

Nawojka Cieślińska-Lobkowicz

The Obligation of the State or a Hobby of the Few

The Implementation of the Washington Principles in Poland

EU- Holocaust Era Assets Conference, Prague-Terezin – 26th-30th June 2009

Looted Art Group

I am saddened that not much good can be said about the policy of my country regarding the problems discussed at this conference. I would like to believe that my paper will not be seen as "soiling my own nest", but as a call to the government of my country to realize its commitment made by signing the Washington Principles in 1998.

"We respect the decisions of the Washington conference. (...) But we have no such problem. Poland was not in coalition with Hitler and has looted nothing."

This was the statement made in 2006 by the director of the Polish Ministry's of Culture and National Heritage department that is responsible for the museum policy. ["Gazeta Wyborcza" 22.02.2006]

The same official announced elsewhere:

"The so-called problem of the Holocaust victims' property has to consider the fact that the victims of Nazi looting were both Jews and Poles, and that the looted objects did not end up in Polish collections." ["Muzealnictwo" vol. 46, 2005 p. 168]

Those statements had never been revoked by the Ministry of Culture and National Heritage.

In spite of this opinion, Polish museums and libraries may still contain quite a number of objects lost by their owners as a result of the German occupation and the Holocaust. Some objects may have even been stored since the beginning of the war, when art owners deposited their collections or (especially Jewish collectors) made fictitious gifts to public institutions which they thought were still safe.

During the occupation, the closed Polish museums and libraries were often used by Germans as repositories for valuable cultural goods looted from the Jews, during their deportation into the ghettos, and then during ghetto liquidations. Such was the situation, for example in Warsaw, Cracow, Łódź, Poznań, and Lublin.

We know that just after the war some objects that were rescued that way were returned, if their pre-war owners claimed them. But we cannot be sure if such restitution was consistently practiced then. Moreover, a great majority of the confiscated objects were stored without any indication of to whom they belonged. All other goods found throughout the liberated Polish territories in warehouses, offices and apartments left by the fleeing Germans – if not by chance identified – were being routinely classified as abandoned property, which, according to the 1945 and 1946 State decrees, became State property. In the former German territories gained by Poland as a result of the Potsdam Conference of 1945, practically all abandoned property was considered to be (post)German and was nationalized. That also included property confiscated by Nazis from German Jews.

Many art objects looted by Germans but also stolen or appropriated by the local population had reached the public collections after the war. They were purchased from private persons or antique shops that were set up during the occupation years, or shortly after the war, and that often sold objects from an unknown or a fictional source.

After 1950 when the art trade was nationalized, provenance standards did not improve; the tendency to falsify provenance even increased. This encouraged the black market and the smuggling of art abroad. Since 1989, the displaced art works, especially polonica 'privately' looted by Nazi functionaries or by German soldiers or smuggled after the war have been returning to the Polish art market. Usually their pre-war owners and data concerning the war years are not mentioned.

This sizeable segment of contemporary Polish art trade, which sometimes witnesses the appearance of high-class objects deemed lost during the previous decades, enriches the museum collections – directly through purchases (rare because of the limited resources of public cultural institutions) – or indirectly by deposits and gifts. I should also mention the completely forgotten category of art works that found their way to the country's museums following the post-war emigration waves of the remaining Polish Jewry. These objects, although luckily rescued from the Holocaust, could not be legally taken out of the country because of official restrictions on cultural goods, and so were bought off their emigrating owners at prices much lower than their value.

For almost 20 years, the Ministry of Culture and National Heritage has been gathering documentation on the Polish cultural losses during the Second World War, but unfortunately Judaica have not been treated as a separate category. Some data gathered by the Ministry has been published in books and online; plans exist to publish more. This documentation mainly deals with the losses of the State and communal collections and a few well-known private collections that were owned by aristocracy. Only these collections usually (though not always) would have been registered or documented in some way. Other private collections had not been catalogued, and their documentation would be fragmentary and dispersed or altogether lost.

Suffice the example of the 1932 exhibition of paintings by the Polish-Jewish artist Maurycy Gottlieb which showed over seventy canvases from private Jewish collections, whose owners were mentioned by name. Catalogues dating from the nineteen thirties of the exhibitions of famous Polish painters such as Jacek Malczewski, Józef Mehoffer, Leon Wyczółkowski or Teodor Axentowicz, prove that a great part of their canvases had been owned by Jewish collectors who were not anonymous at all.

Nevertheless relatively few of these owners' names are mentioned in the published documentation of war losses. Maybe that is because, as written in 1977 in a confidential letter by the director of the ministry museums' department, this would necessitate an earlier

“research in the museums, which had gotten some objects as a result of restitution or purchase”. [Archival data in author's possession]

It is understandable that during the first decades after the fall of communism in 1989, Polish Ministries of Culture and of Foreign Affairs as well as public cultural institutions did in fact concentrate on documenting and listing the war losses suffered by the country in general. This was done chiefly to use these lists in the State's restitution negotiations with Germany, Russia and the Ukraine, concerning those Polish cultural goods which as a result of the war were found within the current territories of these countries.

But in 2000, the Polish delegation to the Forum on Holocaust-Era Looted Cultural Assets in Vilnius, declared the decision to undertake provenance research in our museums which

“will be closed with the list of works of art and other cultural properties, which have been saved during the war in the museums, but have been previously lost by the Holocaust victims resulting from obvious lawlessness. Every identified work of art of such provenance will be made public in order to undertake further steps according to the Washington principles adequate to the circumstances of the given case.”

[Deputy Minister of Culture and National Heritage, was published on the Internet page vilniusforum.lt/proceedings]

A special inter-ministerial commission was created for the coordination and monitoring of these actions; cooperation with Jewish congregations in Poland was planned for the future.

All of this turned out to be no more than bureaucratic and political ephemera, with no concrete results.

In practice, the Washington Principles have been used by the State authorities exclusively for the wholly legitimate goal of reclaiming cultural goods that as a result of the Second World War had been displaced outside the current borders of Poland. Thanks to the spirit as well as letter of the Principles, restitution was accomplished of a number of objects belonging to pre-war Polish museums and private collections, which after the war had been bought in good faith by American museums and private collectors in the USA and Great Britain, or objects that were withdrawn from foreign auctions. [See the website of the Ministry of Foreign Affairs: msz.gov.pl]

In this context it is worth mentioning four cases of restitution of Jewish owned cultural goods that involved Polish authorities.

The first two cases concern countries abroad.

The first one was the return in 2004 of forty Hebrew manuscripts and incunabula from the legendary collection of Leon Vita Saraval (1771-1851).

Since 1854 up to the beginning of 1939, the collection had been owned by the library of the Jüdisch-Teologisches Seminar in Breslau. The whole 20,000 volumes library of that school was confiscated by the Gestapo and was transported to the Reichssicherheitshauptamt in Berlin. Then, in 1943, to protect it from possible bombardment, the library was moved to the territory of the Czech and Moravian Protectorate. By this route, the most valuable pieces of the Saraval collection ended up after the war at the Czech National Library in Prague. The Commission for Art Recovery initiated the request to the Czech authorities to return these objects to the Jewish congregation in Wrocław, and the Polish Ministry of Foreign Affairs conducted the negotiations. The Polish-Czech agreement of 1946, that bound both countries to mutual restitution proved to be ineffective in this case, because it did not take into account the territories gained by Poland as a result of the Potsdam conference, such as Lower Silesia to which Wrocław belongs. So the restitution of the Saraval Judaica became possible only as a result of the Washington Principles, to which the Czech party agreed, although the case remained debatable because of the open issue of the legal succession of the Breslau Jewish community regarding today's Wrocław Jewish congregation.

The second restitution case concerns the seventeenth century painting by Pieter de Grebber which appeared on a London Christie's auction in 2006. The Art Loss Register identified this painting in the catalogue of Polish war losses and duly informed the auction house and the Polish Embassy in London. So our Foreign Affairs Ministry intervened and requested the return of the painting to Poland.

It was then that Polish diplomats in USA informed Warsaw that the painting's owner's heirs are living in Philadelphia; the owner was a well known pre-war antiquarian from Warsaw, Abe Gutnajer who had been murdered in the ghetto there in 1942. As a result, the Polish authorities decided to help the heirs disinterestedly. The matter was finalized in 2008 by an agreement between the current proprietor of the painting and Gutnajer's heirs. This was

“the first case in which our Foreign Affairs Ministry acted for restitution on behalf of rightful heirs, who happen not to be Polish citizens”. [Gazeta Wyborcza, 24.04.2008]

Furthermore, up to this day, the painting is mentioned on the Foreign Affairs Ministry's internet page as one of the objects restituted to Poland thanks to the efforts of its workers and the Polish diplomatic corps.

Two inland cases were solved in a different way.

The first case concerns the liturgical objects that were looted by the Germans from Warsaw's synagogues and survived in the storage of the capital's National Museum which was closed during the occupation. After the war, these objects were registered in the museum's inventory. The Association of Jewish Religious Congregations of the Polish Republic, according to the law of 27th February 1997 concerning the State's relation to Jewish congregations, claimed the

restitution of these Judaica to the only synagogue currently existing in Warsaw, the Nożyk synagogue.

The museum returned the objects, but only as a long-term loan, and kept them on its inventory. The basic argument against restitution was that in spite of the very high probability that these objects had been the property of the Warsaw congregation, it was impossible to be completely sure, because the objects were produced in series and not unique.

Now to the last case of restitution. Goustav Courbet's painting "Landscape Around Ornans" was mistakenly restituted to Poland by the Americans in 1946, from Fishhorn in Austria, as part of a group of paintings that had been looted by Germans from the Warsaw's National Museum. The Courbet had been part of the Budapest collection of Baron Mor Lipot Herzog, which was confiscated by the Nazis in 1943. In 2001 the Warsaw museum received a claim to return this painting to Herzog's heir, an American citizen. The museum director finally decided to remove the painting from the museum's inventory and to return it to the heir's plenipotentiaries. The Minister of Culture at first refused an export license, then questioning the heir's title to the painting voided the return. The Courbet remains in Warsaw's National Museum as its legal property to this day.

There are a few other restitution claims concerning several paintings and drawings of old masters and German painters in the Polish public collections. These are the claims of the heirs of German Jews from Wrocław (former Breslau): Max Silberberg, Carl Sachs, Leon Smoschewer, addressed to the National Museums in Wrocław and Warsaw; the claims of the heirs of the Dutch collector and art dealer Jacques Goudstikker and of the Jewish family Zoellner that was forced to emigrate from the 3rd Reich, are addressed to the National Museum in Gdańsk (former Danzig).

The possessions of these families that had been looted by the Nazis under various circumstances, included art collections. The heirs and their lawyers succeeded to reconstruct the documentation of these collections to a considerable degree. In cases of Silberberg's and Goudstikker's property, the museums in Germany, Holland and Israel restituted the paintings identified as originally belonging to the confiscated collections, although it was not their legal duty. Polish museum directors not having any political support or guidelines from the authorities, ignored or rejected the claims on the basis of Polish law.

The Jewish Historical Institute in Warsaw also rejected the claim to return two paintings by Ralf Immergluck, a Jewish artist from Cracow, who perished in the Holocaust. The claim was submitted by the artist's family. In this case, the decisive argument for the refusal was an insufficient proof of ownership, even though the painting had been purchased soon after the war in a Cracow antique shop, without any provenance data.

The Ministry of Culture and National Heritage was unable to provide me with answers as to the number of claims made in recent years by the owners' heirs.

Because, as the Ministry stated in a mail to me dated 4th June 2009:

"The claims for return of specific objects are submitted directly to the interested institutions that, according to prevailing laws, are sole managers of their collections. Therefore, the ministry does not have the possibility to conduct statistics of this type. This does not mean that restitutions were not conducted."

Knowing that without the consent of the Minister of Culture no director of a public museum can remove items from the inventory of his collection, we can presume that during the last years no object from Polish museums has been restituted to the heirs of Jewish owners.

The slowness of the authorities and cultural institutions in verifying the provenance of public art collections, accompanied by lack of transparency, has caused some independent initiatives to arise.

In the years 2002-2006, the Stefan Batory Foundation organized a series of international and national conferences, seminars and debates that were dedicated to the ownership, restitution and privatisation of cultural property, and involved interested professionals, representatives of former owners, lawyers and journalists.

In 2002, the Museums' Commission of the Polish Art Historians' Association established the Forum for Displaced Works of Art. This Forum attempted to inform the professional community and media about the Washington Principles, and to promote the cooperation among museums in the field of provenance research, to encourage open proceedings and to serve as an independent advisory body for the anticipated restitution claims.

The Polish ICOM requested the successive Ministers of Culture to create specific guidelines for the realization of the Washington Principles. It also directed attention to the need to regulate the ownership of collected items, as an act necessary for the legitimacy of the museums in Poland and abroad.

The Polish ICOM even conducted a statistical analysis of our museums' ownership status, which showed that a high percentage of items listed in the inventories as well as in the deposits were of unknown provenance. The majority of these items are not objects lost by owners during the German occupation. Unofficially, museum experts estimate that about one per cent of all items in Polish collections is previously Jewish-owned.

All the activities I described here were looked at by the authorities without much understanding. Supported by the media on case-by-case basis, they had a limited effect. Careful provenance of the museum items in the exhibition - and (still seldom) collection - catalogues remain an achievement of a small number of individual researchers.

Fortunately, during the last decade great progress has been made in Poland in the research and knowledge concerning Holocaust issues, the history of Polish-Jewish relations in general, especially during the occupation and post-war periods. This progress is not just quantitative, but is a qualitative change and it concerns not just specialists but the wide circle of public opinion.

No doubt the catalysts of this process were the two great public debates caused by the books by Jan T. Gross: 'Neighbors' (2000) and 'Fear' (published in Polish in 2008).

The uncovering of the 1941 Jedwabne crime and the description of post-war criminal anti-Semitic acts in Poland (among the reasons of which was the appropriation by Poles of abandoned Jewish property) caused a shock, opened the eyes of many and caused rethinking. Among them are museum people, librarians and archivists, who certainly would like to join the group which for years has been postulating the adoption of the Washington Principles. This group tried to stay informed about the restitution issues, to write and lecture on this subject, to continue the provenance research, to mediate between the parties, and to monitor the art market. More than that could not be done by private means.

The date and theme of the Prague Holocaust-Era Assets Conference have been known for some time. It was obvious that during the conference, Poland's only claim would be the great progress in the field of Holocaust education during the past decade, thanks to the efforts of scholars, artists, journalists and promoters of the Jewish-Polish dialogue (among them also a number of politicians), but also thanks to the State policies.

Unfortunately, I was not successful in my attempt to access the appropriate authorities in order to propose the preparation of a concrete programme of Washington Principles' implementation in Poland that would be binding and could be presented at the Prague conference.

Various solutions that were used for restitution purposes in other countries can certainly prove useful in choosing an optimal formula for our country. In my opinion, besides the involvement of a governmental agent and public cultural institutions, the necessary condition must be the participation of the NGOs, independent experts and trusted public figures. Another indispensable condition would be a statutory transparency of procedures, open actions and results accessible to the public. Independent consultants to the museum directors and to the Ministry of Culture should also advise in matters of restitution claims.

The specificity of Polish restitution problems - the number of heirless victims of the Holocaust among Polish Jews, the lack of inventories of many pre-war private collections, fragmentary and dispersed documentation, illicit export of artworks, and the rules of the post-war art trade - demand the creation of a special team for the provenance research of public collections.

Such a team should comprise museum, library and archive collaborators, independent researchers and – last but not least – of those specialists who have spent years documenting Polish cultural losses.

Such a team would need full access to archives (this has not been the case until now) and to museum inventories. One of the high priority tasks should be the creation of an online archive of ownership signs and marks, and an online library of all documents, to help in identifying past owners and collections. An important aspect of the activity of such a team should be a cooperation with foreign institutions and provenance researchers, as well as an attempt to gain understanding and cooperation of Polish auction houses. No less valuable would be the contact with groups and persons who had emigrated from Poland before, during or after the Second World War, and who could supply knowledge and traces regarding lost collections or their post-war tracking. This by the way touches the issue of the access to the documentation kept by international auction houses.

To sum up, the goal of provenance research is not just the restitution of objects to the owners' heirs, or another fair and just solution. To no lesser extent, the goal is also after decades of amnesia, the restoration of memory of the pre-war Jewish collectors and the fate of their collections. Museums, libraries, archives that guard the common memory owe this not only to the heirs, but to their own mission, to the society they serve and to the history of Polish Jewry.

Let me finish by returning two very modest but symbolic art objects to their owners.

The first object which I found in Poland is a small watercolor by the Polish- Jewish painter Erno Erb who was murdered in the Lwów ghetto. On its back side there is a note that it belonged to the Leon Braciejowski collection. Braciejowski was the owner of two elegant fashion stores in Cracow, a member of the town's Jewish elite and a respected art collector. His collection of more than seventy paintings, including works by famous Polish painters, disappeared without a trace during the German occupation. My search for the heirs of Leon Braciejowski ended successfully. His granddaughter who lives in California has only one prewar keepsake of her grandfather – a clothes hanger from the Braciejowski shops.

The second object I found in Germany. It is a 1926 print of a less known Polish artist. Most likely it was looted by Germans during the Warsaw Uprising in 1944.

I am pleased to return this print to the Polish Ministry of Culture and National Heritage, because it belonged to the pre-war State Collection of the Republic of Poland, as shown by the stamp and inventory number on the print's back.