

STRATEGY PAPER FOR PROVENANCE RESEARCH,

DECISION-MAKING PROCESSES AND POWERS FOR 'JUST AND FAIR' SOLUTIONS

AT THE KUNSTHAUS ZÜRICH

14 March 2023

TABLE OF CONTENTS

1. BACKGROUND
2. STRATEGY FOR PROVENANCE RESEARCH AT THE KUNSTHAUS ZÜRICH
3. DECISION-MAKING PROCESSES AND POWERS FOR 'JUST AND FAIR' SOLUTIONS
4. APPENDICES

APPENDIX 1:

Passages on ethics and provenance research in the new subsidy agreement between the City of Zurich and the Zürcher Kunstgesellschaft

APPENDIX 2:

Glossary

Written by Ann Demeester, Dr Philippe Büttner, Joachim Sieber

1. BACKGROUND

The Kunsthaus Zürich has documented the origin of the works in its collection ever since the museum was established in 1910, and comprehensive results of this work were published for the first time in the 2007 collection catalogue. For two paintings by Albert von Keller, gifted from the estate of the Zurich art collector Oskar A. Müller in 2007, which were identified as Nazi-looted art, 'just and fair solutions' within the meaning of the Washington Principles were found, in 2010 and 2012 respectively.

Starting in 2017, with support from the Federal Office of Culture (FOC), this provenance research has been taken to a new level. In 2019, the Kunsthaus created a permanent provenance research position. Since then, the provenances of the collection holdings have undergone systematic research that is open in terms of results, in accordance with international standards, with the conclusions continually being published in the online collection. This includes, under the terms of the new subsidy agreement with the City of Zurich, a review of the works on long-term loan to the Kunsthaus.¹

The Kunsthaus Zürich conducts its provenance research in accordance with the International Council of Museums (ICOM) [Code of Ethics](#) for museums, along with the [Washington Principles](#) of 1998 and the [follow-up Terezín Declaration](#) of 2009.² In the new subsidy agreement with the City of Zurich, the Zürcher Kunstgesellschaft has also committed to carrying out its provenance research in line with the concept of 'cultural property confiscated as a result of Nazi persecution' (see Appendix 1: Subsidy agreement; Appendix 2: Glossary). This may also include, following in-depth investigation and clarification of specific circumstances, artworks sold by emigrants in what are termed 'safe' third countries outside the area of Nazi rule, such as Switzerland. This development is taking place against the backdrop of a far-reaching social and political debate which is to be conducted nationwide and involve a diverse range of voices. Museums such as the Kunstmuseum Bern, Kunstmuseum Basel and Kunsthaus Zürich are contributing to this debate by updating their strategies for dealing with 'cultural property confiscated as a result of Nazi persecution'.

In the text that follows, the Kunsthaus Zürich sets out its own strategy for provenance research and its results, which will also involve developing a provenance research department with an increased number of staff.

¹ The substantial long-term loans to the Kunsthaus Zürich include the following foundations and groups of privately owned works: deposits from the Vereinigung Zürcher Kunstfreunde, Alberto Giacometti Foundation, Betty and David Koetser Foundation, Fondation Hubert Looser, Emil Bührle Collection, Knecht Collection, Merzbacher Collection and other unnamed private collections. <https://www.kunsthhaus.ch/en/sammlung/private-sammlungen/> (24.2.2023). The Kunsthaus also holds long-term loans from the Swiss Confederation (Gottfried Keller Foundation) and the City and Canton of Zurich.

² Even before the Washington Principles were adopted in 1998, the Kunsthaus had signed the 'Declaration by the signatory art museums of Switzerland in respect of cultural assets looted under the Nazi regime and during the Second World War'; see the FDHA/FDFA report on the state of work in the field of Nazi-looted art, in particular, on the subject of provenance research, Appendix III, <https://www.bak.admin.ch/bak/en/home/cultural-heritage/looted-art-from-the-nazi-period/contact-bureau-on-looted-art.html> (24.2.2023) and https://www.bak.admin.ch/dam/bak/en/dokumente/raubkunst/publikationen/erklaerung_der_unterzeichnendenkunstmuseen_schweizerinbezugaufku.pdf.download.pdf/declaration_by_thesignatoryartmuseumsoswitzerlandinrespectofcul.pdf (24.2.2023).

2. STRATEGY FOR PROVENANCE RESEARCH AT THE KUNSTHAUS ZÜRICH

In March 2023, the Board of the Zürcher Kunstgesellschaft and the management of the Kunsthaus Zürich adopted a provenance research strategy which builds on strategies already in place in Swiss museums.³ As set out below, it includes, among other things, a systematic review of new acquisitions and loans, transparent and solution-oriented approach to sales outside the area of Nazi rule, as well as a proactive approach where there are suspicions of cultural property confiscated as a result of Nazi persecution and, where the circumstances are clear, a firm approach.

1. Ongoing systematic review of collection holdings

The Kunsthaus Zürich will review its own collection as a priority, ahead of existing long-term loans. The review will focus primarily on establishing the prehistory of the works of art created before 1945 that entered the Kunsthaus' collection after 30 January 1933. The aim is to ensure that no cultural property confiscated as a result of Nazi persecution remains unidentified in the collection holdings. The research results will be continually updated in the museum's internal database and will be available to all members of Kunsthaus staff. The results of completed research projects will be published via the online collection. The entry for each object researched will assign it to a category, from 'provenance certain and not suspicious', to 'clear indications of cultural property confiscated as a result of Nazi persecution'.

A number of individual projects jointly financed by the Federal Office of Culture (FOC) have been completed to date, including the online publication of the provenance of works in the Collection of Paintings and Sculptures (2016–2018); the investigation into the acquisitions for the Collection of Prints and Drawings in the years 1933–1950 (2017–2019) and the cataloguing of the letterpress copybooks (outgoing correspondence from the Kunsthaus) for the years 1933–1945 (2021–2022) from the Kunsthaus' extensive archival holdings. Two projects supported by the FOC are currently being implemented, one to research the gifts by Leopold Ruzicka (1949), Nelly Bär (1968) and Walter Haefner (1973–1995) (2021–2023), which now belong to the Kunsthaus' collection; and one to investigate the acquisitions for the Collection of Paintings and Sculptures, 1946–1960 (2023–2024). To ensure that the ongoing review of the collection holdings can be continued in future, it will be necessary to create new permanent positions and procure third-party resources. A combination of the Kunsthaus' own funds and support from the FOC and others has enabled the creation of two additional positions in 2023. The Executive Council of the Canton of Zurich has also committed a substantial sum from the culture fund for provenance research at the Kunsthaus Zürich.⁴

³ See the strategy for provenance research at the Kunstmuseum Basel, 2022, <https://kunstmuseumbasel.ch/de/forschung/provenienzforschung/strategie-provenienzforschung> [24.2.2023].

⁴ See decision of the Executive Council 2022/1332, meeting on 5 October 2022, <https://www.zh.ch/bin/zhweb/publish/regierungsratsbeschluss-unterlagen./2022/1332/RRB-2022-1332.pdf> [24.2.2023]. The Cantonal Council still has to sign off these contributions.

2. Systematic review of new acquisitions and new loans

The provenances of new acquisitions created prior to 1945, including gifts, bequests and long-term loans, will be reviewed at the Kunsthaus Zürich before they are accepted. The acquisition of objects that constitute property confiscated as a result of Nazi persecution, or the introduction of which into Switzerland violates national or international law, is to be avoided by a meticulous review of their provenance, with the aim of ensuring that only works which are not suspicious are integrated into the collection. Large-scale new acquisitions that cannot be reviewed within a short timeframe will initially only be accepted provisionally and conditionally.

The Kunsthaus Zürich will review objects in its own collection as a priority, ahead of existing and new long-term loans. Temporary external loans for the Kunsthaus' own temporary exhibitions will be reviewed by way of an initial check, provided this can be done using reasonable efforts. To ensure the Kunsthaus' provenance research staff have sufficient time to prepare for specific reviews of planned loans, they will be notified by the relevant departments at the earliest opportunity.

3. Transparent and solution-oriented approach to sales outside the area of Nazi rule

The Kunsthaus Zürich declares that sales made by emigrants between 30 January 1933 and 8 May 1945 outside the area of Nazi rule will be subjected to particular attention. In-depth research into these holdings will be treated as a priority in the coming years. Where it is obvious that a work was sold exclusively as a result of emigration attributable to persecution – for example, when a rapid sale was conducted to enable the person concerned to flee Nazi-controlled territory; they were not able to dispose freely of the proceeds of sale; a sale price was set that was not appropriate when measured against comparable market transactions; or the sale was carried out to secure the livelihood of someone who, for instance, was prohibited from practising their profession or was subject to other measures of state persecution in their country of residence – the Kunsthaus Zürich is, in accordance with the Washington Principles recognized by Switzerland in 1998 and the follow-up Terezín Declaration of 2009, prepared, provided this can be done using reasonable efforts, to locate heirs, notify them accordingly and, subject to the circumstances of the specific case, seek mutually agreed 'just and fair solutions'.

4. Proactive approach to suspicions of cultural property confiscated as a result of Nazi persecution

The Kunsthaus Zürich will, on its own initiative, conduct in-depth research into works of art whose provenance between 30 January 1933 and 8 May 1945 is uncertain or where there are indications that they are cultural property confiscated as a result of Nazi persecution. Where there are substantiated indications of cultural property confiscated as a result of Nazi persecution, the Kunsthaus Zürich will attempt, through research, to identify the presumed claimants (heirs), to the extent that this can be done using reasonable efforts. These persons will be contacted proactively by the Kunsthaus with a view to jointly seeking a 'just and fair solution'. The same procedure will apply after clarification of entitlement in the case of external claims to a work from the Kunsthaus's holdings.

The spectrum of 'just and fair solutions' extends from, for example, publicly acknowledging the circumstances of confiscation for the purposes of memory culture by an exhibition or mentioning the provenance history when the work is displayed in the museum to paying compensation; selling the work to a third party and apportioning the

proceeds; or having a third party purchase it and subsequently lend it to the museum; or indeed returning the work (restitution). The works subject to in-depth research will be identified to the public by means of a specific notice in the exhibition rooms.

5. Active education, specialist networking and online publication of archive holdings

The Kunsthauus will reflect on its own collection history and organize events and work presentations on topics related to provenance research. Provenance research staff will inform employees of the Kunsthauus about current issues and developments in provenance research by means of handouts and specific workshops. They will work actively with the curators as well as the Art Education and Communications & Marketing departments with the aim of presenting the historical contexts and the histories of specific objects to visitors as transparently and precisely as possible. Research results will be communicated appropriately in guided tours, publications, online articles and lectures as well as the Kunsthauus' own exhibition projects and work presentations.

The Kunsthauus supports international networking among researchers and favours the international exchange of information. As far as possible, all members of provenance research staff will be both members of the Schweizerischer Arbeitskreis Provenienzforschung (Swiss Provenance Research Association, SAP/ASP) and associated with the international Arbeitskreis Provenienzforschung e.V. They will meet established standards of scientific research.

The Kunsthauus Zürich will continue to publish further selected holdings from the extensive, publicly accessible archives of the Zürcher Kunstgesellschaft and the Kunsthauus Zürich at digital.kunsthauus.ch. The documents that are of particular relevance to international provenance research to date include the exhibition catalogues (1801–1949), the annual reports (1885–2021) and the outgoing correspondence contained in the letterpress copybooks (1933–1945).

3. DECISION-MAKING PROCESSES AND POWERS FOR 'JUST AND FAIR' SOLUTIONS

In each individual case, decisions regarding a 'just and fair solution' will be taken by the Director's provenance committee on the basis of the results of provenance research. The committee will comprise the Director, the Collection Curator, the Head of Provenance Research and a legal representative. It will be assisted by an independent body in the form of an international commission of experts to provide advice and formulate proposals. It will then submit a proposal regarding further action to be taken to the Board, headed by the Chair. In the case of works owned by the Zürcher Kunstgesellschaft, §17 para. 9 of the Articles of Association⁵ stipulates that the power to take decisions regarding a 'just and fair solution' in accordance with the Washington Principles rests with the Board, headed by its Chair.

⁵ Articles of Association of the Zürcher Kunstgesellschaft, last updated 29 May 2017: The Board is the supreme management body. It represents the Zürcher Kunstgesellschaft both internally and externally. Its responsibilities include in particular 'all matters that, by law, the articles of association, regulations or resolution of the Board, are not expressly reserved to another body'. (§17 para. 9).

4. APPENDICES

APPENDIX 1: Passages on ethics and provenance research in the new subsidy agreement between the City of Zurich and the Zürcher Kunstgesellschaft, Articles 5–8 (still to be approved by the City of Zurich Parliament)

Art. 5

a. Principles

¹ The Zürcher Kunstgesellschaft is committed to and implements the International Council of Museums (ICOM) Code of Ethics.⁶

² It recognizes the 'Washington Conference Principles on Nazi Confiscated Art' of 1998, along with the follow-up declarations jointly signed by Switzerland,⁷ and implements them in accordance with the latest practice. In so doing, it is guided by the concept of 'cultural property confiscated as a result of Nazi persecution' within the meaning of the Terezín Declaration (2009).

³ In its acquisition and exhibition policy and in its cooperation with lenders especially, it will follow the guidelines set out in paras 1 and 2. It will draw up a binding collection policy and publish it on the Kunsthaus website.

⁴ Provenance research and the handling of its results are a priority for the Zürcher Kunstgesellschaft. It will issue binding standards in this regard, and update them to reflect developments in the practice of provenance research. Its standards will be communicated on its website.

Art. 6

b. Collection

1 The Zürcher Kunstgesellschaft will conduct research into the provenance of all holdings in the collection. It will draw up a concept for implementing the research, and report on the status of implementation in its annual report. To this end, it will operate a provenance research department with appropriate resources and decision-making powers.

2 It will provide transparent, public information about the results of provenance research and the content of research reports. It will make details of the provenance of its holdings accessible online and catalogue them in an appropriate manner alongside the works.

³ It will take the appropriate steps in response to the outcome of provenance research in accordance with the guidelines set out in Art. 5 paras 1 and 2.

⁶ The Code of Ethics governs the professional ethics for museums, which are referred to in ICOM's Statutes. They reflect principles that are generally recognized within the international museum community. Membership of ICOM and payment of the annual subscriptions to ICOM are deemed to constitute recognition of the ICOM Code of Ethics (<https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf>).

⁷ Washington Conference Principles on Nazi-Confiscated Art und in particular the follow-up Terezín Declaration ((<https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>, <https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration/>)).

Art. 7

c. Long-term loans

1 The Zürcher Kunstgesellschaft will review the provenances of works on long-term loan and take action as indicated as a result. In particular, it will not exhibit any works where there are substantiated indications of cultural property confiscated as a result of Nazi persecution in accordance with the guidelines in Art. 5 para. 2. 2 It will incorporate into new agreements with owners of long-term loans the provision that these loans will be subject to the same quality requirements regarding provenance research as apply to the artworks in its own collection. In the case of existing loan agreements, this provision will be included when the agreement is renewed.

Art 8

d. The Emil Bührle Collection

¹ The Zürcher Kunstgesellschaft will also conduct research into the provenance of the works in the Emil Bührle Collection.

² The provenance research conducted to date by or on behalf of the Foundation E.G. Bührle Collection and its appraisal are to be evaluated.⁸ The independence of this evaluation and its scientific quality are to be ensured.

³ The arrangements for the evaluation will be agreed with the City of Zurich Mayor's Department. The City of Zurich will make an appropriate contribution to the cost of the evaluation.

⁴ The Zürcher Kunstgesellschaft will take such action as is indicated by the evaluation. Art. 7 para. 1 also applies.

⁵ Art. 6 para. 2 applies, *mutatis mutandis*.

⁸ Preparations for the evaluation, on instructions from the City and Canton of Zurich and the Zürcher Kunstgesellschaft, have already commenced, with the appointment of the Round Table headed by Felix Uhlmann in summer 2022. The results of the evaluation are expected to be available in the first half of 2024; see the media release from the City of Zurich dated 29 August 2022, https://www.stadt-zuerich.ch/prd/de/index/ueber_das_departement/medien/medienmitteilungen/2022/august/220829a.html [24.2.2023], <https://www.stadt-zuerich.ch/content/dam/stzh/portal/Deutsch/Medienmitteilungen/2022/august/MM%20EN%20Round%20table%20evaluation%20B%c3%bchrle%20Collection%20provenance%20research.pdf> [24.2.2023].

APPENDIX 2: GLOSSARY

Provenance research

Provenance research aims to clarify and publish the origins and ownership of works of art right back to the time of their creation. It focuses in particular on works that changed hands during the years of Nazi rule in Germany and the associated takeover of other parts of Europe between 1933 and 1945.

Cultural property confiscated as a result of Nazi persecution (Nazi-looted art)

The term 'Nazi-looted art' refers to 'art that had been confiscated by the Nazis and not subsequently restituted'.⁹ It comprises cultural property that was either violently seized ('confiscated') from its (predominantly Jewish) owners by the Nazis, or removed from them by way of compulsory sales ordered by the Nazi authorities. While direct confiscations occurred primarily in the areas occupied by Germany from 1939 onwards, the sales under duress carried out within Germany were conducted primarily in application of the 'Nuremberg Laws' enacted in 1935, which formed the basis for the systematic persecution and expropriation of Jews. Consequently, it is today assumed that any proceeds from such forced sales – even at market prices – were either wholly or partially denied to the former owners.

Looted art in the form of confiscations by the Nazi authorities was the subject of the Washington Principles of 1998, under which the signatory states – including Switzerland – committed to seek just and fair solutions to cases that had not been resolved by restitution, between the pre-war owners or their heirs on the one hand, and the current owners on the other. Looting of art resulting from forced sales and other measures executed under duress formed the subject of the follow-up Terezín Declaration of 2009, which extended the concept of looted art to include 'cultural property confiscated as a result of Nazi persecution'. This is intended to bring cultural property sold as a consequence of Nazi persecution within the scope of rules based on the Washington Principles.

Just and fair solutions

The spectrum of 'just and fair solutions' extends from publicly acknowledging the circumstances of confiscation for the purposes of memory culture by an exhibition or mentioning the provenance history when the work is displayed in the museum to paying compensation; selling the work to a third party and apportioning the proceeds; or having a third party purchase it and subsequently lend it to its current owners; or indeed returning the work (restitution).

⁹ Definition given in the Washington Conference Principles of 3 December 1998 on Nazi-Confiscated Art.