

Collecting, transacting, investing in art – A German retrospective 2012

Claudia von Selle, UIA Congress 2012, Dresden, Art Law Commission – 03.11.2012

- clients: sellers, buyers, galleries, auction houses, insurances
- art assets: paintings, books, oldtimer, jewelery etc.
- risks about:
restitution claims from former owners (I)
value (II)
due diligence-obligation

I. Ownership

A) Unlawful expropriation

1. WWII
 - a) Nazi-looted Art
 - b) afterwar expropriation/ GDR
2. Human Remains

B) Political conflict/war/criminal action

1. Trophy Art
2. Art theft

II. Value

A) Authenticity

B) Forgery

C) Expert opinion

I. Ownership, A) Unlawful expropriation, 1. WWII

a) Nazi-looted art

court decisions:

Hans Sachs Poster collection – Federal Court of Justice V ZR 279/10, 16.03.2012

- restitution laws (here Art. 51 , s. 1 REAO) – expired today - cannot exclude justified restitution claims following general civil law (unknown location of art asset)
- compensation does not exclude a later restitution claim

- no answer to the questions:
 1. Are there legal obligations of German public museums following the Washington Principles?
 2. Is there an exclusivity of (expired) restitution laws in cases when the location of the asset was known during the time of application of the restitution laws?

I. Ownership, A) Unlawful expropriation, 1. WWII, a) Nazi-looted art

Music library Peters – Federal Administrative Court, 7 C 12/10, 24.11.2011

Act to Prevent the Exodus of German Cultural Property (in the version of the Act of 18 May 2007, Federal Law Gazette, Part I, p. 757) also applies to restituted assets following § 1 VI VermG

pending

„Sumpfliegende“ Paul Klee (heirs Sophie Lissitzky-Küppers vs City of Munich);

I. Ownership, A) Unlawful expropriation, 1. WWII, a) Nazi-looted art

outside court

- unresolved „Madame Soler“ Picasso (heirs Paul von Mendelssohn-Bartholdy vs City of Munich)
- settlements „Leuchtturm“ Paul Adolf Seehaus (heirs Alfred Flechtheim vs Kunstmuseum Bonn) Washington Principles
- Advisory commission: November 2012 4th recommendation (since 2005) „Gutshof in Dangast“ and „Selbstbildnis“, Karl Schmidt-Rottluff, restitution to heirs of Roberto Graetz
- books – restitution Father Muckermann library to heirs on initiative of University of Munster

b) afterwar expropriation on the territory of former GDR between 1945-1949/ GDR

- Legal basis for restitution claims: „Entschädigungs- und Ausgleichsleistungsgesetz“ (EALG)
- Today the most concerned Federal States: Sachsen-Anhalt, Thüringen,
- Till end of 2014 Sachsen-Anhalt will have to retribute 30 000 art objects and archives to former owners, mostly noble families (from 120.000 works registered, 93 000 already restituted mostly with settlements)
- GDR-expropriation: no legal basis for restitution claims today, case to case decisions

2. Human remains

- restitution claims from extra-European countries (Australia, Namibia, New Zealand)

October 2011, restitution of 20 skull from Charité Berlin to Namibia,

June 2012 – restitution 600 year old mummy from Ethnological Museum Munich to Perú

- commission of German Museums Association working on Guidelines for Human Remains in German museums and collections

I. Ownership

- B) Political conflict/war/criminal action

1. trophy art

- no substantial progress on political or legal level
- „Russian museums in WWII“ German-Russian research project

further information bks@kulturstiftung.de, Ms Dr. Britta Kaiser-Schuster

- inner-German restitution claims

Gotha Foundation Schloss Friedenstein vs. Germanisches Nationalmuseum Nürnberg

2. art theft

- art objects coming from plunderings in Pakistan, Mali, Ägypten
- Chillida-sculpture (Baukunst Galery, Cologne), 123 piece antique tea set

II. Value

A) Authenticity

- „Rotes Bild mit Pferden“ 1914, Heinrich Campendonk (Trasteco vs. Auktionshaus Lempertz – Regional Court 2 O 457/08)
- **violation of due diligence obligation of auction house:**
 - authentication certificate based only on (inhouse) art expert opinion while scientific analysis was required
 - from estimated value of 100.000 Euro on potential forgery must be considered,
 - absence of evidence of forgery doesn't prove authenticity
 - „due“ diligence is not equal to „usual“ diligence;
 - frivolity doesn't become due diligence because the concerned market is used to such a behaviour,
 - reputation of an auction houses influences the standard of it's due diligence obligation:
complete expertise based on expert opinion **and** scientific analysis
- **or:** explicit notice that certificate „is based on art historical analyse“

II. Value

B – Forgeries

- between 10 and 30% of art objects in the art market forgeries?
- forgery of art works and/or authentication certificates:

„Jäger-collection“ Beltracchi (Regional Court Cologne, 110 KLS 17/11)

„Ready-made de l'Histoire dans Cafe de Flore“, Immendorff (Regional Court Düsseldorf, 12 O 473/08)

II. Value

C – Expert opinion

- different relevance of expert opinions in the art market and in jurisdiction
- false estimation of market value or authenticity of art objects by experts

17th century carpet from collection Comtesse Martine Marie-Pol de Béhage

sold in 2009 for 900 Euro at auction house Rehm, in 2010 at Christie's 7,5 million Euro

Regional Court Augsburg dismissed the compensation claim of former owner in January 2012

- change of expert opinion – new expert opinion (Otto Freundlich)

conclusion

handle with care: due diligence \neq usual diligence !

