

Bavarian Ministry of State for
Education and Culture, Science and Art

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Drs. 17/12339 ‘Provide the Greatest Possible Transparency about the Origins of Works of Art’

Drs. 17/12355 ‘Clarify the Scandal of the Selling of Looted Art’

Drs. 17/12176 ‘Nazi-looted Art - Clarify Omissions – Support Victims – Strengthen Provenance Research’

Attachments: 3 copies of this letter.

Dear Madam President,

The plenary session of the Bavarian Parliament will soon hold a debate on the questions contained in *Drs. 17/12339*, *Drs. 17/12355* and *Drs. 17/12176*.

In view of the great importance of provenance research, and in particular the ‘Transfers from State Ownership’ which were raised in the questions, it is of special importance to me to inform Parliament in advance. As already announced, I will also report to the Committee on Science and Art (*Ausschuss für Wissenschaft und Kunst*) on 12.10.2016.

Taking into account the points raised in the questions, I report as follows:

In the 1950s and 1960s, 890 works of art (comprising paintings and sculptures) from the art collections of the NSDAP and high-ranking Nazi-officials were absorbed into the collections of the Bavarian State Painting Collections with the designation ‘Transfers from State Ownership’ (*‘Überweisungen aus Staatsbesitz’*).

Background

The basis for extensive interventions regarding the assets of the NSDAP, its organisations and high-ranking members was established by the Allies before the end of the Second World War with Military Government Law (MRG) No. 52, the substance of which took effect on 18 September 1944. The Law placed these assets under Allied control to prevent their further movement. On 10 October 1945, through Control Law No. 2, the Allied Control Council, the highest joint representative body of the four occupying powers, dissolved and declared unlawful the NSDAP and its associated organisations. Under Control Law No. 2, all Party assets were seized by the Allied military authorities. As a result of Control Council Directive No. 24 (12 January 1946), on 5 March 1946 the Minister Presidents of Bavaria, Greater Hesse and Württemberg-Baden [Baden-Württemberg]¹ signed into effect Control Council Law No. 104. This law (known as the Law for Liberation from National Socialism and Militarism) excluded high-ranking National Socialists from participation in public life and seized their assets as ‘Contributions to Reparations’. In 1947/48, the Allied Control Council determined in two directives (KRD 50 and 57), the further handling of the assets confiscated from the NSDAP and its high-ranking members. If the assets were not considered to be subject to restitution, they were to be transferred to the Federal states in which they were found at the end of the war. The Bavarian State Office for Property Administration and Restitution (BLVW), founded in May 1946, was responsible for carrying out the transfer of assets from Allied to Bavarian custody. The BLVW was initially under the control of the Minister President and, from 1948, reported to the Bavarian Ministry of Finance.

¹ Became Baden-Württemberg in 1952.

From 1955 the Munich Financial Resources Office of the State of Bavaria (renamed in 1963 the Regional Finance Office) took over the duties of the BLVW.

In 1945 the US Allies created several Central Collecting Points (CCPs), one of which brought together art works in Munich in order to return them to their legal owners after clarification of their provenance. In 1948 the US authorities handed over to the Bavarian Minister President works of art that they had not yet been able to restitute to be held in trust ‘under the provision that investigations as to source of origin will be carried on’.² In 1952 the Trusteeship for the Administration of Cultural Assets (*Treuhandverwaltung von Kulturgut*) was established at the German Foreign Office by the Federal Government. It was responsible for external restitution to countries that had been occupied by Germany during the Second World War. Only those works of art which had been the property of the NSDAP or high-ranking Nazi officials, and which, according to the conditions of the trusteeship, had been excluded from external restitution, remained in the custody of the Bavarian State Government and gradually had their ownership transferred to the Free State of Bavaria in the course of the 1950s and 1960s. On 23 December 1950 the Bavarian Finance Ministry issued Implementation Provisions (*Durchführungsbestimmungen*) defining the ‘confiscation, management and exploitation’ of these assets. According to these Provisions, these assets were to be sold in order that the proceeds could be used to redress the injustices of National Socialism. The Implementation Provisions contained an exemption for works of art which the Finance Ministry, in consultation with the Ministry for Culture, wished to exclude from public sale in order to preserve them for the State Collections. In such cases, the receiving museums had to pay the value of the artworks to a Reparations Fund. This is how the 890 works of art came to be in the Bavarian State Painting Collections (*Bayerische Staatsgemäldesammlungen*) (BSGS).

² Original quote in English.

Eberhard Hanfstaengl (1886-1973), the Generaldirektor of the BSGS from 1945 and head of the Central Collecting Point (CCP) in Munich, reported to the Bavarian Ministry for Culture in September 1950 that further enquiries into the works of art given in trust to the Free State of Bavaria 'were no longer promising' as the available documents had already been fully evaluated by the CCPs. It is therefore to be assumed that at that time further intensive investigation was not carried out by the responsible Bavarian authorities. In evaluating this statement, it should also be noted that at that time today's historical tools were not available and that the highly complex and differentiated methodology and numerous international sources of today's provenance research have only developed over the last decade. Further, the many archives of families, individuals, the art trade and institutions now available have only been made accessible in the recent past – not least as a result of the debates which have intensified worldwide since the Washington Conference.

Applications for restitution in the post-war years were dealt with 'quickly and carefully' according to the provisions of the laws applicable at the time. However, the persecution of the Nazi era severely disrupted or completely destroyed the families of many Jewish art collectors and dealers. This meant that their claims could often not be registered within the time limits imposed by the legislation of the time. On 10 November 1947, the American Military Administration issued a Restitution Law (MRG 59) which stipulated a 12 month limit for the registration of claims. The Federal Republic also continued reparation and restitution efforts under pressure from the Allies. According to the Transitional Treaty of 1952, applications for external restitution of works of art and cultural assets could be submitted until 8 May 1956. The 1957 Federal Restitution Act (BRüG) set the final deadline for applications for internal restitution of assets – after two renewals – at 1 April 1959.

Research Projects on the 'Transfers from State Ownership'

Since 2012 provenance research has been conducted at the Bavarian State Painting Collections (BSGS) into the works categorised as 'Transfers from State Ownership'. These included some of the artworks from the Hermann Göring Collection, the paintings from which had already been researched by Ilse von zur Mühlen between 1999 and 2002 and the results published by the BSGS in 2004 in the form of a provenance report. In 2012 a BSGS research project on the 'Transfers from State Ownership' was started with the aim of examining the provenances of all the works of art in order to clarify them as far as possible, and list all works with suspicious or incomplete provenances on the LostArt.de database of the German Centre for Cultural Property Losses so that this information be available for potential claimants. As information on problematic provenances emerges, it is also shared with other Bavarian State Museums. In addition, the research project is investigating the overall circumstances of the transfer of the (890) works of art to the BSGS.

Results of the Project on 'Transfers from State Ownership'

As of July 2016, a total of 404 of the 890 works, (45%), have been researched. 239 of these 404 works, (59%), have, since 2007, been registered on the LostArt.de database as under suspicion of having been looted. 140 of the 404 works of art, (35%), were determined to be unproblematic, most of them contemporary works of the Nazi era. Further research is being carried out on the objects which have already been registered on LostArt. In order to meet legitimate concerns about transparency, the progress of the research is regularly made public through press conferences and the BSGS Annual Reports.

Restitutions of the 'Transfers from State Ownership'

To date, arising from the LostArt reports, two restitution applications were submitted for two works from the Hermann Göring Collection. In 2013 the Bavarian State Painting Collections (BSGS) restituted Inv.-No. 13336, Narcisso Virgilio Díaz de la Peña's '*Die verletzte Eurydike*' ('*The Injured Eurydice*') and discussions are being held with the applicants for a further work - Inv.-No. 13269, '*Auferweckung des Lazarus*' ('*the Resurrection of Lazarus*') by a southern German artist of ca 1530/40. A painting which was once in the possession of the NSDAP had already been restituted by the BSGS in 2004 (Inv.-No. 12579) to the heirs of the original owner.

Sales>Returns and the Function of the Bavarian State Painting Collections

Returns to former Nazi officials and their families:

There is only one case, according to current knowledge, where works of art that had been transferred from Bavarian State ownership to the BSGS and which had been confiscated from a former Nazi official were returned. In the 1950s the photographer Heinrich Hoffmann successfully sued against the expropriation of his property. Among the objects handed over to him were 24 works which had been inventoried by the BSGS (Inv.-Nos. 11983-11994 and 11996-12007).

Further returns were made to the family members of former Nazi officials; however none of these works of art were part of those transferred to the BSGS. Between 1949 and 1952 objects belonging to her husband Baldur von Schirach were returned to Henriette Hoffmann-von Schirach. Hoffmann-von Schirach had proved that she had brought these with her into her marriage and that they were her property.

Emmy and Edda Göring also demanded items from the confiscated assets of Hermann Göring, respectively their husband and father. They justified their claims analogously to Hoffmann-von Schirach, stating that the objects were their property and not that of Hermann Göring. Until 1964 individual objects were returned to them.

Sales to former Nazi Officials or their Families:

In 1959 Henriette Hoffmann-von Schirach applied to repurchase objects which had belonged to her father, Hitler's photographer Heinrich Hoffmann. These items had initially been set aside by the Trusteeship for the Administration of Cultural Assets in expectation of a claim for external restitution. The relevant authorities granted Hoffmann-von Schirach's application. This led to just four works of art from the collection of Heinrich Hoffmann remaining in the BSGS. In 1960 and 1962 Henriette Hoffmann-von Schirach repurchased five works of art which had already inventoried for a total of 5,100DM. Among these was the Jan van der Heyden (formerly Inv.-No. 12891, today in the *Dombauverein Xanten* (Xanten Cathedral Association), about which an article was published in June 2016. The painting was sold at an estimated value (*Schätzpreis*). This price was determined by the staff of three State Museums together with an independent expert. The van der Heyden was considered to be a 19th century copy. The low estimate of the value of the picture (300DM) should be considered in light of the general low regard for the 19th century and for copies (in the sense of better reproductions) at that time.

There were further sales to family members of former Nazi officials. However, none of these came from works of art already inventoried by the BSGS. Henriette Hoffmann-von Schirach and her son Robert von Schirach, for example, acquired a number of further works from the collections of Heinrich Hoffmann and Baldur von Schirach.

Public Sales of Works of Art from the Transfers from State Ownership:

In 1966/7 106 paintings from these transfers were sold by the Bavarian State Painting Collections (BSGS) on its own initiative. These paintings, which were not regarded as museum-standard, were sold at auctions and directly to art dealers. As these works of art belonged to the founding assets of the Free State of Bavaria, permission was sought from both the Ministry of Education and Cultural Affairs and the Bavarian Ministry of Finance for the sales. The Ministry of Finance granted its approval January 1966 after the intended sales had been discussed in the **Budgetary Committee of the Bavarian Parliament and thus** become a matter of public record.³

Works of art which have already been researched by the Research Project have been registered on www.LostArt.de

According to our present state of knowledge, only six further works of art from those transferred to the Bavarian State Painting Collections are known to have been sold after this set of sales. In 1958, by Ministerial decision, a painting was sold to a private person (Inv.-No. 12164), and in 1961 four pictures were purchased by a private collector in Schweinfurt (Inv.-Nos. 12870, 13008, 13010, 13048). A further work was handed over to the Central Finance Office (*Zentralfinanzamt*) in 1961 and was auctioned in 1962 (Inv.-No. 12888). The same process occurred in the case of a painting (Inv.-No. 12894) which was returned to the BSGS in 1980 via the Munich Finance Office. In 1989 a painting was handed over to the Munich Artists' Association (*Künstlergenossenschaft*) in the course of the exchange of one painting for another (Inv. No. 12120 in exchange for Inv.-No. 15175).

A further 13 objects from the Transfers which had been entered into the BSGS inventory were handed over to state institutions and in one instance to a church institution (Inv. Nos. 11770, 11786, 11801, 11811, 11882, 11958, 12697, 11883, 12152, 12153, 12158, B 417 and B 418), and were therefore not transferred for the commercial benefit of the BSGS.

On 25 October 1974 further works from former Nazi ownership were auctioned with the necessary permissions from the Bavarian Ministry of Culture and the Ministry of Finance –

³ Bold in original: **Verkaufsabsichten im haushaltspolitischen Ausschuss des Bayerischen Landtages und damit öffentlich im Januar 1966 zustimmend diskutiert worden waren**

which acted as consignor - through the Neumeister Auction House in Munich. These were exclusively works of art from Hermann Göring's collection which had never belonged [SDI] to the BSGS.

The sales of 500 formerly Nazi owned works, mentioned in the article 'Munich's Stolen Art Bazaar' (*Süddeutsche Zeitung* 25/26 June 2016) with reference to the research of the Central Institute for History of Art (*Zentralinstituts für Kunstgeschichte*), refer to sales by the public sector as a whole and not only to those of the Free State of Bavaria.

Transfers in the Public Eye

The divestments were not a secret, although it was not explicitly communicated in the course of the 1966-/67 'sales campaign' that the sale items had formerly been owned by NSDAP organisations and Party officials. The intention to sell and the origin of the objects was made known to and approved by the Parliament, through the January 1966 process of obtaining consent to sell the paintings. However, this information was initially of little public interest. It was only shortly before the conclusion of the sale in the autumn of 1967 that coverage in regional and international media intensified. The media did not criticise the fact of the sales, but that the works of art were being sold far too 'cheaply', especially since some of them could have importance at least for branch museum of the BSGS. The Cultural Policy Committee of the Bavarian Parliament dealt with these accusations at the turn of the year 1967/68. That the works came from former Nazi ownership was always mentioned in the media reports (in, ia, *Abendzeitung*, *Bayerische Staatszeitung*, *Handelsblatt*, *Münchner Merkur* and *Süddeutsche Zeitung*), but at no point and from no side was this criticised. At that time reparation and restitution efforts were regarded as concluded and thus played hardly any role in public perceptions of these sales.

This disregard also applies to the auction of handcrafted items from Hermann Göring's Collection in 1974. In contrast to the sales of 1966/67, the auction catalogue in this case explicitly pointed out the origin of the objects in Göring's Collection.

At the end of the 1980s the debate on reparation and restitution, which had been conducted intensively in the immediate post-war years, was revived in the public realm. There was a new demand for a thorough review of the artworks of high-ranking Nazi officials and led to the 1998 Washington Declaration (*Washington Conference Principles on Nazi-Confiscated Art*). In the Washington Declaration, more than 40 states, including the Federal Republic of Germany, committed themselves to investigating their art collections and finding just and fair solutions with the former owners or their heirs. The Principles show that the moral questions regarding the Nazi era are posed and answered completely differently today than was the case in the immediate post-war years.

On the basis of the Washington Principles and the Joint Declaration by the Federal Government, the Federal States and the National Associations of Local Authorities on the Tracing and Return of Nazi-Confiscated art, especially Jewish Property of December 1999, public institutions are called upon to actively search their collections for art looted by the Nazis.

Transfer of Files to the State Archives

Under Article 6 (1) (1) of the Bavarian Archival Law all public authorities, courts, and other public bodies of the Free State of Bavaria must submit to the relevant state archive documents which they no longer require in order to fulfil their duties. Under the terms of Article 6 (1) (1), this should take place 30 years after the date of the creation of the documents, unless otherwise provided for by the legislation or administrative regulations of the highest State authorities.

The Bavarian State Painting Collections (BSGS) have so far not transferred any files to the Bavarian State Archives, because the essential prerequisite for a transfer according to the Bavarian Archive Act is that they are no longer 'required for the fulfilment of tasks.' The BSGS is an institution which conducts historical research. Art historians, restorers and natural scientists – and in the case of provenance research latterly also historians – have always undertaken research into the history of the works of art in the BSGS. The records and documentation of the works of art at the BSGS are the subject of research as much as the works of art themselves. Correspondence remains an important source for the museum's research. Files and inventories on the origin of the works of art are particularly indispensable for provenance research. A transfer of the files to the State Archives would impair the provenance research being undertaken at the Bavarian State Painting Collections.

The transactions directly related to the 'Transfers from State Ownership' are in eight bundles (*Konvolute*), subdivided by their origins (persons and institutions) held in suspension files consisting of circa. 3,500 pages. Without these files the above research project could not be carried out. These documents, like all others, were and are accessible to those conducting scholarship and research (and were, for example seen by the authors of the SZ article). All requests for the inspection of the BSGS files were approved. Moreover, it should be noted that the State Archives are in agreement with the BSGS and have said that the transfer of files is no longer required.

On the Transfer of Similar Holdings in Berlin

The Berlin Federal Office for Central Services and Unresolved Property Issues (BADV) still maintains a large inventory of works of art

(including works from the Linz Collection), which after the end of the war were confiscated and examined by the Allies as Property of the Reich. The 2,300 works of art from this stock which could not be restituted became the property of the Federal State in 1963 according to the terms of Article 134 GG. There are comparable collections in other European countries.

Cooperation with the Commission for Looted Art in Europe (CLAE)

Cooperation or correspondence with the CLAE is on a case-by-case basis. For example, the CLAE contacted the Bavarian State Painting Collections (BSGS) in 2011 and requested material regarding a sale; this was sent to CLAE.⁴

Concentration and Continuation of Provenance Research at the State Museums and Collections

The need for research and the related challenges are enormous. A task of this magnitude can only be tackled if cooperation between museums, libraries and archives as well as between the specialised provenance research agencies is strengthened and institutionalised. It was for this reason that in 2015 the Bavarian State Ministry for Education, Culture, Science and the Arts established the Research Network for Provenance Research in Bavaria (*Forschungsverbund Provenienzforschung Bayern*) which links the research efforts of the participating institutions and seeks to develop synergies. The following institutions are members of this Research Network: the Bavarian National Museum, the Bavarian State Painting Collections, the Bavarian State Library, the General Directorate of the Bavarian State Archives, the Institute for History of Art at the Ludwig-Maximilian-University, Munich, the Institute for Contemporary History, Munich-Berlin, the Bavarian Office for Non-State Museums, the State Collection of Graphic Art, and the Central Institute for Art History, Munich.

First results and experiences of the Research Network have led to the conclusion that the membership should be widened and cooperation further concentrated and institutionalised.

⁴ 'Die Zusammenarbeit bzw. Korrespondenz mit der CLAE erfolgt fallbezogen. So hatte die CLAE beispielsweise 2011 Kontakt zu den Staatsgemäldesammlungen aufgenommen und Material zu einem Verkauf erbeten, das übermittelt wurde.'

In the medium term, the establishment of further structures and the strengthening of project-related personnel is desirable, especially in the absence of relevant official bodies.

Yours sincerely

Dr. Ludwig Spaenle
Minister of State