of the Indemnification Commission was completed at the end of December 2007, after having dealt with 5,210 cases in the total value of 35.2 million of euros. The Act of 20 December 2001 provided that the non-allocated amounts shall be transferred to a charitable foundation for the benefit of the Jewish Community.

b) Cultural assets:

Both the Study Commission and the Indemnification Commission have contributed to the solution of the cultural asset issue. The Study Commission has investigated the spoliation of these assets together with the largest cultural institutions, and has published its findings and its results. In some cases, the assets were actually returned. On the basis of the reports issued by the unit "Restitution of the Spoliated Jewish Cultural Assets", the Indemnification Commission has in many cases granted financial compensation for the works of art which had been sold in the post-war period to the benefit of the Public Treasury.

The investigations and the restitutions have not yet been fully completed, and the research of the cultural assets goes on under the guidance of the SPP Science Policy, namely of its unit "Restitution of the Spoliated Jewish Cultural Assets" whose activities are similar to those of the former Office for Economic Recovery. The most important federal cultural institutions fall within the competence of the SPP Science Policy.

In the 1950s, the retrieved cultural assets which had been spoliated were registered in the inventories of the relevant (federal cultural) institutions.

2/ FRANCE

a) **General information :**

In 1997, the public authorities set up a "Study Mission on the Spoliation of Jews" chaired by M. Mattéoli. This body has investigated the spoliation suffered by the Jews during WWII, and recommended that a compensation commission should be set up under the name of "CIVS" (Commission for the Compensation of Victims of Spoliation pursuant to the anti-Semitic legislation in force during the Occupation). The CIVS provides compensation for all tangible and financial assets spoliated (apartments, workshops, businesses, bank accounts). To date, about 26,000 cases have already been examined the overall value of which amounted to EUR 420 million. The CIVS has therefore been given a very broad mandate, namely the compensation for all the spoliated assets. No deadline has been provided for the submission of applications, no limitation of funds was planned in advance, and the mandate of the Commission is also unlimited in time. Every month, the Commission receives about eighty applications from individuals with a more distant degree of relationship as compared to Belgium.

b) **Cultural assets:**

Regarding the restitution of the spoliated works of art, France has been trying since the end of the war to find the owners of the works of art found in Germany. Out of 65,000 works of art retrieved, 45,000 were returned, 15,000 secondary works of art were put on sale by the Property Management Office, and 2,000 of them were given a special MNR status. The "Musées nationaux Récupération" (National Museums Recovery Programme) includes works of art retrieved from Germany following the WWII which could not be returned to their legitimate owners and which were entrusted by the Office of Private Goods and Interests to the Administration of the Museums of France. It also includes works of art proceeding from the trade in objects of arts. The French legislation stipulated that the above works of art are not included in the heritage and have a different status. The French state is not the owner but solely a "holder" of these assets. These MNRs (2,000 works of art) have been subject to an in-depth study and, since 1950, it was possible to reconstitute more than 200 of them. For such restitutions, it is sufficient to have an order issued by the Minister of Foreign Affairs; they are therefore relatively easy, namely due to their special status.

At present, France's research focuses above all on the works of art with a "MNR" status, and it has recently launched new initiatives (the exhibition at the Museum of Art and History of Judaism and the international symposium held in 2008) to find the owners of these works. A list of these works is available both in hard copy and on a website.

The CIVS was asked twice to recommend the restitution of very important works of art (Picasso, Vernet) and has proposed its mediation regarding a major work by Braque; compensation was awarded to the beneficiaries who agreed that the painting can remain at the Musée National d'Art Moderne. However, its key role is related to the compensation of the dispossessed owners whose works of art were not found. When reviewing individual applications, the CIVS either finalizes the compensation already granted by the German government (the BRÜG Act), or provides full compensation on the basis of the value of the relevant works at the time they were spoliated. Although the number of works of art dealt with by the CIVS is relatively low (1 % of all the cases), the amount of the relevant compensation is very high (25 million euros to date).

3/ LUXEMBOURG

First of all, please note that the number of works of art spoliated was relatively limited. On the basis of the testimonies from the post-war period, it was possible to establish a list of some forty paintings that had belonged to Jews. Most of these works were created by Luxembourg painters, mainly by Guido Oppenheim, who was himself deported to Auschwitz at the age of 82. None of these paintings was found. The Luxembourg Office of Economic Restitution (O.R.E.L.) has reported that some paintings were found in Germany but due to inexistent documentation, no information on this research is available. Most of the works of art were confiscated in the residences of the Grand Ducal family and in the homes of the members of the government in exile. All works which could be found, due also to the cooperation of the

occupying powers in Germany, were taken to Luxembourg and restituted. A painting by Cranach, sold by its owner to a Dutch merchant Kajetan Mülhman, had ended up in Herman Göring's collection. As this sale was considered illegal (no permission had been granted according to the Luxembourg or German law), the Government recovered the painting as a national asset and entrusted it to the National Museum of History and Art.

In general, we can say that recovery of and/or compensation for the spoliated works of art has caught by now the attention of neither the public nor the Government. The major issues of the post-war period were the reconstruction (one third of the country being devastated by the Battle of the Ardennes), supplies (Luxembourg depended largely of Belgium as they were joined in an economic and monetary union) and repatriation (4,000 persons forcibly relocated to Silesia, 4,000 political deportees; 10,000 young people forcibly enrolled in the German army, 50,000 refugees...for a total population of 290,000 people).

Moreover, the War Damage Compensation Act excluded all "luxury" goods, therefore also the works of art.

However, a few years ago, the Grand Lodge of Luxembourg was able to recover its archives which had been found in Moscow.

An exposition on the spoliation of cultural assets, organised by the Museum of History of the City of Luxembourg in 2005 (The Big Spoliation) has presented this issue to a very interested audience but it was impossible to go on further with the research.

No painting by a grand master belonging to a Luxembourg citizen disappeared during the war. However, the issue of the refugees, namely Jews, still remains open but unfortunately, the relevant documentation is insufficient.

4/ THE NETHERLANDS

a) General information :

In the Netherlands, the public authorities have opted to grant the same compensation to all victims of Nazi persecution for the assets or possessions lost or spoliated.

The choice of such a policy has enabled to pay special attention to the research and restitution of the confiscated cultural assets.

b) Cultural assets:

In relation to the cultural assets, the "Herkomst Gezocht" Commission, better known under the name of the "Ekkart Commission", has conducted an extensive research and provided advice to the Minister of Education, Culture and Science as to the policy to pursue. Its research was focused on the "NK" works and on the cultural assets which have been transferred to the (Royal) Museums of the Netherlands. The spoliated goods which have been retrieved but could not so far be returned are owned by the State and are "lent" to the museums.

The opinions of the Ekkart Commission were followed and the Government set up an independent advisory committee to evaluate individual restitution requests. According to the choice of the parties, this Committee expresses an opinion, either binding or not, on an application for restitution of a spoliated cultural asset. About 600 to 650 works of art have already been restituted in this way.

Similarly as in France, exhibitions have been organised displaying some of the works of art spoliated during the WWII. Reports have also been published in hard copies, on CD-ROMs and also on websites. The Netherlands are actively trying to find the heirs.

A new program focused on the research of the provenance of the works of art has been envisaged for the period 2009-2012. It will be led by the "Vereniging van Nederlandse Musea", will cover the period between 1933-1948 and will focus on other than royal museums.

There is a question whether this system, aimed at verifying of an alleged provenance of the assets in the period in question, can be recommended to other countries.

The success of such a research depends largely on the organisation, functioning and cooperation of the museums in terms of facilitating the access to the inventory available and checking of its reliability.

B/ BRIEF COMPARATIVE STUDY**1) SIMILARITIES :**

- General intensification of work since the Washington Conference (1998) ;
- Preliminary historical research due to the setting up of specialised commissions ;
- Pro-active restitution policy ;
- In cases when restitution is not possible, individual or collective compensation policy is adopted (by allocation of funds to organizations such as foundations) : Belgium, France.

2) DIFFERENCES :

- The "ad hoc" responsibility of the Commission is either large (France: all confiscated goods, Belgium) or limited to works of art (the Netherlands);
- Different status of works found the owner of which has not yet been identified:
 - a special status : France (MNR) ;
 - added to national collections (Belgium, Luxembourg, the Netherlands) ;
- Different amount of time spent in the investigation of the cases: no limit (France), a set deadline in Belgium, with the option of a later introduction of the individual cases of works of art
- Different bases for compensation:
 - Belgium (3rd generation);
 - France (all generations);
- the amount of the compensation is assessed either at the historical value (France), or at the current value of the work (Belgium).

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II/ CURRENT OUTLOOK

The four European countries which were subject to this review are facing very similar problems, although their solutions may be different due to the differences in their respective national legislations.

At present, the above countries are facing the following issues:

1/ INVESTIGATIONS ON THE CULTURAL ASSETS WHICH HAVE FALLEN INTO THE PUBLIC DOMAIN OR ARE PART OF PRIVATE HERITAGE (STUDIES OF PROVENANCE)

- a) The identification of assets "owned" by the State (national museums...) raises the question of provenance of a specific work of art and of the terms and conditions of its purchase.
How to conduct such investigations and how to define the field of research ? Which period should be reviewed ? When can the price considered to be inadequate? ...
- b) Identification of assets which are part of private heritage.
To what extent can we investigate this field (in art galleries)? What are the possible objections in terms of practice and legislation ?
- c) Public awareness
Is it sufficient just to organise expositions and publish catalogues in a more systematic way? What new initiatives can be taken?

2/ STATUS OF THE CULTURAL ASSETS IDENTIFIED

There are several possible alternatives:

- a) Cultural assets which are identified as being in the public domain, we know with certainty that they were spoliated from members of the Jewish Community, and their owner at the relevant time is known: restitution is possible and necessary.
What legal formalities are necessary to change their status from public domain to private property?
- b) Cultural assets which are identified as being in the public domain, we know with certainty that they were spoliated from members of the Jewish Community, and their owner at the relevant time is not known:
Which status should be attributed to such works? Should we consider a change of the status already attributed?
- c) Cultural assets which are identified as being in the public domain, are of doubtful origin, for example because of the date of their purchase, but it is not certain they were spoliated from members of the Jewish Community: *is it necessary to invite the relevant museums to perform systematic research of the provenance themselves, even if it means that it would challenge their status, or should they rather wait for the results of the investigations conducted by the applicants themselves? Could both the above approaches be combined possible which would enable as smooth and efficient cooperation as possible ?*

3/ SPECIAL QUESTIONS:

To date, other questions are raised as well:

- a) Should the possibility of reviewing the limit of the degree of kinship be considered, e.g. such as the 3rd degree in Belgium? Should such a limitation be introduced in France (CIVS)?
- b) Should a deadline be defined within which the heirs must submit a claim? Is it necessary to introduce in France the same deadline as in the other countries?
- c) What should be done if the compensation has already been granted ? Should the property which has been finally found be still returned if the amount already received is paid back? What authority should then receive that amount?

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CONCLUSION

The conference held in Prague in June 2009 should help further improve the understanding of the various restitution or compensation schemes introduced by the above four Western European countries, evaluate the solutions they have envisaged, and investigate possible improvements to the activities which are at present undertaken by their leaders. Finally, are the solutions adopted by these countries transferable to other European countries?

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