

Bequest of Cornelius Gurlitt: Decisions by the Kunstmuseum Bern Foundation regarding how to deal with works of unclarified provenance and the restitution claims by the descendants of Dr Ismar Littmann

After spending several years researching the bequest of Cornelius Gurlitt, which comprises approx. 1,600 works, the Kunstmuseum Bern Foundation has reached several resolutions as to how to deal with works of unclarified provenance and the restitution claims by the descendants of Dr Ismar Littmann. The decisions were reached following extensive investigations and considerations as well as in cooperation with independent international experts.

- **The Kunstmuseum Bern will give up its ownership of any works of unclarified provenance that may lack specific evidence of being Nazi-looted art but for which implications of looted art and / or conspicuous circumstances exist (referred to as yellow-red works).**
- **The Kunstmuseum Bern will retain ownership of works of unclarified provenance for which extensive research was unable to uncover any evidence of the works being Nazi-looted art and for which no implications of looted art and / or conspicuous circumstances exist (referred to as yellow-green works).**
- **The research findings and assessments are presented transparently and new insights will be reassessed at any time – along with the corresponding consequences.**
- **The Kunstmuseum Bern will transfer two works by Otto Dix jointly to the descendants of Dr Ismar Littmann and the descendants of Dr Paul Schaefer.**
- **The entire Gurlitt bequest was redocumented based on the extensive largely completed research and is publicly accessible through a new online database.**
- **The Kunstmuseum Bern will show a comprehensive exhibition on the Gurlitt bequest in autumn 2022.**

Background

Rolf Nikolaus Cornelius Gurlitt passed away on 6 May 2014. Prior to his death, he had designated the Kunstmuseum Bern Foundation as his sole heir in his will (Cornelius Gurlitt bequest). In the six months between the opening of the will and the end of the period to disclaim the inheritance, the Kunstmuseum Bern conducted summary investigations, particularly with respect to the possibility of Nazi-looted art being among the items. At the same time, the Kunstmuseum Bern, the Federal Republic of Germany (FRG), and the Free State of Bavaria assigned an agreement. On 22 November 2014, after careful consideration, the Kunstmuseum Bern decided to accept, not to waive, the legacy of Cornelius Gurlitt.

2014 Agreement: Provenance Traffic Light System

In the 2014 Agreement, the parties agreed to a method that distinguishes between certain and uncertain provenance classifications of the works in the bequest of Cornelius Gurlitt and handles these works in a correspondingly differentiated manner on the basis of such classifications. This method is expressed in the colour codes defined by the so-called Provenance Traffic Light (2014 Provenance Traffic Light). The Kunstmuseum Bern gives up ownership of any artwork identified as Nazi-looted art ("red") under the 2014 Agreement. These works shall be held by the Federal Republic of Germany in trust until they are restituted to the rightful owner or the descendants of the rightful owner. The Kun-

Kunstmuseum Bern will remain the owner of works of art for which provenance research was able to rule out any suspicion of the works being Nazi-looted art with a probability bordering on certainty ("green"). In the case of works with unexplained changes of ownership during the period of Nazi rule (1933 – 1945) for which the findings are unable to eliminate or confirm with certainty that the works constitute looted art ("yellow"), the Kunstmuseum Bern is entitled to give up ownership of the works and transfer them to the Federal Republic of Germany (right of choice).

Provenance research from 2013 to 2021

Provenance investigations were first conducted on the approximately 1,600 works of art by the "Schwabing Art Trove" task force (2013 – 2015) as well as the "Gurlitt Provenance Research" (2016 – 2017) and "Reviews, Documentation and Event-driven Research Work on the Gurlitt Art Trove" (2018) projects, which were conducted by the German Lost Art Foundation.

A Provenance Research Department was established at the Kunstmuseum Bern in 2017. Since 2017, this department researched the works in the Gurlitt bequest of so-called degenerate art, from 2019 in collaboration with the "Forschungsstelle Entartete Kunst" ("Degenerate Art" Research Center) of the Hamburg University.

In March 2019, the documentation produced by the Task Force and the projects undertaken by the German Lost Art Foundation was conclusively handed over to the Kunstmuseum Bern. Until 2021, the documentation was evaluated and individual pieces from Cornelius Gurlitt's bequest were further investigated by the Provenance Research department of the Kunstmuseum Bern in collaboration with independent international experts.

Definition of new provenance categories

Over the course of this work, the Kunstmuseum Bern decided to define two additional categories, "yellow-green" and "yellow-red", to establish a more differentiated approach to items of unclarified uncertain provenance ("yellow" category, 2014 Provenance Traffic Light System) and support the decision-making process.

Summary of results

Following the preliminary completion of this research on 30 June 2021, the works of art from Cornelius Gurlitt's bequest with uncertain provenance in the period from 1933 to 1945 were attributed as follows to the categories of "green", "yellow-green", "yellow-red" and "red".

Category	Definition	Number of works
Green	The provenance for the period from 1933 to 1945 can be reconstructed. This is not a case of looted art.	28
Yellow-Green	Works created by members of the Gurlitt family by the artists Heinrich Louis Theodor Gurlitt (1812 – 1897) and Cornelia Gurlitt (1890 – 1919)., without research report	246

Yellow-green	The provenance from 1933 to 1945 has not been unambiguously clarified; gaps in the ownership history remain. According to current research, there is no evidence of looted art. There are no implications of looted art and / or conspicuous circumstances.	1091
Yellow-red	The provenance from 1933 to 1945 has not been conclusively clarified; gaps in the ownership history remain. According to current research, there is no evidence of looted art. There are, however, implications of looted art and / or conspicuous circumstances.	29 (of which, 2 claimed by Littmann, 5 will be returned to the FRG, 22 will remain at the Kunstmuseum Bern for further research)
Red	The provenance for the period from 1933 to 1945 can be reconstructed. This is a case of looted art.	9 These objects already been restituted by the Federal Republic of Germany (FRG) and the Kunstmuseum Bern.
	Excluded from the research since these works relate to dissolved portfolios and other mass-produced items. Because of this, the numbers of works counted varies	Around 270

The nine works in the "red" category have already been restituted by the Federal Republic of Germany in consultation with the Kunstmuseum Bern.

In the case of 22 works of art in the "yellow-red" category, the Kunstmuseum Bern is conducting further provenance investigations in terms of new substantial research paradigms.

In the case of two works of art that are the subject of a restitution claim, the Kunstmuseum Bern is working together with the claimants to reach a fair and just solution.

The final decision on whether Kunstmuseum Bern Foundation will accept the works of art from Cornelius Gurlitt's bequest is based on the status of the findings and assessments as at 30 June 2021.

Exercising the right to choose

The decision of the Kunstmuseum Bern Foundation is based in part on an internationally recognised set of ethical principles for museums such as the [Washington Principles \(1998\)](#), the [Terezín Declaration \(2009\)](#), and the [ICOM Code of Ethics for Museums \(2004\)](#).

In addition, the conscious and responsible handling of uncertain findings also plays a central role. Based on a comprehensive analysis of historical research as well as ethical and moral considerations, the Kunstmuseum Bern Foundation has reached the following decisions on 21 December 2020 and 5 November 2021:

- The Kunstmuseum Bern Foundation will definitively accept the works in the “yellow-green” category. These works will remain the property of the Kunstmuseum Bern.
- The Kunstmuseum Bern Foundation will give up its ownership of the works in the “yellow-red” category and transfer these works to the Federal Republic of Germany under the condition that there is no further need for research, no claims are filed and no potential rightful owners are evident.
- The Kunstmuseum Bern Foundation will deal with claims relating to works in the “yellow-red” category or investigate potential claims to such works and explore options for amicable solutions. If the findings are ambiguous or incomplete, the Kunstmuseum Bern Foundation will strive to find a solution that meets the sense of justice on both and is open with respect to potential solution models. Only if this procedure is unsuccessful such works will be transferred to the Federal Republic of Germany.
- In the event that the Kunstmuseum Bern Foundation has assumed permanent ownership of a work of art for which further provenance research undertaken by the Kunstmuseum Bern reveals that the work is Nazi-looted art, such work shall be restituted to the rightful owners without delay.
- Transparency: As at the date of this media release, the Kunstmuseum Bern Foundation will publish the works of Cornelius Gurlitt’s bequest in the **online database THE GURLITT ESTATE** (gurlitt.kunstmuseumbern.ch). New research findings will be immediately published in the database and thus being made internationally accessible. The research and considerations for decision-making will be published, too.
- Scientific reappraisal: Going forward, the Provenance Research Department of the Kunstmuseum Bern will continue to research works of art of the Gurlitt Estate and pursue new information and sources to that end. It will also participate in further efforts to reappraise the history of the art dealer Hildebrand Gurlitt from an historical and art-history perspective. The research will focus on the connection between art looting, the art trade and museum collection policies and the Nazi rule. They will take transnational research perspectives into account, particularly those of Holocaust Studies and exile research.

In the interest of facilitating scientific exchange, the department will make the findings of its research available within the framework of scientific cooperation. Provenance research is conducted freely, in cooperation with independent experts, within the framework of collaborative research projects and in due consideration of the quality criteria of scientific work. New information, sources and leads from third parties will be examined objectively and the findings of this research will be communicated in a transparent, comprehensible manner.

- An independent Provenance Council has been advising the the Kunstmuseum Bern Foundation on principal matters since 2017. The members of this Council are: Prof. Georg Kreis, historian, Basel; Esther Tisa Francini, lic. phil., provenance researcher, Museum Rietberg, Zurich; Dr Her-

bert Winter, attorney-at-law, formerly President of the Swiss Federation of Jewish Communities, Zurich

Claim of the descendants of Dr Ismar Littmann

After works of art from the collection of Cornelius Gurlitt (1932 – 2014) were published in the Lost Art database, the descendants of Dr Ismar Littmann sent a restitution claim to the “Schwabing Art Trove” task force, which was responsible at the time. The restitution claim related to two watercolours from Otto Dix, *Dame in der Loge*, 1922 (SV no. 35/105, Lost Art ID 477895) and *Dompteuse*, 1922 (SV no. 35/104, Lost Art ID 477893). In October 2014, the heirs extended their restitution claim to include another 23 works on paper from Cornelius Gurlitt’s bequest. The Federal Republic of Germany had declined restitution for these 25 works following provenance research conducted by the Task Force “Schwabinger Kunstfund” (2013 – 2015) and the “Gurlitt Provenance Research” project (2016 – 2018).

The Kunstmuseum Bern has been communicating with representatives of the heirs of Dr Ismar Littman both transparently and constructively since 2019. This cooperation, which has now been in place for just over two years, aims to establish a joint assessment of the findings available to date, which will then serve as the basis of an amicable settlement.

During this exchange, the descendants of Dr Ismar Littmann and his wife Käthe Littmann gave up their restitution claim for 23 works of art from Cornelius Gurlitt’s bequest and requested that they be deleted from the Lost Art database. They maintained their claim for restitution of the two watercolours from Otto Dix, *Dompteuse* (1922) and *Dame in der Loge* (1922).

The initial research on the watercolours of Otto Dix, *Dompteuse* (1922) and *Dame in der Loge* (1922) conducted from 2013 to 2017 by the Task Force “Schwabinger Kunstfund” and the “Gurlitt Provenance Research” project, for, did not lead to any conclusive results. The provenance research for both works was unable to provide clear evidence that the watercolours had been the property of Dr Ismar Littmann (2 July 1887 – 23 September 1934) or his descendants and that these works had been taken away from them in connection with their persecution between the dates 30 January 1933 and 8 May 1945.

After a review conducted by external experts, the “Gurlitt Provenance Research” project assessed the findings for both works as “unclarified” (“yellow” category, 2014 Traffic Light System).

After completion of further research by the Kunstmuseum Bern, the situation as of June 2021 appears as follows:

- The provenance of both works is largely incomplete for the period from 1933 to 1945 (identity of the work, details of ownership during the period under review, persecution-related seizure, aggrieved parties). The research did not lead to any verifiable reconstructions of changes of ownership during the time of National Socialist rule. The information gathered during this research did, however, lead to a body of circumstantial evidence of sufficient substance to allow a decision to be made regarding the relatively most likely scenario. Overall, these conclusions are clearly outside the realm of certainty or high probability.
- The potentially aggrieved parties and/or rightful owners are Dr Ismar Littmann and Dr Paul Schaefer or their descendants. No other potentially aggrieved parties and/or rightful owners were evident at the end of the research work.
- From a legal point of view, the findings in both cases does not come close to a justiciable density of evidence. The relatively most likely scenario overall for both works is assessed outside the

categories that call for certainty or a high level of likelihood. Therefore, assessing the works in question as Nazi-looted art ("red") or free of Nazi-looted art ("green") is out of the question.

Due to the existence of conspicuous circumstances as well as implications of Nazi-looted art, the works are classified in the provenance category "yellow-red".

From the perspective of the Kunstmuseum Bern, in the clarifications and the decisions on the claim of the descendants of Dr, Ismar Littmann, there is an increased obligation to exercise due diligence as well as to internationally applicable ethical standards. Within this framework, the Kunstmuseum Bern is free to decide how to deal with both of the works in question. Even to give up ownership of "yellow-red objects" is inherently consistent with the Foundation's legal status, its service agreement with the Canton of Bern and its status as a non-profit organisation.

This discretionary leeway also encompasses innovative solutions, as in the case of the painting *La Montagne Sainte-Victoire* by Paul Cézanne, which is also among Cornelius Gurlitt's bequest. In that case, in a 2018 agreement, the Kunstmuseum Bern granted the Cézanne family the right to regularly exhibit the painting as an item on loan at the Musée Granet in Aix-en-Provence, Cézanne's hometown. In doing so, the Kunstmuseum Bern relinquished some of its rights to use the work ([see the media release on Paul Cézanne](#)).

On the topic of how to handle works of art in the "yellow" category in accordance with the 2014 Agreement and in respect of the differentiated provenance categories defined by the Kunstmuseum Bern, the Kunstmuseum Bern Foundation decided to give up its ownership of works in the "yellow-red" category and hand them over to the Federal Republic of Germany. If claims are filed or potentially aggrieved parties are identified in connection with works in the "yellow-red" category, the Kunstmuseum Bern has decided to initially seek an amicable settlement agreement with those involved. Only if these efforts fail, such works will be handed over to the Federal Republic of Germany.

Enforcing claims for property restitution (vindication) in a litigation before the ordinary civil courts would most probably be futile due to the incompleteness of the findings in this case. Given the highly fragmentary nature of the information available in this case, the Kunstmuseum Bern does not feel that it would be appropriate to directly apply the *Washington Principles* (1998) and the *Terezín Declaration* (2009), especially with respect to Principle Nr 4 (reduced burden of proof) of the *Washington Principles*. However, the Kunstmuseum Bern acts in the spirit of both declarations, when it applies the maxim of reaching "a fair and just solution", which is valuable in all circumstances.

Against this background, on 5 November 2021, the Kunstmuseum Bern Foundation decided the following:

- The two works by Otto Dix, *Dompteuse* (1922) and *Dame in der Loge* (1922), will be transferred jointly to the descendants of Dr Ismar Littmann and the descendants of Dr Paul Schaefer once a transfer agreement has been concluded.
- The prerequisite for this is the unconditional consent of all parties involved to the proposed solution. The Kunstmuseum Bern will moderate this process.
- A transfer of the two works in question to the heirs of Dr Ismar Littman and the heirs of Dr Paul Schaefer is preferable to a transfer of ownership in trust to the Federal Republic of Germany.
- This should not prejudice the direct application of the *Washington Principles* (1998). In particular, the Kunstmuseum Bern does not consider an appeal to Principle Nr 4 as appropriate in this case. Instead, this decision is in their spirit.
- The specific terms of the transfer are to be laid down in a transfer agreement between the three parties.

Quotes

"The decision to accept the Gurlitt legacy was mainly motivated by a desire to find a careful, responsible way of dealing with this challenging situation. The years of in-depth debate surrounding the legacy have allowed the Kunstmuseum Bern to adopt a clear stance on the matter, which is reflected in the two decisions. We've all learned a lot in the process."

Marcel Brühlhart, Member of the Board of Trustees of the Kunstmuseum Bern / person in charge of the Gurlitt Dossier

"For the Kunstmuseum Bern, dealing with the legacy of Cornelius Gurlitt has been and still is a major challenge and everyone involved is dedicated to handling it correctly. I'm particularly thrilled about the international networks and collaboration in the area of provenance research that have arisen in the past few years. This is the path we have to stick to going forward – we still have a lot of work ahead of us."

Nina Zimmer, Director of the Kunstmuseum Bern – Zentrum Paul Klee

Next steps

Handling of the claim of the heirs of Dr Fritz Salo Gaser regarding the following 13 works from Cornelius Gurlitt's bequest

- Hans Christoph, *Paar*, 1924
- Conrad Felixmüller, untitled (couple in landscape), 1921
- Erich Fraass, untitled (mother and child), 1922
- Ludwig Godenschweg, untitled (female nude), undated
- Ludwig Godenschweg, untitled (front view of male head), undated
- Otto Griebel, untitled (veiled woman), 1926
- Bernhard Kretzschmar, untitled (tram), undated
- Wilhelm Lachnit, untitled (girl at table), 1923
- Wilhelm Lachnit, untitled (man and woman at window), 1923
- M.R., untitled (child at table), undated
- Fritz Maskos, untitled (musing woman), 1920
- Christoph Voll, *Mönch*, 1921
- Christoph Voll, *Sprengmeister Hantsch*, 1922

Further research and search for possible rightful owners for the following works from Cornelius Gurlitt's bequest that are classified as yellow-red

- Pierre Auguste Renoir, *Oedipus Rex (1)*, 1895
- Pierre Auguste Renoir, *Oedipus Rex (2)*, 1895
- Pierre Auguste Renoir, *Stilleben*, undated
- Paul Gavarni, *Homme debout avec une plante*, undated
- Marguerite Gérard, untitled (portrait of a young woman), undated
- Max Liebermann, untitled (self-portrait of the artist with a book of sketches, dedicated to Max Braunthal), undated
- Giovanni Domenico Tiepolo, untitled (Nessus abducts Deianira), undated
- Ferdinand Georg Waldmüller, *Bildnis zweier Frauen*, 1831
- Georg Grosz, *Grotesker Tanz*, 1915

Further research and search for possible rightful owners for the following works from the collection of the Kunstmuseum Bern:

- Henri Matisse, *Les anémones*, 1923, acquired by the Kunstmuseum Bern in 1945
- Ernst Ludwig Kirchner, *Dünen und Meer, Fehmarn*, 1913, acquired by the Kunstmuseum Bern in 2000
- Max Slevogt, *Pfalzlandschaft*, 1930, acquired by the Kunstmuseum Bern in 1941

Exhibition at the Kunstmuseum Bern

Taking Stock: Gurlitt In Review

16 September 2022 – 15 January 2023

The exhibition accompanies the conclusive acceptance of art works and artefacts from Cornelius Gurlitt's legacy and takes stock. For the first time, the Gurlitt legacy is comprehensively presented: the outstanding collection of modern German works on paper as well as paintings and drawings of French art from the 19th century, single works from different eras, East Asian crafts and small archaeological sculptures. The presentation is complemented by testimonies from Hildebrand Gurlitt and Cornelius Gurlitt, documents and photographs. With this exhibition, the Kunstmuseum Bern also addresses the challenges a museum faces when dealing with a bequest from an art dealer from the time of National Socialism as well as the ethical questions this raises.

Annexes and notes

- Report and decision to accept
- Report and decision regarding Littmann
- Database entitled "DER NACHLASS GURLITT" (THE GURLITT ESTATE):
gurlitt.kunstmuseumbern.ch
- Agreement of the 24 November 2014 between the Federal Republic of Germany, the Free State of Bavaria and the Kunstmuseum Bern
- Washington Principles (1998):
<https://www.bak.admin.ch/bak/en/home/cultural-heritage/looted-art-from-the-nazi-period/international-principles.html>
- Declaration of Terezin (2009):
<https://www.bak.admin.ch/bak/en/home/cultural-heritage/looted-art-from-the-nazi-period/international-principles.html>

The reports on provenance research of the works listed in the database are published at proveana.de or can be viewed on request by contacting provenienzforschung@kunstmuseumbern.ch

Authors of the reports

Authors and experts in provenance research

Dr Nikola Doll, Head of the Provenance Research Department of the Kunstmuseum Bern, based on preliminary work performed by the "Schwabing Art Trove" task force (2014 – 2015), the "Gurlitt Provenance Research" project as well as other more in-depth research conducted by the Kunstmuseum Bern.

The findings were evaluated with:

- Dr Marcus Leifeld, Bonn
- Dr Britta Olényi von Husen, Cologne
- Dr. Gesa Jeuthe-Vietzen, Forschungsstelle "Entartete Kunst" ("Degenerate Art"- Research Department), Department of Art History Kunstgeschichtliches Seminar, Hamburg University
- Prof. Dr. Uwe Fleckner, Forschungsstelle "Entartete Kunst" ("Degenerate Art"- Research Department), Department of Art History Kunstgeschichtliches Seminar, Hamburg University

Furthermore, the following experts contributed:

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- Dr. Ines Rotermund-Reynard, Institut national d'histoire de l'art, Paris
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