

WORKING TRANSLATION**Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property**

**Office: Deutsches Zentrum Kulturgutverluste
(German Lost Art Foundation),
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Recommendation of the Advisory Commission**in "Heirs of the Salomon family v. City of
Gelsenkirchen"**

Magdeburg – 29/04/2016. The Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, chaired by its Deputy Chairman, Prof. Dr Reinhard Rürup, has produced an opinion on the case of the heirs of the Salomon family v. city of Gelsenkirchen.

1. The proceedings concern the painting "Bacchanale" (oil/canvas, 117 x 204 cm) painted by Lovis Corinth in 1896. The heirs of the Salomon family, Monique and Peter Rolf Ludnowski, demand the restitution of the painting, which the city of Gelsenkirchen refuses, arguing that Martha Salomon received a compensation payment in 1962.

Until 1936, the painting was owned by the Jewish businessman Alfred Salomon of Berlin-Wilmersdorf. He had acquired the painting shortly after World War I from the Caspary gallery in Munich at a price of 23,000 Reichsmark. Arthur Salomon's ownership title is uncontested. It was expressly acknowledged in the course of compensation proceedings held in Berlin in 1962.

Starting in 1933, the Salomon family was subject to racist persecution by the Nazi regime. Under the pressure of persecution and in order to prepare their emigration, the family found themselves forced to sell all their home furnishings, library holdings and artworks including the painting by Corinth. The sale was effected by the art auction house Rudolph Lepke on 11 and 12 March 1936. In the auction catalogue, the Corinth painting is listed under item number 123. According to Alfred Salomon's widow, Martha Salomon, the total proceeds of the auction amounted to just under 20,000 RM, an amount that fell clearly short of the selling value estimated by the auction house (41,441 RM). The price paid for the Corinth painting at that auction is not known. Before the auction, the auction house estimated its selling value to be 7,500 RM.

In 1936, the company Salomon & Kaminsky OHG in which Alfred Salomon held a 50% share also had to be liquidated. In 1937, Alfred and Martha Salomon together with their two children emigrated to the Netherlands. When the German Wehrmacht occupied the Netherlands, the Salomon family were arrested and deported to concentration camps. Martha Salomon was the only one of them to survive. Alfred Salomon died on 1 February 1945 in Bergen-Belsen concentration camp. The children were murdered in Auschwitz.

Martha Salomon was the heir of her husband, Alfred Salomon. She died in 1971 leaving her estate to her niece, Ruth Ludnowski, and her nephew, Heinz Max Ehrlich. The latter died in 1979 and was succeeded by his sister Ruth Ludnowski who drew up a testament designating her grandchildren Monique and Peter Rolf Ludnowski as her heirs. She died in 1999. When the heirs learned that the Corinth painting was held by the Kunstmuseum of the city of Gelsenkirchen, they requested the city in December 2010 to investigate the provenance of the painting and asked for its restitution. It took until 2013 to establish unequivocally that the Gelsenkirchen painting is actually the one which had been owned by Alfred Salomon until 1936.

2. After World War II, Martha Salomon filed a claim in Berlin to receive compensation for the property losses sustained by her and her family as a result of Nazi persecution. In the framework of a settlement, she was granted a payment of 33,200 Deutschmark in 1962 to compensate for the "underselling" losses of 60,000 RM or 12.000 DM incurred in the auction, the "Reich Flight Tax" (Reichsfluchtsteuer) that the family had paid and other costs. The value assumed for the Corinth painting, which at the time of the settlement was deemed lost, is not known. It is to be assumed that it accounted for less than 20% of the total "underselling" losses, i. e. at the utmost 2,400 DM, an amount far below the market value at the time.

3. The city of Gelsenkirchen acquired the Corinth painting in 1957 from the Cologne gallery Czwiklitzer at a price of 14,500 DM. The previous owners in the period between 1936 and 1957 and in particular the erstwhile Jewish owner were obviously not known to the city of Gelsenkirchen when it acquired the painting. When it was no longer contested that Alfred Salomon had been the owner of the painting which he lost under the pressure of Nazi persecution, the heirs demanded its restitution in 2013, while the city of Gelsenkirchen declared the restitution claim to be unjustified because Martha Salomon had received full compensation for the property losses sustained by her, including the loss of the painting in question.

In the course of 2014, both sides made several attempts to achieve a compromise. The heirs offered the city among other things a compensation payment of 65,000 euros if the city of Gelsenkirchen were to return the painting to the heirs, while the city of Gelsenkirchen demanded a percentage share of the increase in the painting's value since its acquisition in 1957 amounting to up to 150,000 euros, if the painting were to be restituted and subsequently sold by the heirs. The parties also discussed the idea of commissioning a high-quality copy of the painting which, following the eventual restitution, would be exhibited in the Gelsenkirchen Kunstmuseum together with information concerning the painting's history and the fate of its former owners.

4. When it became evident that it would not be possible to achieve an agreement between the parties on that basis, they agreed in December 2014 to submit the case to the Advisory Commission. After the Commission had accepted the case, both parties submitted their positions in statements dated 8 March and 18 June 2015 and 8 March and 5 April 2016, respectively. The final hearing of the parties was held on 12 April 2016.

5. After a thorough examination of the statements and documents that were submitted to the Commission and following the hearing of both parties, the Advisory Commission arrived at the conclusion that the sale of the Corinth painting in March 1936 was a forced sale due to Nazi-persecution. There is neither proof nor evidence suggesting that Alfred Salomon received an adequate price for the painting in 1936 or that in the 1962 compensation proceedings his heirs received adequate compensation for the loss of the valuable painting which even five years earlier had been sold at a price of 14,500 DM. For this reason, the Advisory Commission recommends that the painting be restituted to the heirs.

The Advisory Commission suggests that the city of Gelsenkirchen be compensated for the purchase price and the costs that it has incurred to preserve, maintain and publicly display the painting since 1957. The amount of 65,000 euros which was already offered by the heirs at an earlier stage seems appropriate for this purpose. The Advisory Commission sees, however, no justification for giving the city of Gelsenkirchen a share of the increase in the painting's value since 1957. There are neither legal nor moral reasons for imposing such a requirement which would qualify the restitution to the heirs.

The Commission also recommends that the previously discussed idea be taken up, i. e. that a high-quality copy of the painting be made and displayed in the Kunstmuseum, together with

information about the painting's history and the fate of the former owner and his family. The costs involved should be borne jointly by the two parties.

6. The task of the Advisory Commission is to mediate in case of disputes between the parties presently in possession of cultural goods and their former owners or the heirs of the latter, if both parties so desire. The Commission can issue an ethically grounded recommendation for resolving the dispute. Former President of the Federal Constitutional Court Professor Dr Jutta Limbach (Chairperson) and former President of the German Bundestag, Professor Dr Rita Süßmuth, former President of the Federal Constitutional Court, Professor Dr Hans-Jürgen Papier, legal scholar Dr Hans Otto Bräutigam, legal philosopher Professor Dr Dietmar von der Pfordten, historian Professor Dr Reinhard Rürup, art historian Professor Dr Wolf Tegethoff and philosopher Professor Dr Ursula Wolff currently serve as honorary members of the Commission.

The Deutsches Zentrum Kulturgutverluste (German Lost Art Foundation) is the office of the Advisory Commission and point of contact for those submitting claims.

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