

LIMES
PLUS

JOURNAL OF SOCIAL SCIENCES AND HUMANITIES

HOLOCAUST AND RESTITUTION

HESPERIA*edu*

ISSN 1820-0869

Broj 2/2015

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Published by

HESPERIAedu

Belgrade, Francuska 14
E-mail: h.edu@eunet.rs
www.limesplus.rs; www.hedu.biz
www.komunikacija.org

For Publisher

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Printed by

Instant system, Beograd

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CIP - Каталогizacija u publikaciji
Narodna biblioteka Srbije, Beograd
32

LIMES plus : časopis za društvene i humanističke nauke /
odgovorni urednik Nikola Samardžić. - 2004, br. 1- . - Beograd :
Hesperia edu, 2004- (Beograd : Instant system). - 24 cm

Three issues per year
ISSN 1820-0869 = Limes plus
COBISS.SR-ID 114047756

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HOLOCAUST AND RESTITUTION

Part II

The Political Roles in the Restitution

FURTHER OBSERVATIONS ON THE RESTITUTION OF ART, JUDAICA, AND OTHER CULTURAL PROPERTY PLUNDERED IN SERBIA

Review Scientific Article

Wesley A. FISHER,
Research Conference on
Jewish Material Claims
Against Germany and
World Jewish Restitution
Organization (WJRO), USA

Following on the overview presented at the first annual Holocaust and Restitution Conference concerning what is known about the expropriation of cultural property in Serbia during World War II and where that cultural property is presently located, ways in which restitution of art, Judaica, and other cultural property might best be implemented are discussed. Serbia is encouraged to do historical research on the history of cultural plunder during World War II and on what was restituted to Serbia and within Serbia after the War, and to create a listing or database on the internet of what was taken in Serbia, noting what was subsequently returned and what is still missing. An entity should be responsible for provenance research in the country, either one that actually does the research as in Austria or one that oversees the research carried out by museums, libraries, and archives as in the Netherlands. Information should be made public over the internet of the results of such provenance research. A separate entity, as neutral and independent as possible, should be responsible for restitution decisions based on the provenance research. Serbia should pass legislation covering the return of private movable cultural property that is applicable to both Serbian and foreign citizens. Preferably there should be no deadline for claims for cultural property, whether individual or communal, since such cultural property is often not immediately identifiable. A non-bureaucratic process for filing claims should be established. Cultural property for which original owners and heirs are not identified (heirless property) should be listed

on an internet site so that potential claimants can come forward. Such items should not necessarily move from their current location, but their provenance history should be publicly noted.

Key words: restitution, artworks, Yugoslavia, Serbia, Jewish, cultural property, Nazis, plunder

AT THE FIRST ANNUAL HOLOCAUST AND RESTITUTION Conference, an overview was provided of what is known concerning the expropriation of cultural property from Jews and non-Jews in Serbia during World War II, where the cultural property plundered from Serbia is presently located, and what cultural property known or suspected of having been plundered is currently in Serbia (Fisher 2014).

In that overview it was noted that there is information from German and other archives on artworks, books and Judaica plundered, and information from restitution records after World War II. While the fate of some cultural property looted from Jews in Serbia remains unknown, the fate of many archives, books, and other cultural property is known. Thus while the whereabouts of the artworks by the symbolist painter Leon Koen remain largely a mystery,¹ it is known that there are Serbian Jewish archives in Moscow, Serbian Jewish book collections in Minsk, and books from the Geca Kon Publishing House in Austria and Germany.² And it is known that in addition to cultural property that is in Serbia that was looted from Serbian Jews, there are artworks that were brought into Serbia after World War II that were looted from Jews in other countries (Fisher 2014).

Building on that, this article discusses how restitution of art, Judaica, and other cultural property might best be implemented in Serbia with reference to the experience of other countries.

In regard to information on the comparative experience of other countries, in the fall of 2014 the Claims Conference and World Jewish Restitution Organization presented at an International Council of Museums (ICOM) Conference in St. Petersburg “Holocaust-Era Looted Art: A Current Worldwide Overview” that ex-

1 Further details on this artist see: (Adić 2009, Šuica 2001).

2 See: (Köstner 2005).

amines the implementation of the Terezin Declaration in 50 countries. That paper is available on the internet.³ We have been heavily involved in the “Schwabing Art Trove” Task Force dealing with the Cornelius Gurlitt Collection recently discovered in Munich and Salzburg, as well as the creation of the new German Center for Cultural Property Losses and the Provenance Research Training Program of the European Shoah Legacy Institute (ESLI), among many other activities.⁴

Reaching closure in regard to the huge numbers of cultural items taken during the Holocaust is not easy for any country. Serbia needs to deal with the problem not only on general historical and moral grounds, but also as a member of the International Council of Museums (ICOM) and therefore in accordance with the Code of Ethics of ICOM; as an endorser of the Terezin Declaration, which incorporates the Washington Conference Principles on Nazi-Confiscated Art; and as a country bound by the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

The following are recommended steps that ideally Serbia should take in regard to historical research, provenance research, legal matters, and heirless cultural property:

Historical Research

Very little attention has been paid to date to the history of the expropriation of cultural property in Serbia, both from Jews and from non-Jews. There has been some work on the main Nazi looting agency, the Einsatzstab Reichsleiter Rosenberg (ERR), which set up its office originally in the offices of the Chief Rabbi of Belgrade. The ERR was preceded, however, by the Kunstschutz (“Art Protection Unit”) of the Wehrmacht, as well as by the Gestapo, so most of the art in Serbia had been taken by the Kunstschutz by the time the ERR became operative in the area. Little work has been done on the history of this aspect of World War II in Serbia.

Similarly there has been little or no research on what was restituted to Serbia and within Serbia. So far as is known, there has not been examination of the claims forms filed in Serbia after the War or of the activities of local collecting points.

³ <http://art.claimscon.org/our-work/looted-art-report/>

⁴ For information on the Claims Conference-WJRO Looted Art and Cultural Property Initiative, see <http://art.claimscon.org/>

To the extent possible, a listing or database should be created on the internet of what was taken in Serbia, noting what was subsequently returned and what is still missing. Unlike other countries, Serbia does not appear to maintain a list of its losses, whether removed from the country or otherwise, including Jewish losses but not only Jewish losses. Such a database would be helpful in understanding what is still missing.

Provenance Research

A distinction should be made between provenance research (the history of the ownership of an object from its creation to the present) and processes for claims and restitution. As in Austria and the Netherlands, the two countries that perhaps are the best examples, it is preferable for Serbia to have an entity that is responsible for provenance research and a separate entity that is responsible for restitution matters.

The provenance research entity should be as neutral and independent as possible, whatever its relation to the Ministry of Culture or other parts of the government may be. Its composition should include not only experts in art, but also in general history, libraries, and archives, and there should be inclusion of experts from the Jewish community.

Following the Austrian model, the provenance commission/office/board would itself carry out the research and have full access to the records and other holdings of the state museums, libraries, and archives. Given the relative lack of trained provenance researchers in Serbia and the political disagreements in the country, the Austrian model would probably be a good one for the country.

Following the Netherlands model, the provenance commission/office/board would review work that would be done by the museums, libraries and archives themselves. The various cultural institutions of Serbia will presumably prefer this Netherlands model.

In many countries – including Germany and the United States – museums, libraries, and archives carry out provenance research on their collections without such research being subjected to review. However, in those countries the museums and other professional associations, as well as often the governments, try to establish standards and guidelines for provenance research. And there are attempts through ICOM and otherwise to establish international standards for the

field. While these are helpful, they nonetheless do not fully overcome the problem that museum curators and others working for cultural institutions have generally been taught to protect their institution's collections no matter what – i.e., without reference to where those collections may come from – and experience conflicts of interest when carrying out provenance research. Some sort of independent review of such work is therefore desirable.

Although it can be argued that knowing where items in a collection come from should be simply a part of good collections management, as a practical matter museums, libraries, and archives are likely to see the task of provenance research as something that requires additional personnel and funding.

Note that because cultural property is movable, provenance research very often must be done in cooperation with experts in other countries.

Information should be made public over the internet of the results of provenance research on art and other cultural property.

Legal Matters

Serbia should pass legislation covering the return of private movable cultural property that is applicable to both Serbian and foreign citizens.

Either in that legislation or separately, provision should be made for the restitution of communal cultural property above and beyond Article 15 of the 2006 Serbian restitution law that established a deadline of September 30, 2008, which effectively was too short a period for the implementation of such restitution. Unlike immovable property, movable cultural property is often not immediately identifiable, and it is therefore preferable not to establish a deadline for claims – or at least allow for a relatively long period for such claims to be made.

Serbia should establish a non-bureaucratic process for filing claims, preferably outside the courts. Claims should be handled by a separate restitution entity that will take into account the findings of the provenance commission/office/board. The restitution entity should also be as neutral and independent as possible and should consist of respected experts, including representation of the Jewish community. The claims process should take into account the “unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era” (Principle 4 of the Washington Conference Principles).

There should preferably be no obstacle to the export of restituted cultural property. If a distinction is to be made for “national treasures”, the identification of such works should not be left until after a restitution decision has been made or is in process. In any event, since there are known artworks that were plundered by the Nazis in other countries and subsequently illegally brought to Serbia, such works cannot reasonably be labeled as “national treasures.”

Heirless Cultural Property

In regard to cultural property for which original owners and heirs are not identified (heirless property), such property should be clearly listed, preferably on an internet site (an example is the database of the National funds in Austria⁵) so that potential claimants can come forward. Such items should not necessarily move from their current locations, but their provenance history should be publicly noted by the museum or other cultural institution.

As regards heirless communal property, the principle stated in Article 15 of the 2006 Serbian restitution law could well apply: “...movable items of cultural, historical or artistic significance shall be returned to the ownership of the church or religious community and if they are a constituent part of the collection of a public museum, gallery or similar institutions, agreement regarding their continued use between the church or religious community and the holder of the item are defined by contract.”

While the sale of heirless cultural property may eventually be desirable, it should only be done with great care, since experience has shown that these are unique items of great emotional importance to families and communities, and very few such items are in fact actually heirless.

Some Closing Political Observations

It is reasonable for Serbia to identify and possibly ask for the return of items that were plundered from Serbia that are now in other countries.

Handling of the reputation of Ante Topic Mimara should be straightforward, that while he did many good things for Serbia, there were certain actions that he took that need to be corrected.

94 ⁵ See: Art Database of the National Fund, <http://www.kunstrestitution.at/>

Since some of the provenance research issues are common to a number of the countries of the former Yugoslavia, consideration should be given to possible cooperation with those other countries.

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Rezime:***Dalja zapažanja o restituciji umetničkih dela, judaika i drugih kulturnih dobara opljačkanih u Srbiji***

Ovaj rad odnosi se na izazove u vezi sa oduzimanjem pokretne imovine u Srbiji. U pitanju je nastavak rada predstavljenog na prvoj stalnoj konferenciji u Beogradu koja se bavila restitucijom jevrejske imovine. Umetnine, judaika i druga kulturna dobra koja su oteta tokom Holokausta i nalaze se u Srbiji predmet su istraživanja koji je do sada bio zanemaren. Postoji potreba za istorijskim istraživanjem ne samo pokretne imovine oduzete tokom Drugog svetskog rata, već imovine koja je nakon 1945. završila u Srbiji iz drugih delova Evrope. Istraživanje je neophodno upotpuniti listom imovine sa posebnom naznakom šta je vraćeno prethodnim vlasnicima, šta nije i gde se predmeti trenutno nalaze. U okviru istraživanja porekla imovine moguće je slediti primer Austrije u kojoj se institucije muzeja i biblioteka time bave ili primer Holandije u kojoj to rade arhivi. Važno je da rezultati budu javno, elektronski dostupni. Posebno nezavisno telo bi trebalo da preuzme odgovornost u vezi sa prihvatanjem zahteva za restituciju pokretne imovine.

Još uvek nije donet jedinstven zakon u Srbiji koji bi omogućio i državljanima Srbije i stranim državljanima da podnose zahteve za restituciju pokretne imovine. U slučaju donošenja zakona koji bi se bavio povraćajem pokretne umetnine bilo bi važno izbeći vremensko ograničenje za podnosiocima obzirom na veoma zahtevan i dug posao u vezi sa istraživanjem porekla umetnina. Nemoguće je očekivati da se svaki slučaj pronađene pokretne imovine za koje se utvrdi poreklo vrati prethodnom vlasniku, ali je važno da rezultati budu javno dostupni.

Ključne reči: restitucija, umetnička dela, Jugoslavija, Srbija, jevrejsko, kulturna dobra, nacisti, pljačka

*Paper received: 09. 10. 2015.
Paper reviewed: 22. 10. 2015.
Paper accepted: 09. 11. 2015.*