


# Restitution of Nazi-Confiscated Art in the Czech Republic

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**Abstract:** The following paper describes and critically evaluates the approach of the contemporary Czech Republic to the restitution of works of art confiscated under the pressure of Nazi-persecution. This is achieved by a brief analysis of the legislation and general restitution case law before the adoption of Act No. 212/2000 Coll., as amended, and by a summary of the international principles on Nazi-confiscated Art, which are then compared with the recent Czech approach. The focus is placed on law regulation and related case law, references to foreign experience are rather illustrative. Finally, the Czech legislation is briefly evaluated and some ‘de lege ferenda’ proposals as well as some practical recommendations for institutions holding Czech state collections are given.

**Keywords:** Nazi-confiscated Art; Washington Principles; restitution; Holocaust Restitution Act; Czech restitution

The aim of this paper is to describe and critically evaluate the approach of the contemporary Czech Republic to the restitution of works of art confiscated under the pressure of Nazi-persecution according to the Czech Act No. 212/2000 Coll., as amended (hereinafter referred to as the ‘Holocaust Restitution Act’).<sup>1</sup> In order to understand the Holocaust Restitution Act, the reasons for its enactment on June 23rd 2000 and its scope, at first a brief introduction to the restitution regulations and case law to property taken in connection with the Holocaust applied after 1989 is required.<sup>2</sup> After this initial analysis, the Holocaust Restitution Act is introduced as a whole. Following that, the article examines the international approach to the resti-

tution of artworks and its implementation in Section 3 thereof. Finally, the current Czech legislation is briefly evaluated, its main shortcomings highlighted and desirable solutions proposed. Even though this paper contains much case law, I strongly believe that this approach is vital to better understand the Czech legal system and the problems that victims of the Shoah and their heirs, including potential foreign applicants for restitution of property confiscated from their relatives in the territory of former Czechoslovakia, are facing.

## Before the Adoption of the Holocaust Restitution Act

Shortly after the restitution statutes adopted in the first half of the 1990s came into force,<sup>3</sup> it became clear that most of the property injustices caused

1 Act No. 212/2000 Coll., on the mitigation of certain property injustices caused by the Holocaust and on the amendment of Act No. 243/1992 Coll., regulating certain issues related to Act No. 229/1991 Coll., on the regulation of property relations to land and other agricultural property, as amended by Act No. 93/1992 Coll., as amended, in: [ASPI System], Wolters Kluwer, available from: [www.aspi.cz](http://www.aspi.cz), <21.08.2024>.

2 For more detailed information on the Czech restitution regulation in the 1990s and its political background, please see Jan Kuklik: Restitution of Jewish Property in the Czech Republic, in: Loyola of Los Angeles International and Comparative Law Review 41 (Winter 2018), No. 3, 583-606, here: 584. Available from: <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1777&context=ilr>, <15.10.2024>.

3 Specifically, the following statutes: Act No. 403/1990 Coll., on the mitigation of the consequences of certain property injustices, in: [ASPI system], Wolters Kluwer, available from: [www.aspi.cz](http://www.aspi.cz), <21.08.2024>; Act No. 87/1991 Coll., on out-of-court rehabilitation, in: [ASPI system], Wolters Kluwer, available from: [www.aspi.cz](http://www.aspi.cz) (hereinafter referred to as the ‘Act on Extrajudicial Rehabilitation’), <21.08.2024>; Act No. 229/1991 Coll., on the regulation of ownership relations to land and other agricultural property, in: [ASPI system], Wolters Kluwer, available from: [www.aspi.cz](http://www.aspi.cz), <21.08.2024>.

between 1938 and 1945 under the pressure of occupation or due to national, racial or political persecution could not be alleviated. This was not only because of the chosen period regarding the property injustice, which did not include the period before February 25th 1948, but also due to the restrictions on nationality and residence of the beneficiaries, as well as the condition that the matter in question had not yet been settled in the past by inter-state restitution agreements. Thus, only selected persons whose property had been restituted in the post-war period, but who had been deprived of it again in the decisive period according to the above mentioned statutes, could claim compensation. As one might already suspect, such cases were rare.<sup>4</sup>

The strictly set restitution conditions were partially mitigated by case law, especially by those decisions allowing for a return of confiscated property with reference to the Czech Civil Code. However, in 2005 the Constitutional Court of the Czech Republic decided a definitive end of this law interpretation and in its “Kinsky decision” ruled that:

*“It is not possible to effectively seek protection under the general civil law rules regarding property rights that extinguished before February 25th 1948 in cases, in which special restitution rules do not provide for the mitigation or remedy of the property damage in question.”<sup>5</sup>*

In order to partially correct the above mentioned statutory injustice and to take into account the unfinished restitution of the property looted in the course of the Second World War, the Act on Extrajudicial Rehabilitation was amended by Act No. 116/1994 Coll. of April 29th 1994.<sup>6</sup> The aim of this amendment was to extend the restitution to such cases, in which the post-war claims according to the Presidential Decree No. 5/1945 or Act No. 128/1946 on grounds of racial persecution had

not been satisfied after the coup of February 25th 1948.<sup>7</sup> The regulation for a possible restitution of agricultural land and for restitution in favor of Jewish communities was postponed for political reasons and was only addressed, primarily due to international pressure, in the Holocaust Restitution Act.<sup>8</sup>

## The Holocaust Restitution Act

The Holocaust Restitution Act is divided into two main parts – the first part (Section 1 to 5 thereof) specifically regulates the compensation of Jewish communities, foundations and associations and the restitution of artworks, while the second part (Section 6 thereof) concerns the restitution of agricultural land. Pursuant to Section 1(1) thereof, state-owned property previously owned by Jewish communities, foundations, and associations forfeited by these as a result of transfers, which had been declared null and void by Presidential Decree No. 5/1945 Coll. or Act No. 128/1946 Coll., shall be returned to the Federation of Jewish Communities or to the individual Jewish communities in the Czech Republic, with the exceptions listed therein. The specification of the property, which was about to be returned, had been in accordance with Section 2(2) of the Holocaust Restitution Act laid down by special government decrees. In this regard, a question arose whether it would be possible to successfully request the return of property which is not specified by government decrees, even though the latter meet the conditions of Section 1(1) of the Holocaust Restitution Act. This issue was addressed in the judgment of the Supreme Court of the Czech Republic of January 31st 2008, Case No.

4 See Zuzana Kročilová: The Confiscation of Works of Art during the Period of Non-Freedom and the Attempt at their Post-war Restitution, XII. year of SVOČ, category doctoral studies, 18.

5 See the decision of the Plenum of the Constitutional Court of the Czech Republic Pl. ÚS-st 21/05, 477/2005 Coll., ST 21 SbNU 493 (hereinafter referred to as ‘Kinsky’), available from: <https://nalus.usoud.cz/Search/ResultDetail.aspx?id=52528&pos=1&cnt=1&typ=result>, <24.04.2024>.

6 Act No. 116/1994 Coll., amending and supplementing Act No. 87/1991 Coll., on extrajudicial rehabilitation, in: [ASPI system], Wolters Kluwer, available from: [www.aspi.cz](http://www.aspi.cz), <21.08.2024>.

7 Restitution on grounds of legal acts carried out under the pressure of occupation, or national, or political persecution was excluded, which has been confirmed by case law – see the ruling of the Constitutional Court of the Czech Republic No. 164/1994 Coll., available from: <https://nalus.usoud.cz/Search/ResultDetail.aspx?id=27130&pos=1&cnt=1&typ=result>, <21.08.2024>, or the ruling of the Constitutional Court of the Czech Republic, Case No. III ÚS 107/04, N192/35 SbNU 509, Opočno Castle, available from: <https://nalus.usoud.cz/Search/ResultDetail.aspx?id=47403&pos=1&cnt=1&typ=result>, <21.08.2024>.

8 Culminating in 1998 at the Washington Conference on Holocaust-Era Assets.

28 Cdo 3906/2007,<sup>9</sup> which allowed for a return of each and every property fulfilling the conditions set in Section 1(1) of the Holocaust Restitution Act. However, this decision mentioned a new problem, not necessarily resolved therein, namely whether it would be possible to hand over property which, after a successful post-war restitution, had later been transferred back into state property. The Supreme Court of the Czech Republic revised this issue in its judgment of July 2nd 2009, Case No. 28 Cdo 5405/2008,<sup>10</sup> in which it refused to release immovable property that had been transferred to state property on the basis of a purchase agreement which had been signed in 1957.

Although the above-mentioned case-law refers to items transferred under the provisions of Section 1(1) of the Holocaust Restitution Act, in my opinion, it is possible to apply these conclusions also in cases of requests for the return of artworks. For example, the request of the descendants of Emil Pick (1865-1945) for the return of a substantial part of the family collection, which would normally fall under 'restitution' in Section 3 of the Holocaust Restitution Act (that is discussed later in this text), was rejected on the grounds set up in the above mentioned Case No. 28 Cdo 5405/2008. The surviving family members managed to get some valuable paintings from the family collection back after their return from Theresienstadt, but following their post-war emigration, these paintings were transferred to state property again and ended in the collections of the National Gallery in Prague (hereinafter referred to as the 'NGP'). During the 1990s, these paintings were not returned and, in view of their post-war restitution, cannot be released even

today. After a thorough search through the NGP's collections, several drawings and prints belonging to this collection that before had been considered lost (and therefore not restituted directly after the Second World War) were finally identified. However, these rather minor artworks constitute an insufficient substitute for paintings by artists such as Alfons Mucha or Joža Uprka, which cannot be restituted.

Part Two of the Holocaust Restitution Act expanded the definition of entitled persons in Act No. 243/1992 Coll.<sup>11</sup> in a similar way as Act No. 116/1994 Coll. did in the 1990s. In this case, restitution was not limited to persons affected by racial persecution, but could be claimed by all those persons who were entitled to it under Presidential Decree No. 5/1945 Coll. or Act No. 128/1946 Coll., if they had not already been compensated before. The claim for restitution had to be filed until June 30th 2001; this deadline, unlike the deadline originally laid down in Article 3(2) of the Holocaust Restitution Act, was never extended.

## Restitution of Works of Art: An International Context

As noted above, during the 1990s, there was not only growing domestic pressure to settle the issue of Holocaust victims' former property, but there was also growing international pressure, culminating in the Washington Conference on Holocaust-Era Assets in 1998.<sup>12</sup> From November 30th to December 3rd 1998, governmental delegations together with representatives of auction houses, Jewish communities and history experts, met in Washington. Although this conference made history primarily through the approval of the so-called 'Washington Principles on Nazi-Confiscated Art'

9 See the judgment of the Supreme Court of the Czech Republic, Case No. 28 Cdo 3906/2007, published in the Collection of Civil Decisions and Opinions of the Supreme Court of the Czech Republic, 7/2008, C 5876, available from: [https://www.nsoud.cz/judikatura/judikatura\\_ns.nsf/\\$\\$WebSearch1?Search-View&Query=%5Bspzn1%5D%20%3D%2028%20AND%20%5Bspzn2%5D%3D%20%3D%2028%20AND%20%5Bspzn3%5D%3D%20%3D%203906%20AND%20%5Bspzn4%5D%3D%20%3D%202007&SearchMax=1000&SearchOrder=4&Start=0&Count=15&pohled=1](https://www.nsoud.cz/judikatura/judikatura_ns.nsf/$$WebSearch1?Search-View&Query=%5Bspzn1%5D%20%3D%2028%20AND%20%5Bspzn2%5D%3D%20%3D%2028%20AND%20%5Bspzn3%5D%3D%20%3D%203906%20AND%20%5Bspzn4%5D%3D%20%3D%202007&SearchMax=1000&SearchOrder=4&Start=0&Count=15&pohled=1), <21.08.2024>.

10 See the judgment of the Supreme Court of the Czech Republic, Case No. 28 Cdo 5405/2008, published in the Collection of Civil Decisions and Opinions of the Supreme Court of the Czech Republic, 10/2009, C 7573, available from: [https://www.nsoud.cz/judikatura/judikatura\\_ns.nsf/\\$\\$WebSearch1?Search-View&Query=%5Bspzn1%5D%20%3D%2028%20AND%20%5Bspzn2%5D%3D%20%3D%2028%20AND%20%5Bspzn3%5D%3D%20%3D%205405%20AND%20%5Bspzn4%5D%3D%20%3D%202008&SearchMax=1000&SearchOrder=4&Start=0&Count=15&pohled=1](https://www.nsoud.cz/judikatura/judikatura_ns.nsf/$$WebSearch1?Search-View&Query=%5Bspzn1%5D%20%3D%2028%20AND%20%5Bspzn2%5D%3D%20%3D%2028%20AND%20%5Bspzn3%5D%3D%20%3D%205405%20AND%20%5Bspzn4%5D%3D%20%3D%202008&SearchMax=1000&SearchOrder=4&Start=0&Count=15&pohled=1), <21.08.2024>.

11 Act No. 243/1992 Coll., regulating certain issues related to Act No. 229/1991 Coll., on the regulation of ownership relations to land and other agricultural property, as amended by Act No. 93/1992 Coll. in: [ASPI System], Wolters Kluwer, available from: [www.aspi.cz](https://www.aspi.cz), <21.08.2024>.

12 See the Proceedings of the Washington Conference on Holocaust-Era Assets, held November 30 – December 3, 1998 in Washington, D.C., edited by James D. Bindenagel, available from: <https://fcit.usf.edu/holocaust/resource/assets/index.HTM>, <21.08.2024>; and Jan Kuklík et al. (eds.): Jak odškodnit holocaust?: problematika vyvlastnění židovského majetku, jeho restituace a odškodnění, Prague 2015, 43.

(hereafter referred to as the ‘Washington Principles’), issues relating to insurance and the property of Jewish communities were also on the agenda.

Already in his speech at the beginning of the conference, Stuart Eizenstat, a U.S. diplomat and attorney, expressed his hope that the conference’s participants would agree on the basic principles to be applied in the restitution of Nazi-Looted Art. To this end, a draft of eleven principles was made available to all conference participants, based on the principles developed by the Association of Art Museum Directors in June 1998, which called on members of the Association to examine their own collections to uncover confiscated works of art. On the following days, the Nazi-Looted Art panel discussed obstacles to identifying lost artworks, as well as the experiences of individual countries and their approach to possible restitution. It became clear that the creation of the originally intended binding international law document was not possible. This was due to both the different legal systems of the conference’s various participants (especially the differences between Anglo-American and continental legal systems) and due to the lengthy and costly process of creating a binding international law, which would also further delay the achievement of justice for (aging) Holocaust survivors and their heirs. Upon suggestion of the Swiss delegation, a compromise solution of non-binding principles that should be applicable in legal systems around the world was eventually chosen.<sup>13</sup>

The agreed Washington Principles are prefaced by a preamble emphasizing their non-binding nature. The eleven principles are based on cooperation in the identification of confiscated artworks, promotion of research and respect for the fact that the provenance of artworks cannot always be completely established for historical reasons, the unification of registers of identified Nazi-looted art and, last but not least, the principle of seeking a ‘just and fair solution’, preferably with the assistance of an independent specialized commission.<sup>14</sup>

13 The proceedings of the Washington Conference on Nazi-Looted Art are clearly summarized in Andrea F. G. Rashér: Conference report. The Washington Conference on Holocaust-Era Assets (November 30-December 3, 1998), in: *International Journal of Cultural Property* 8 (1999), No. 1, 338-343.

14 The full English text is available under: <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>, <21.08.2024>.

Although the Washington Principles are *soft law* in nature, they have influenced the legal systems and the jurisprudence of most of their signatories and have helped to reconstitute much cultural property around the world.<sup>15</sup>

Following the adoption of the Washington Principles, a number of international recommendations and related principles have been developed.<sup>16</sup> One of the most important documents is the so-called Terezin Declaration signed by 47 signatories in 2009 in Prague.<sup>17</sup> Here, the participating countries confirmed their consent to be bound by the Washington Principles, to promote provenance research and, above all, to adapt their legal systems so that the Washington Principles can be properly applied. At the same time, the European Shoah Institute was created not only to conduct research on the Holocaust but also to make independent recommendations on the restitution of Jewish property.<sup>18</sup> In course of the latest development in this field, the so-called Best Practices for the Washington Conference Principles on Nazi-Confiscated Art were issued on March 5th 2024. The aim of this document is to clarify the interpretation of the Washington Principles and thus to improve their practical implementation in national laws. As of May 23rd 2024, the Best Practices were endorsed by 25 States.<sup>19</sup>

## The Czech Approach to the Restitution of Works of Art

How has the Czech Republic responded to international developments in the field of Nazi-looted art? First of all, the Czech Documentation Centre for Property Transfers of the Cultural Assets of WW II Victims, p. b. o. (hereinafter referred to as the ‘Centre’) was established in 2001 to follow up on the work of the expert team of the Joint Working

15 Or to find other just and fair solutions.

16 All relevant international documents on Nazi-looted art are transparently published under: <https://www.lootedartcommission.com/international-principles>, <21.08.2024>.

17 Terezín Declaration on Holocaust Era Assets and Related Issues adopted at the conference in Prague (and Terezín) on June 30th 2009.

18 Even though this institute had been established, its activities were discontinued in 2017. See: [https://www.kehilaprag.cz/cs/novinky/cinnost-evropskeho-institutu-odkazu-soa-\(esli\)-ends](https://www.kehilaprag.cz/cs/novinky/cinnost-evropskeho-institutu-odkazu-soa-(esli)-ends), <21.08.2024>.

19 <https://www.state.gov/best-practices-for-the-washington-conference-principles-on-nazi-confiscated-art/>, <21.09.2024>.



Commission on the Arization of Jewish Property.<sup>20</sup> The main task of the Centre is to conduct research in archives and public collections in order to identify objects that could be claimed as Nazi-looted art. Such objects are then published on its website. Moreover, it issues publications on its findings and promotes the topic of looted property through exhibitions and conferences.

The Washington Principles are further reflected in the text of the Holocaust Restitution Act, specifically in Section 1(2) thereof, according to which 63 artworks were transferred to the Jewish Museum in Prague (hereinafter referred to as the 'Jewish Museum'), as well as Section 3 thereof, according to which Nazi-looted art shall be transferred from the public collections to Holocaust victims and their descendants.

Since the Jewish Museum does not manage state-owned property,<sup>21</sup> it is not obligated to restitute Nazi-looted art under the provisions of Section 3 of the Holocaust Restitution Act. However, it has volunteered to release items from its collection to Holocaust victims and their descendants. To this end, the Jewish Museum has published the "Terms for the filing of claims for voluntary transfers of assets in the collections of the Jewish Museum in Prague, which were unlawfully seized during the period of Nazi occupation".<sup>22</sup> The Jewish Museum's procedure for the release of collection objects can be summarized as follows: The conditions for the admissibility of restitution are similar to Section 3 of the Holocaust Restitution Act. However, and that is a significant difference, the Jewish Museum does not limit the beneficiaries to direct descendants but extends this group to other heirs. In doing so, the Jewish Museum remedies a serious legal deficiency. The request for the release of a collection object is published on the website of the Jewish

Museum and in other publications. A decision for or against a restitution is taken after one year from the date of the request's publication. The eligibility of the application is assessed by the Expert Panel for Property Transfers from the Collections of the Jewish Museum in Prague. The Jewish Museum's Board then decides on the release of the object; in the event of a rejection of the application, the applicants are entitled to submit a petition for review to the Supervisory Body of the Jewish Museum.

The applicants' attention is drawn to the fact that the release of the object may be subject to conditions under Act No. 20/1987 Coll., on State Heritage Protection, as amended,<sup>23</sup> as well as tax obligations.<sup>24</sup> This excursion into the practice of the Jewish Museum serves as a basis for the evaluation of the practice of public institutions, which are governed by the provisions of Section 3 of the Holocaust Restitution Act. According to this provision, the following conditions must be met:

- 1) The restitution is made on the basis of a request addressed to the person who manages the artwork in question. The form of the application is not specified.
- 2) The artwork shall be transferred free of charge. The legal definition allowing to return only works of art is based on the wording of Washington Principles and was in the time of its implementation neither surprising nor controversial. However, nowadays the international praxis shifted to a broader legal concept of 'cultural property', which has not been reflected by the Czech legislator yet. Since the Czech state institutions are strictly bound by law, it is not possible to restitute those Nazi-looted everyday objects or books, which could not be clearly considered as 'works of art'.

Another, quite practical problem is the actual identification of the artwork which is about to be restituted. The description of artworks from dispersed collections is usually not sufficient and the requested work often cannot be clearly identified

20 See more at <http://www.cdmp.cz>, <21.08.2024>.

21 The museum's buildings were returned to the Prague Jewish community in 1994; the Federation of Jewish Communities took over most of the collections from the Czech state. The Jewish Museum in Prague takes the form of an interest association of legal entities whose founders are the Ministry of Culture of the Czech Republic and the Federation of Jewish Communities in the Czech Republic. More information, including the full text of the founding agreement and statutes, is available under: <https://www.jewishmuseum.cz/en/info/visit/>, <21.08.2024>.

22 The full text of this document is available under: <https://www.jewishmuseum.cz/en/collection-research/provenance-research-and-voluntary-transfers/museum-policy-voluntary-transfers/>, <21.08.2024>.

23 Act No. 20/1987 Coll., on State Heritage Protection, in: [ASPI system], Wolters Kluwer, available from: [www.aspi.cz](http://www.aspi.cz), <21.08.2024>.

24 See Act No. 586/1992 Coll., on income taxes, in: [ASPI system], Wolters Kluwer, available from: [https://www.aspi.cz](http://www.aspi.cz), <21.08.2024>.

in the collection of the state institution.<sup>25</sup> This happened in the case of the painting *Old Jew in a Fur Cap* by Rembrandt (or his workshop) which France had asked the Czech Republic in 1998 to return.<sup>26</sup> The work was handed over to France, but at the time of the handover it was openly discussed that it was probably not the sought after Nazi-looted art object, but only a variation of it. If the French state had not been on the applicant's side (and thus no political decision had been made), it is unlikely that the painting, due to its uncertain identification, would have been released from the public collection.

3) The artwork was confiscated between September 29th 1938 and May 4th 1945. This is the period of so called 'non-freedom' under Presidential Decree No. 11/1944 on the restoration of the Legal Order<sup>27</sup> in conjunction with Government Decree No. 31/1945 establishing the end of the period of 'non-freedom'.<sup>28</sup> The chosen period thus corresponds to the Czech legal tradition. However, if we take into account the international overlap of Nazi-looted art, it is obvious that the decisive period's beginning should (at least for objects from foreign collections) be dated as early as January 30th 1933.<sup>29</sup>

4) The artwork has been taken away from individuals. This means that legal persons are excluded from restitution under this provision, while Jewish communities, foundations and associations are entitled to get compensated under Section 1 of the Holocaust Restitution Act.

5) The artwork was taken away as a result of an ownership change, which was then declared null and void by Presidential Decree No. 5/1945 Coll. and Act No. 128/1946 Coll. In contrast to Part Two of the Holocaust Restitution Act, it is sufficient that the legal act merely fulfills the conditions of nullity set out in the post-war legislation.<sup>30</sup> As null and void were declared such property transfers which were concluded after September 29th 1938 under pressure of occupation or national, racial or political persecution. An exception to this rule was provided for in Section 1 of Act No. 128/1946 Coll.<sup>31</sup> for the case that the property was transferred to a 'reliable' person and it was proven that the act was carried out for a reasonable compensation either by initiative of the original owner or in his interest. This exception has been granted, inter alia, in those cases where the objects have been passed into state property in the form of so-called gifts in exchange for export permits, i.e. artworks that the original owner donated to public institutions in exchange for permission to export the rest of his or her art collection abroad. The restitution of such 'gifts' was for a long time rejected; it was only after the post-revolutionary Bloch case that the practice changed severely.<sup>32</sup> In this context, it should be mentioned that the Bloch case also led to a fundamental reversal of the practice of declaring restituted artworks as cultural monuments, which had previously been a common practice and which

25 An exception is, for example, the detailed documentation of collections that have been insured. See the case of Emil Pick's art collection mentioned above.

26 See <https://www.holocaust.cz/zdroje/clanky-z-ros-chodese/ros-chodes-1999/leden-11/washington-98/>, section "Works of Art", <21.08.2024>.

27 See Decree No. 30/1945 Coll. II, on the validity of the Constitutional Decree of the President of the Republic of 3rd August 1944, No. 11 of the Official Gazette of the Czechoslovak Republic, on the restoration of the rule of law, in: [ASPI system], Wolters Kluwer, available from: [www.aspi.cz](http://www.aspi.cz), <21.08.2024>.

28 Decree No. 31/1945 Coll. II determining the end of the period of non-freedom for the field of regulations on the restoration of the rule of law, in: [ASPI system], Wolters Kluwer, available from: [www.aspi.cz](http://www.aspi.cz), <21.08.2024>.

29 See the reasoning under condition 5 below.

30 This was confirmed, inter alia, in the judgment of the Supreme Court of the Czech Republic in the Bloch case regarding the so-called gifts for export permits (see FN 32 below).

31 Act No. 128/1946 Coll., on the nullity of certain property-law acts from the period of non-freedom and on claims arising from such nullity and from other interference with property, in: [ASPI system], Wolters Kluwer, available from: [www.aspi.cz](http://www.aspi.cz), <21.08.2024>.

32 See the decision of the Supreme Court of the Czech Republic, Case No. 28 Cdo 2582/2011, available from: [https://www.nsoud.cz/judikatura/judikatura\\_ns.nsf/\\$\\$WebSearch1?SearchView&Query=%5Bspzn1%5D%20%3D%2028%20AND%20%5Bspzn2%5D%3D%20%20AND%20%5Bspzn3%5D%3D%202582%20AND%20%5Bspzn4%5D%3D%2011&SearchMax=1000&SearchOrder=4&Start=0&Count=15&pohled=1](https://www.nsoud.cz/judikatura/judikatura_ns.nsf/$$WebSearch1?SearchView&Query=%5Bspzn1%5D%20%3D%2028%20AND%20%5Bspzn2%5D%3D%20%20AND%20%5Bspzn3%5D%3D%202582%20AND%20%5Bspzn4%5D%3D%2011&SearchMax=1000&SearchOrder=4&Start=0&Count=15&pohled=1), <24.04.2024>. Richard and Katharina Bloch emigrated to Great Britain in 1939 and wanted to take their art collection with them. They applied for an export permit, which was granted on condition that selected paintings were donated to the State Collection of Old Masters (now the NGP). In this court decision, it was confirmed that the so-called gifts for export permits transferred to the state during the period of 'non-freedom' were null and void legal acts. For more details on the issue of so-called gifts for export permits, see Zuzana Löbling: Schenkungen für Ausfuhr genehmigungen in der Zeit der Unfreiheit und die Frage ihrer Restitution in der Tschechischen Republik, in: Bulletin Kunst & Recht 24 (2023), No. 2022/2-2023/1, 108-123.

had made it substantially difficult to export the restituted artwork out of Czech Republic.<sup>33</sup> After the judgment of the Municipal Court in Prague of June 12th 2014, Case No. 10 A 16/2014, according to which the interest in full compensation for the Holocaust victims can be an exceptionally serious reason for cancelling the cultural monument declaration, public institutions stopped submitting proposals for declaring items to become cultural monuments.

In the context of the nullity condition, it is necessary to point out the frequent cross-border aspect of Nazi-looted art. The confiscation of artworks did by far not only occur in the territory of former Czechoslovakia and subsequently the Nazi German “Protectorate of Bohemia and Moravia” during the relevant period, but also in all other territories controlled by the Nazis. These looted or otherwise unlawfully acquired artworks were traded throughout Europe and enriched Czech collections as well. In those specific cases, it is therefore necessary to assess whether or not the legal act in question is covered by Czech post-war regulations. If a positive conclusion should be drawn, it still does not necessarily mean that it would be possible to restitute the requested object from Czech state collections. The reason for this is that in such cases the artworks in question were taken from the territory of Nazi Germany between 1933 and 1938 and therefore do not fall within the decisive period set out in the Holocaust Restitution Act. The only solution to this shortcoming of the Holocaust Restitution Act would be an amendment hereof.<sup>34</sup>

The condition of nullity regarding the transfer of a specific artwork is also linked to cases in which the state collection acquired the object after the Second World War in good faith. In my opinion, if all other conditions are met, the obligation to restitute the artwork applies here as well, since the law remains

silent on ‘bona fide’ acquisition by the state collection. Moreover, the restitution of the artwork in question follows the principle of ‘in favorem restitutionis’ and at the same time does not contradict the basic principles of the Holocaust Restitution Act.

6) The requested works of art are assumed to be in state possession since the date of the Holocaust Restitution Act’s entry into force. This condition, however restrictive for potential beneficiaries, is not surprising given the constitutional division of powers (and property) between the state and the municipalities and has not been found inadmissible even by the highest courts of the Czech Republic. Specifically, the failure to release an oil painting from the collections of the Brno City Museum was found to be lawful by the Supreme Court in case No. 28 Cdo 3893/2011,<sup>35</sup> as the defendants are not obligated persons under the Holocaust Restitution Act.<sup>36</sup> In this case, the constitutional complaint was rejected on April 17th 2014,<sup>37</sup> *inter alia* with reference to the above-mentioned decision of the Constitutional Court Pl. ÚS-st 21/05 in the Kinsky case, “in which the Constitutional Court, in the context of restitution legislation [...] emphasized that this essentially heterogeneous group of legal norms containing often different terminology always has the same, precisely defined [limited] purpose [objective] given by the lawmaker, which cannot be expanded in any way.” Although municipalities are not obliged to hand over the artworks, they may undertake to hand them over voluntarily, as the Jewish Museum did.<sup>38</sup>

33 See, for example, the above mentioned declaration as cultural monuments of certain works transferred from the NGP to the Jewish Museum on the basis of the provisions of Section 1(1) of the Holocaust Restitution Act.

34 The Czech legislator may get inspired by the provisions of Section 1(1)(2a) of Austrian Federal Law No. 181/1998 BGBl., Bundesgesetz über die Rückgabe von Kunstgegenständen und sonstigem beweglichem Kulturgut aus den österreichischen Bundesmuseen und Sammlungen und aus dem sonstigen Bundeseigentum (Kunststückgabegesetz – KRG), available from: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010094>, <21.08.2024>. This law is considered to be part of the best restitution practice worldwide.

35 See the decision of the Supreme Court of the Czech Republic, Case No. 28 Cdo 3893/2011, available from: [https://www.usoud.cz/Judikatura/judikatura\\_ns.nsf/\\$\\$WebSearch1?Search-View&Query=%5Bspzn1%5D%20%3D%2028%20AND%20%5Bspzn2%5D%3D%20AND%20%5Bspzn3%5D%3D3893%20AND%20%5Bspzn4%5D%3D2011&SearchMax=1000&SearchOrder=4&Start=0&Count=15&pohled=1](https://www.usoud.cz/Judikatura/judikatura_ns.nsf/$$WebSearch1?Search-View&Query=%5Bspzn1%5D%20%3D%2028%20AND%20%5Bspzn2%5D%3D%20AND%20%5Bspzn3%5D%3D3893%20AND%20%5Bspzn4%5D%3D2011&SearchMax=1000&SearchOrder=4&Start=0&Count=15&pohled=1), <24.04.2024>.

36 The defendants in this case were the Brno City Museum and the Statutory City of Brno.

37 See the decision of the Constitutional Court of the Czech Republic, Case No. III. ÚS 1712/12, available from: <https://nalus.usoud.cz/Search/ResultDetail.aspx?id=83662&pos=2&cnt=2&typ=result>, <24.04.2024>.

38 Municipalities generally take a rather negative attitude towards the release of artworks from their collections, yet there are occasional mentions in the media of requests from the descendants of victims. An example is the Petschek family’s negotiations with the city of Ústí nad Labem [Aussig a.d. Elbe] in the Centre’s 2014 Annual Report, see [http://www.cdmp.cz/wp-content/uploads/VZ\\_CDMP\\_2014.pdf](http://www.cdmp.cz/wp-content/uploads/VZ_CDMP_2014.pdf), <24.04.2024>. A negative decision was made on the application of the descendants of the Tugendhat family, see <https://zpravy.aktualne.cz/domaci/brno-nevyda-dedicum-vilu-tugendhat/r-i:article:382150/>, <24.04.2024>.

In this context, it should be mentioned that the state property was transferred to the regions, which are higher territorial self-governmental units, on the basis of Act No. 157/2000 Coll. with effect from January 1st 2001,<sup>39</sup> i.e. after the Holocaust Restitution Act came into force. This means that it is the regions and their respective administrations which are obliged to restitute Nazi-looted art to the beneficiaries, free of charge upon request as confirmed by the Supreme Court's judgment in the case of the Oskar Federer collection.<sup>40</sup>

7) Works of art shall be transferred gratuitously into the ownership of the natural person who owned them before the confiscation and, if that person should be deceased, into the ownership of his or her spouse or into the ownership of his or her descendants, if the original owner and his or her spouse should be deceased. This condition is generally considered to be the most controversial one, because, as mentioned above in the description of the restitution of artworks from the Jewish Museum's collections, it does not reflect the reality of the Holocaust and unduly narrows the scope of potential beneficiaries. Although this condition is often criticized,<sup>41</sup> the wording of Section 3(1) has not yet been amended in this respect.<sup>42</sup>

The grandnephew of Richard Popper, who, along with his wife, daughter, and grandson, had died during the Second World War, unsuccessfully sought to have the entire Section 3(1) repealed before the Constitutional Court of the Czech Republic. The Constitutional Court dismissed the complaint by its decision under

Case No. III. ÚS 1131/09.<sup>43</sup> In its reasoning, it relied on the aforementioned decision in the Kinsky case as well as on the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol No. 1. Contrary to public expectations, the complainant did not take his alleged claim to the European Court of Human Rights, but with the assistance of Edward Fagan, an American lawyer, brought an action for the release of the collection on April 19th 2012 in the U.S. District Court in Fort Lauderdale, South Florida.<sup>44</sup> The outcome of this lawsuit is unknown and according to insider information, there has never been a hearing in merit in the case. However, we can be sure that there is currently no case law to be expected, which would be a milestone in the Czech approach to the restitution of Nazi-looted art.

In sharp contrast to the above-mentioned efforts to restitute the Popper Collection stands the fate of the works of art transferred to the Jewish Museum on the basis of Section 1(2) of the Holocaust Restitution Act. These artworks were part of a rather small, but from today's point of view valuable collection of JUDr. Emil Freund (1886-1942). If these artworks had remained in the possession of the state, they could not have been restituted because of the absence of direct descendants. However, the Jewish Museum follows its own rules and restituted the paintings to the descendants of one of Freund's sisters living in the USA.<sup>45</sup> As noted above, some of the works were declared cultural monuments upon release from the Jewish Museum's collections and their new owners thus had very limited options for dealing with them. Therefore, they sold them back to the state, namely to the NGP. Among the six purchased artworks was Signac's iconic *L'Hirondel Steamer*,<sup>46</sup> which can now be admired by the public at the Trade Fair Palace, Prague.

39 Act No. 157/2000 Coll., on the transfer of certain assets, rights and liabilities from the property of the Czech Republic to the property of regions, in: [ASPI System], Wolters Kluwer, available from: [www.aspi.cz](http://www.aspi.cz), <21.08.2024>.

40 See the judgment of the Supreme Court of the Czech Republic, Case No. 28 Cdo 2594/2006, available from: [https://www.nsoud.cz/judikatura/judikatura\\_ns.nsf/\\$\\$WebSearch1?Search-View&Query=%5Bspzn1%5D%20%3D%2028%20AND%20%5Bspzn2%5D%3D%20AND%20%5Bspzn3%5D%3D%202594%20AND%20%5Bspzn4%5D%3D%202006&SearchMax=1000&SearchOrder=4&Start=0&Count=15&pohled=1](https://www.nsoud.cz/judikatura/judikatura_ns.nsf/$$WebSearch1?Search-View&Query=%5Bspzn1%5D%20%3D%2028%20AND%20%5Bspzn2%5D%3D%20AND%20%5Bspzn3%5D%3D%202594%20AND%20%5Bspzn4%5D%3D%202006&SearchMax=1000&SearchOrder=4&Start=0&Count=15&pohled=1), <24.04.2024>.

41 See, for example, <https://www.holocaust.cz/zdroje/clanky-z-roschodese/ros-chodes-2003/srpen-5/restituce-umeleckych-del/>, <21.08.2024>.

42 This stands in contrast to the deadline for filing a claim under the provisions of Section 3 of the Holocaust Restitution Act, which was first extended by Act No. 227/2002 Coll. until 31st December 2006, only to be later completely deleted by Act No. 531/2006 Coll.

43 See the decision of the Constitutional Court of the Czech Republic, Case No. III ÚS 1131/09, available from: <https://nalus.usoud.cz/Search/ResultDetail.aspx?id=62413&pos=6&cnt=6&typ=result>, <24.04.2024>.

44 See <https://www.lootedart.com/news.php?r=QBCLRR914521>, <21.08.2024>.

45 See [https://www.tyden.cz/rubriky/kultura/umeni/stat-odkoupi-restituovane-obrazy-za-desitky-milionu\\_82099.html?hideTab](https://www.tyden.cz/rubriky/kultura/umeni/stat-odkoupi-restituovane-obrazy-za-desitky-milionu_82099.html?hideTab), <21.08.2024>.

46 See [https://sbirky.ngprague.cz/dielo/CZE:NG.O\\_18969](https://sbirky.ngprague.cz/dielo/CZE:NG.O_18969), <21.08.2024>.



The substantive conditions for the release of the requested artworks, as provided for in Section 3 of the Holocaust Restitution Act and as interpreted by current Czech case law, have been described above. In the following, I will briefly describe the process of a restitution, which is not a legal administrative procedure and for which no binding form is prescribed. After the application has been submitted to the person who manages the artwork in question (see Section 3(2) of the Holocaust Restitution Act), the latter usually carries out an internal investigation on the basis of archival records to verify the claim. Ideally, the application then is already supported by copies of relevant documents on which the beneficiaries base their claim; if this is not the case, the internal examination takes longer and a rejection of the application on the grounds of failure to bear the burden of proof is not excluded. If the beneficiaries do not know whether or which specific artworks are part of the respective state collection, they may request assistance and research from the Centre or directly from the state institution concerned.<sup>47</sup>

One of the requirements of the Washington Principles is to accept that the provenance cannot always be completely established for historical reasons. This principle is, however, extremely difficult to apply in Czech public institutions, which are bound by the strict provisions of Act No. 219/2000 Coll.<sup>48</sup> The officials concerned try to verify the artwork's identity, establish its provenance and prove the eligibility of the potential beneficiaries so that there is no doubt as to the legitimacy of the restitution. Otherwise they may expose themselves to the obligation to pay compensation for wrongful restitution or even to criminal prosecution. In addition to the (understandable) strictness of Czech state employees, there is another factor – namely the insufficient number of staff and their lack of specialized training in some museums and galleries. Only in a minority of public institutions there are working professionals who are able to assess both, the historical *and* the legal aspects of the requested restitution. Neither the Centre (which

does not deal with legal issues) nor the Ministry of Culture (which does not interfere in the internal affairs of its organizations) can lend support to these institutions. This is why they have no choice but to contact lawyers specialized in the looted art matter,<sup>49</sup> which is an expense that rarely lies within the margin of their budgeting by public funds.

It is therefore not surprising that the combination of strict responsibility of state employees and in some cases their lack of expertise result in the receding importance of the principle 'in favorem restitutionis' when assessing restitution applications. Beneficiaries are unnecessarily often referred to defend their claims before the courts under the provisions of Section 5 of the Holocaust Restitution Act. A desirable solution to this internal tension would be the establishment of a specialized advisory body as called for by the Washington Principles. Such advisory bodies, established for example in Austria,<sup>50</sup> are composed of state representatives as well as experts on Nazi-looted art. Although recommendations published by such boards are usually non-binding in specific restitution cases, the institutions concerned can rely on them in view of the experience and credibility of the board members. The publication of such an advisory panels' recommendations not only contributes to the transparency of the process, but also helps to maintain the quality of the reasoning and, indirectly, through better information for all concerned, promotes consistency in the conclusions reached. However, according to the information available, the question of setting up an advisory commission for the Czech Republic is currently not being discussed.

47 However, unlike the Centre's research, the research carried out by the public collection concerned is usually subject to a fee.

48 See Act No. 219/2000 Coll., on the Property of the Czech Republic and its Representation in Legal Relations, in: [ASPI system], Wolters Kluwer, available from: [www.aspi.cz](http://www.aspi.cz), <21.08.2024>.

49 However, the lawyer can only assess the legal aspects of the case and the decision on the overall claim still remains with the staff of the institution concerned.

50 See <https://provenienzforschung.gv.at/empfehlungen-des-beirats/>, <21.08.2024>.


## Conclusion

An analysis of the provisions of Section 3 of the Holocaust Restitution Act and related Czech practice has shown that although this act represented a positive milestone in the approach to the issue at the time of its adoption, it does not reflect international developments in the field of Nazi-looted art anymore. Although a substantial change is not expected in the near future, at least a little step to improve the situation could immediately be taken – namely the establishment of an (informal) advisory body, which would not require any change of law and would bring many benefits, as discussed above.

If for various reasons it should prove to be too difficult to set up such an advisory body, it would still be highly recommendable that at least some of the most important institutions, which regularly deal with applications based on the Holocaust Restitution Act, take inspiration from the Jewish Museum in Prague and regulate the handling of restitution applications by means of an internal directive available on their website. Such a transparent approach would both facilitate the situation of restitution holders and help the state employees concerned to better navigate the issues as well as clearly allocate their tasks and responsibilities.

Last but not least, one should mention that shortly before the submission of this article, the Best Practices for the Washington Conference Principles on Nazi-Confiscated Art were released. The Czech Republic was among its first signatories and has thus showed her willingness to comply with them. The Best Practices precisely target the shortcomings of the Czech Holocaust Restitution Act, like the narrow interpretation of the word ‘artwork’, the period of looting and the scope of the lawful beneficiaries, which does not cover the scope provided for in Czech inheritance law. It would be highly desirable that the Czech legislator would finally abide to its own international declaration and adopt the already prepared draft of a much needed amendment of the Holocaust Restitution Act.

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