

IMT School for Advanced Studies Lucca - Claims Conference/WJRO Report

THE RESTITUTION OF WORKS OF ART TAKEN FOR REASONS OF RACIAL PERSECUTION IN THE PERIOD 1933-1945:

PROPERTY HELD IN ITALIAN PUBLIC COLLECTIONS

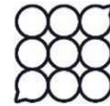
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Report information

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Translation note

This automated English version preserves the report's structure, numbering, headings, lists, comparative tables, appendices, footnote references, and artwork/case-study formatting. Official names of laws, institutions, commissions, databases, artworks, and legal acts are retained where they are terms of art, with an English rendering supplied when useful. Historically sensitive expressions have been translated conservatively: for example, *leggi razziali* is rendered as **racial laws**, *perseguitati razziali* as **persons persecuted on racial grounds**, *sottratti* as **taken, unlawfully taken**, or **dispossessed** depending on context, and *Repubblica Sociale Italiana* as **Italian Social Republic (RSI)**.

Executive Summary

THE RESTITUTION OF WORKS OF ART TAKEN FOR REASONS OF RACIAL PERSECUTION IN THE PERIOD 1933-1945:

PROPERTY HELD IN ITALIAN PUBLIC COLLECTIONS

This report is a call for action.

In 1998, Italy signed the Washington Principles on Nazi-Confiscated Art. In 2000, it adhered to the Vilnius Forum Declaration and, in 2009, to the Terezin Declaration. Last year it approved the Best Practices for the Washington Conference Principles on Nazi-Confiscated Art. Through these instruments, Italy committed itself to facilitating the restitution of works of art unlawfully taken during the Nazi and Fascist period. Yet, unlike other European countries such as Austria, France, Germany, the Netherlands, Switzerland, and the United Kingdom, Italy has not yet adopted specific laws designed to enable the restitution of cultural property to the heirs of former owners, nor has it yet established independent commissions tasked with finding just and fair solutions.

This report examines the legislative changes needed to reach just and fair solutions for works of art and collectors' items held in Italian public collections that were unlawfully taken between 1933 and 1945. The number of paintings, sculptures, documents, and books stolen or lost is estimated in the hundreds of thousands, including works of art and books stolen in Italy following the 1938 racial laws. The report also includes an initial draft of a legislative instrument intended to introduce a narrow and specific exception for works of art and collectors' items unlawfully taken during that period, thereby enabling public collections to engage with the heirs of former owners in order to reach just and fair solutions. The initial draft provides for the establishment of a commission in the spirit of the Washington Principles, following the example of similar bodies already established in other European countries.

The only significant precedent is the Anselmi Commission, which in 2001 highlighted the shortcomings of the Italian system and the difficulty of tracing stolen works of art. Unfortunately, its work did not lead to concrete measures. As a result, even Italian museums of international standing unfortunately hold works of art that were taken during the Nazi and Fascist period and for which no just and fair solution has yet been found.

The report therefore recommends urgent legislative action, including:

1. the establishment of an independent commission with binding decision-making power in matters of restitution;
2. the introduction of narrow exceptions to limitation periods, to the inalienability of public property, and to the prohibition on deaccessioning by public collections, in order to allow just and fair solutions relating solely to works of art and collectors' items unlawfully appropriated in the period from 1933 to 1945;
3. the allocation of unclaimed works to Jewish communities or to the Museum of Italian Judaism and the Shoah (MEIS).

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1. Subject, purpose, and structure of the report

This report reconstructs the legal framework governing the restitution of works of art taken from Jewish citizens or from persons regarded as Jewish during the Nazi and Fascist periods, in particular between 1933 and 1945. Specifically, the analysis focuses on the possible restitution of objects plundered or otherwise taken from Jewish persons in that period in Germany, Italy, or another country occupied by the Nazis or the Fascists, where those objects may now be held by Italian museums or other public institutions.

The report concerns objects with the following characteristics:

1. they must be works of art or, in any event, objects of any nature (for example, documents, archives, or books) that may be considered cultural property because they have historical or artistic interest;
2. they must be objects taken from Jewish persons or persons regarded as Jewish in Germany, Italy, or another country occupied by the Nazi-Fascists between 1933 and 1945. The term **taken** includes confiscation, seizure, theft, plunder, raid, or any other form of coercive acquisition; forced or induced sale, including at auction; and also objects sold by their lawful owners as a consequence of persecution (so-called **flight goods**¹);
3. they must be works currently held in Italian public collections and therefore in museums or other cultural institutes, such as archives or libraries, belonging to public entities in Italy.

For the purposes of this report, it is therefore not relevant whether these objects already have a lawful claimant, or whether the Jewish person who was the original owner has already been identified. In addition, as clarified above, the works of art considered here are not only those that may have been taken in Italy in implementation of the racial laws and subsequent legislative measures of the Italian Social Republic (1943-1945), but any property that was plundered during Nazism and Fascism, including elsewhere, and that is now located in Italy. What matters is that the provenance of the objects, where they are currently held by public institutions, is linked to operations carried out to the detriment of Jewish persons during the Nazi and Fascist period and is therefore unlawful.

The purpose of the inquiry is threefold:

1. to provide an overview of the solutions provided by international rules and those adopted by different countries to ensure the effective restitution of works of art plundered during Nazism and Fascism;
2. to assess the current state of Italian legislation on the restitution of works of art taken from Jewish citizens or from persons regarded as Jewish during Nazism and Fascism;
3. to propose legislative amendments capable of allowing the effective restitution of works that may be held by Italian public cultural institutions.

It should be noted that, although there is currently no definite information on how many or which works may be located in Italy under the conditions described above, the introduction of an adequate legal framework is precisely what can make it possible to carry out an investigative process aimed also at actual restitution. It should also be added that numerous works of art unlawfully taken during the Nazi and Fascist period have been identified in public collections throughout Europe, including the United Kingdom and Switzerland; it is therefore not plausible that no works of art of such provenance are present in Italian public collections. It is no coincidence that, in 2021, the Italian Ministry of Culture nevertheless considered it necessary to activate a Working Group for the study and research of cultural property taken in Italy from Jews between 1938 and 1945 following the promulgation of the racial laws (Ministerial Decree no. 323 of 17 July 2020): confirmation that the issue remains current and far from resolved.

The report is divided into five parts.

¹ To better understand the category of so-called flight goods, consider this example: a Jewish family leaves Germany to avoid persecution and manages to export several works of art, which it sells in Switzerland during the Second World War in order to survive. In the past, the sale in Switzerland was not considered forced because the family was free to decide whether or not to sell. Today that is no longer the case. Works of art sold in Switzerland or elsewhere by Jews fleeing Nazi Germany are considered to have been sold under duress, in the same way as works of art sold in Germany by Jews before their flight or before being sent to concentration camps.

The first part provides data and elements that highlight the significance and continuing relevance of the problem. International attention to this issue fortunately remains very high, and many countries have developed ad hoc rules to facilitate restitution.

The second part focuses on the international legal framework, with particular reference to the Washington Conference Principles on Nazi-Confiscated Art of 1998 (the so-called **Washington Principles**)², namely the 11 non-binding principles shared by 44 countries, including Italy, and the subsequent international documents prepared to implement them (most recently, the **Best Practices for the Washington Conference Principles on Nazi-Confiscated Art** of March 2024³).

The third part reports on a number of comparative experiences, with specific regard to the legislative solutions adopted for the restitution of property plundered during Nazism and Fascism and the procedural instruments provided there. The aim is to identify both national best practices in restitution and the main legal problems that have emerged in implementing such mechanisms.

The fourth part examines the Italian legal framework and its gaps, as well as the obstacles that still prevent possible restitutions today. In this respect, the rules governing public property must be considered - since, as noted above, the objects have become public property - together with the special legal regime for cultural property (for example, rules on the protection of collections or export).

The fifth and final part sets out possible legislative proposals aimed at enabling the effective restitution of the objects considered. From this perspective, several options will be formulated concerning legislative, organisational, and procedural aspects.

It may already be anticipated that, compared with other European countries and the United States, Italy still shows a serious delay in implementing the so-called Washington Principles. This is very grave when one considers the heavy responsibilities borne by the Italian State in carrying out criminal policies against Jewish citizens or persons regarded as Jewish in the period 1938-1945. For these reasons, it appears appropriate to intervene as soon as possible through a legislative amendment that would make it possible to reconstitute any works of art unjustly taken and now held or possessed, on any basis, by Italian public collections.

² <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>.

³ <https://www.state.gov/best-practices-for-the-washington-conference-principles-on-nazi-confiscated-art/>.

2. The significance of the problem

“In the occupied countries, artistic treasures were also plundered: this, as later emerged from seized Nazi documents, was done on the explicit orders of Hitler and Göring, who thereby considerably enriched their own ‘private’ collections. According to a calculation made by Göring himself, the corpulent marshal increased his collection to a value of 50 million marks. In fact, Göring was the driving force in this special branch of plunder. Immediately after the conquest of Poland he issued orders for the seizure of the country’s works of art, and six months later a special commissioner appointed to carry out those orders was able to report that he had laid hands on ‘almost the entire artistic patrimony of Poland.’ [...] According to an official secret German report, by July 1944 approximately 137 railcars, loaded with 4,174 crates containing 21,903 art objects, including 10,890 paintings, had left the West for Germany. [...] Already in January 1941 Rosenberg had estimated the value of the artistic booty from France alone at one billion marks.”⁴

These passages from Shirer’s celebrated history of the Third Reich convey a small part of the strategy of terror pursued by the Nazis in the 1930s and 1940s. It was a “plunder” of Europe, unfortunately initiated and fuelled by racial persecution.

With regard to the quantity of works plundered, the so-called Object Database of Lootedart.com / The Central Registry of Information on Looted Cultural Property 1933-1945 contains details on more than 25,000 objects of every type - paintings, drawings, and artefacts - stolen, missing, and/or identified from more than 15 countries.⁵ It should be noted, however, that the actual number of objects plundered is estimated in the millions, especially if books are included. The number of paintings unlawfully taken, for example, is generally identified with the figure given by Jonathan Petropoulos at the 1998 Washington Conference: approximately 650,000 items.⁶

As regards Italy, where the racial laws were enacted in 1938, the final report of the **Commission for the Reconstruction of Events Characterising the Activities of Public and Private Bodies in Italy in Acquiring the Property of Jewish Citizens** (the so-called **Anselmi Commission**)⁷ provides important quantitative evidence of the scale and breadth of the spoliations: this “emerges with absolute clarity from the impressive legislative and administrative output - hundreds and hundreds of measures - of the period 1938-1943 and the period 1943-1945, and even more from the nearly 8,000 confiscation decrees issued under the legislation of the Republic of Salò. No one was spared: neither the rich nor the poor, neither merchants nor industrial companies, neither those who held shareholdings nor those who had a modest bank account. The confiscation decrees list everything: silverware, real estate, landholdings, works of art and valuable carpets, but also poor household items and personal objects (...).”⁸

Nevertheless, it is becoming increasingly difficult to trace any works plundered in the period 1933-1945, especially if they are held by public institutions. It is enough here to mention the letter of 7 January 1999, no. 0027315, by

⁴ W.L. Shirer, *Storia del Terzo Reich* (1959-1960), Italian translation, Turin, Einaudi, 2014, vol. II, pp. 1437 and 1439.

⁵ <https://www.lootedart.com/search2.php>.

⁶ See Petropoulos’ presentation in the Proceedings of the Washington Conference (<https://1997-2001.state.gov/regions/eur/holocaust/heac4.pdf>).

⁷ Italian Government, Presidency of the Council of Ministers, Department for Administrative Coordination, Commission for the Reconstruction of Events Characterising the Activities of Public and Private Bodies in Italy in Acquiring the Property of Jewish Citizens, *General Report*, April 2001, available online: https://web.archive.org/web/20190331192831/http://presidenza.governo.it/DICA/7_ARCHIVIO_STORICO/beni_ebraici/index.html.

⁸ The report also states that it may “reasonably be considered” that the confiscation decrees were, as shown by an EGELI report, at least 7,847. From the analytical indexing of 7,187 decrees that were found, it appears that the confiscation operation involved 46 provinces, no fewer than 8,000 Jewish citizens, and 230 firms. Quantitative data are lacking for the 660 decrees not found. Only a few decrees contain precise references to the value of the property, and it was therefore not possible to develop a reliable quantification of the property confiscated and the resulting damage. Limited to confiscations carried out up to the end of 1944, bank deposits in cash amounted in any event to a total of Lire 75,089,047.90; government securities to Lire 36,396,831 (nominal value); industrial and other securities, valued according to the end-of-December quotations, to Lire 731,442,219. Real estate was valued on the basis of the criteria established for wealth tax purposes, resulting in a total of Lire 855,348,608 for land and Lire 198,300,003 for buildings. EGELI was the *Ente Gestione e Liquidazione Immobiliare*, established in February 1939 with the task of acquiring, managing, and selling real estate and businesses taken from Italian Jews because of the racial laws; EGELI was dissolved in 1957, but its liquidation, entrusted to the Ministry of the Treasury, lasted until 1997 (see <https://asisp.intesasanpaolo.com/egeli/archive-fond/egeli>).

which the Anselmi Commission transmitted the final document of the Washington Conference on the Economic Aspects of the Holocaust. The letter stated that: "To the knowledge of this Commission, following a careful examination of the 'Siviero' archive, there are no cases of works of art of Jewish ownership currently held by Italian museums or institutions. Nor, still less, have any responsibilities emerged on the part of Italian antique dealers, about whom the press has spoken so much, in the laundering of works confiscated by the Nazis from Jews. The only known case was that of the exchange between Marshal Göring and the Florentine dealer Ventura, involving the delivery of early Italian works in exchange for nine Impressionist paintings seized in France from collectors of Jewish origin. At the end of the conflict all nine works were delivered to the Embassy of France for restitution to their lawful owners, while the works transferred to Göring and subsequently recovered in Germany were taken into State ownership pursuant to Law no. 77 of 14 January 1950, the judicial action brought against the Italian State by the Ventura heirs having been unsuccessful. Nor have the Italian Jewish organisations, although solicited by this Commission, so far made known any intentions to assert claims."⁹

Unfortunately, in the following years it would instead emerge that Italian State museums held works plundered during Nazism and Fascism; and it is plausible that there may be others (as had already emerged in the past, for example in the case of the Romanino painting at Brera, discussed below). It is not credible that many works of art plundered by the Nazis have been identified in French, Swiss, Belgian, and Dutch public collections, while Italian public collections were not involved in any way. For this reason too, in 2020 the Italian Ministry of Culture established, within the Committee for the Restitution of Cultural Property, a Working Group - unfortunately without dedicated resources - for the study and research of cultural property taken in Italy from Jewish citizens or persons regarded as such between 1938 and 1945 following the promulgation of the racial laws.

As will be seen, the analysis of international rules, foreign experiences, and Italian legislation shows a significant delay by Italy in restitution activities and in the implementation of the so-called Washington Principles. This delay, when compared with other countries and taking account of Italy's role in the racial laws and their implementing acts, should be remedied as soon as possible.

⁹ Italian Government, Presidency of the Council of Ministers, Department for Administrative Coordination, Commission for the Reconstruction of Events Characterising the Activities of Public and Private Bodies in Italy in Acquiring the Property of Jewish Citizens, *General Report*, April 2001, available online: https://web.archive.org/web/20190331192831/http://presidenza.governo.it/DICA/7_ARCHIVIO_STORICO/beni_ebraici/index.html.

3. The international legal framework

This report does not consider the general system of rules for the protection of cultural property, such as the 1954 Hague Convention or the 1970 UNESCO Convention, also because they were adopted after the period considered and because they do not apply to events that occurred before their entry into force. A separate discussion concerns the 1907 Hague Convention, Article 56 of which already provided that: “The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure, destruction, or intentional damage done to such institutions, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.” On the basis of this provision, one might find an initial legal basis for ordering the restitution of works plundered during Nazism and Fascism. Beyond the formal aspect - and without considering that Italy did not ratify the 1907 Hague Convention - this reflection helps to highlight the need and urgency to find remedies and solutions to repair the damage caused by Nazi and Fascist plunder and persecution.

The first body of rules consists of measures adopted during or immediately after the end of the Second World War. Among these measures, at the supranational level, the first to be recalled is the **Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control** (with covering Statement by His Majesty’s Government in the United Kingdom and Explanatory Memorandum issued by the Parties to the Declaration) of 5 January 1943.¹⁰ This is a very important act: in particular, paragraph 4 refers to the right of States to declare invalid transfers of ownership or possession that occurred during occupation.¹¹

From a more strictly national standpoint, there is the 1947 Peace Treaty with Italy, which expressly provided for the restitution of property taken (Articles 75 and 78). However, these provisions set a deadline of, respectively, 6 months for the Italian Government to return the property and 12 months then granted to interested parties to submit an application, although an exception was made “where the claimant is able to show that he could not file his claim within this period.”

As has been observed, the provisions of the Peace Treaty do not cover all situations: for example, any property taken by the Nazis before the start of the war and in the meantime possibly brought to Italy would fall outside their scope of application.¹² However, even though these rules did not then ensure the effective restitution of all works of art that had been plundered, they still represent an important point of reference today for framing the context and spirit of any restitution initiative. In addition, the provisions of the Peace Treaty render void any sale contracts concluded after the Treaty entered into force.

The second body of rules, instead, consists of the initiatives that spread at the international level beginning in the 1990s, once it was realised that the works not yet restituted unfortunately were, and are, still numerous. Restitution policies for works of art plundered during Nazism and Fascism have gone through alternating phases, with moments of impetus and others of oblivion, until their revival precisely in the 1990s.¹³

These international normative documents, to which Italy has also adhered, include the so-called Washington Principles; the outcomes of the two Prague conferences, respectively the Terezin Declaration of 2009¹⁴ and the

¹⁰ <https://www.lootedartcommission.com/inter-allied-declaration>.

¹¹ Paragraph 4: “In the Declaration the parties ‘reserve all their rights’ to declare invalid transfers of or dealings with property, rights, &c., which have taken place during the period of enemy occupation or control of the territories in question. It is obviously impossible for a general declaration of this nature to define exactly the action which will require to be taken when victory has been won and the occupation or control of foreign territory by the enemy has been brought to an end. Dispossession has taken many forms and all will require consideration in the light of circumstances which may well vary from country to country. The wording of the Declaration however, clearly covers all forms of looting to which the enemy has resorted. It applies, e.g. to the stealing or forced purchase of works of art just as much as to the theft or forced transfer of bearer bonds.”

¹² B. Cortese, “La restituzione dei beni d’arte spoliati agli Ebrei nella persecuzione nazifascista, tra diritto internazionale e diritto interno”, *Il diritto ecclesiastico*, 2018, pp. 123 et seq., here pp. 133 et seq.

¹³ B. Gaudenzi, “The ‘Return of Beauty’? The politics of restitution of Nazi-looted art in Italy, the Federal Republic of Germany and Austria, 1945-1998”, *European Review of History*, vol. 28, 2021, pp. 323 et seq.

¹⁴ <https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration/>.

2022 follow-up¹⁵; and, most recently, the Best Practices in implementing the Washington Principles, approved in 2024. Before these, there was the Vilnius Forum Declaration of 2000.¹⁶ At the European level, the 1999 recommendation of the Parliamentary Assembly of the Council of Europe on **Looted Jewish cultural property** should be mentioned.¹⁷ With specific regard to the museum sector, reference should be made to the **Guidelines concerning the unlawful appropriation of objects during the Nazi Era** adopted by the American Museums Association in 1999¹⁸ and to the **Recommendations of the International Council of Museums (ICOM) concerning the return of works of art belonging to Jewish owners**.¹⁹

These international documents are not legally binding, but they have nevertheless been able to produce significant effects in favour of restitution policies. By adhering to these acts, States have undertaken in any event to implement what they provide, including by introducing the necessary legislative amendments.²⁰ In this respect, the 2024 Best Practices clearly highlight both the efforts made to date by various countries and the main obstacles that still prevent many restitutions. Among the latter, two points are particularly important for this report, namely those in which the Best Practices state that:

I. Countries are encouraged to create an independent expert body whose composition may be the states' responsibility, to which unilateral access is available that can adjudicate cases of art and cultural property and arrive at or recommend a binding or non-binding decision (for example, the use of commissions in Austria, France, Germany, Netherlands, and the United Kingdom). Such bodies should have balanced, expert, and representative membership. Use of alternative resolution mechanisms is encouraged to avoid litigation. [...]

K. To make restitution of art and cultural property that remains in state-owned collections and private hands possible, countries should consider making exceptions to barriers such as regulations against deaccessioning from state collections, statutes of limitations, market overt, usucapion (mode of acquiring title to property by uninterrupted possession of it for a definite period), good faith acquisition, and export bans.

The international legal framework shows the emergence over time of a general principle favouring **just and fair** remedial solutions in handling restitution of works plundered during Nazism and Fascism.²¹ This greater sensitivity also characterises other areas of cultural heritage law, such as the restitution of property to former colonies or to Indigenous peoples, which have become increasingly frequent since the 2000s.²²

In any event, the principle in favour of restitution described above is also confirmed by the commitment shown by several countries to improving restitution procedures.

¹⁵ <https://www.state.gov/follow-up-to-terezin-declaration-conference-on-holocaust-era-issues/>.

¹⁶ <https://www.lootedartcommission.com/vilnius-forum>.

¹⁷ <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8759&lang=EN>.

¹⁸ https://www.wipo.int/tk/en/databases/creative_heritage/museum/link0012.html.

¹⁹ <https://icom.museum/en/ressource/icom-recommendations-concerning-the-return-of-works-of-art-belonging-to-jewish-owners/>.

²⁰ See already the analysis by T.I. Oost, *In an Effort to do Justice? Restitution Policies and the Washington Principles*, Centre of Art, Law and Policy, University of Amsterdam, 2012.

²¹ T. Scovazzi, "La restituzione dei beni culturali depredati alle vittime dell'olocausto: la situazione in Italia", *Il diritto ecclesiastico*, 2018, pp. 171 et seq., here pp. 179-180.

²² L. Bilsky, "The virtues of comparing: between early Jewish restitution campaign and contemporary post-colonial restitution debate", *Art Antiquity & Law*, vol. 25, no. 4, 2020; and the Sarr-Savoy report commissioned by Macron: F. Sarr, B. Savoy, *Rapport sur la restitution du patrimoine culturel africain. Vers une nouvelle éthique relationnelle* [The Restitution of African Cultural Heritage. Toward a New Relational Ethics], Paris, 21 November 2018, pp. 89 plus annexes.

4. The experiences of other countries

As anticipated, several States have adopted measures to ensure the restitution of works of art plundered during Nazism and Fascism.

In this context, the experiences of Austria, France, Germany, the Netherlands, the United Kingdom, and the United States should be noted.²³

A first examination of the solutions used by these countries makes it possible to highlight certain aspects and, above all, to identify both the strengths and the more problematic points with a view to introducing similar mechanisms into the Italian legal order.

First of all, in all the European experiences an ad hoc committee of experts was created and entrusted with the task of examining any claims or, in any event, possible restitution cases: in Austria, the **Kommission für Provenienzforschung** (Commission for Provenance Research)²⁴ and the **Kunstrückgabebeirat** (Art Restitution Advisory Board)²⁵; in France, the **Commission pour l'indemnisation des victimes de spoliations** (CIVS), which from 1 February 2024 took the new name **Commission pour la restitution des biens et l'indemnisation des victimes de spoliations antisémites**²⁶; in Germany, the **Beratende Kommission** (Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, together with a series of other bodies)²⁷, which will, however, be replaced by an arbitration body by the end of 2024²⁸; in the Netherlands, the **Restitutiecommissie**²⁹; and in the United Kingdom, the **Spoilation Advisory Panel**.³⁰

In order also to identify possible models to be introduced into the Italian legal order - which, it should be recalled, still lacks bodies similar to those just mentioned - it is useful to examine the legislative and institutional framework of the European countries mentioned here.³¹

| Country | Body | Year established | Binding decisions | Recommendations | Authority adopting the final decision |
|---------|---|--|-------------------|-----------------|---|
| Austria | Kommission für Provenienzforschung | 1998 | | X | Federal Minister responsible for the specific museum collection |
| France | Commission pour la restitution des biens et l'indemnisation des victimes de spoliations antisémites (CIVS) | 2024 (first established in 1999) ³² | | X ³³ | Prime Minister |

²³ For an examination of the national laws of these countries, see T.I. Oost, *In an Effort to do Justice? Restitution Policies and the Washington Principles*, cited above, especially Appendix III, and R. Redmond-Cooper, *Museums and the Holocaust*, 2nd ed., Institute of Art and Law, 2021.

²⁴ <https://provenienzforschung.gv.at/en/commission-for-provenance-research/>.

²⁵ <https://provenienzforschung.gv.at/en/empfehlungen-des-beirats/>.

²⁶ <https://www.civs.gouv.fr>.

²⁷ <https://www.beratende-kommission.de/en>.

²⁸ https://www.kmk.org/fileadmin/pdf/PresseUndAktuelles/2024/2024_03_13_20_KuPoSpG_BeratendeKommission_Beschlussvorschlag.pdf.

²⁹ <https://www.restitutiecommissie.nl/en/>.

³⁰ <https://www.gov.uk/government/groups/spoliation-advisory-panel>.

³¹ The United States legislation is not examined in detail here, although it has a specific regime based both on the Holocaust Expropriated Art Recovery Act of 2016 (discussed below) and on the Justice for Uncompensated Survivors Today (JUST) Act of 2017 (https://www.state.gov/wp-content/uploads/2020/03/S_585928-Tab-2.JUST-Act-Legislation.pdf). A comparative perspective is provided in W.A. Fisher and R.J. Weinberger (compiled by), *Holocaust-Era Looted Cultural Property: A Current Worldwide Overview*, Washington D.C.: WJRO and Claims Conference, 2024 (<https://art.claimscon.org/wp-content/uploads/2024/03/4-March-2024-Holocaust-Era-Looted-Cultural-Property-A-Current-Worldwide-Overview.pdf>).

³² On the history of the CIVS: <https://www.civs.gouv.fr/fr/histoire-de-la-civs>.

³³ Except in easily resolved cases, in which the President, after investigating the application, may adopt the decision independently.

| Country | Body | Year established | Binding decisions | Recommendations | Authority adopting the final decision |
|----------------|--|---|-------------------|-----------------|---|
| Germany | Beratende Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogenen Kulturguts, insbesondere aus jüdischem Besitz / Arbitration Court for Nazi-confiscated cultural property | 2025 (the Beratende Kommission was first established in 2003) ³⁴ | X | | |
| Netherlands | Restitutiecommissie | 2001 | X | X ³⁵ | Minister of Education, Culture and Science |
| United Kingdom | Spoliation Advisory Panel | 2000 | | X | Secretary of State for Culture, Media and Sport |

4.1. Austria

The task of the **Kommission für Provenienzforschung** (Commission for Provenance Research),³⁶ established in February 1998, is to conduct investigations into objects confiscated during the persecutions of the Nazi period that entered the ownership of the Republic of Austria, the collections of Austrian federal museums, or other collections.

For administrative management and research coordination, the Commission consists of the Office of the Commission for Provenance Research and individual researchers who work directly in museums and collections.³⁷ These researchers conduct a systematic investigation of acquisitions by federal collections from 1933 to the present.

The Commission prepares the files that are then submitted to, and analysed by, the **Kunstrückgabebeirat** (Art Restitution Advisory Board),³⁸ whose composition is determined by the Federal Minister. It consists of representatives of the Federal Ministry for Digital and Economic Affairs, the Federal Ministry of Justice, the Federal Ministry for Arts, Culture, the Civil Service and Sport, and the Federal Ministry of Defence, together with experts in history and art history appointed by Austrian universities and, in an advisory capacity, a representative of the State Attorney's Office.

The Art Restitution Advisory Board meets several times a year and adopts decisions on the basis of the files submitted by the Commission for Provenance Research. These non-binding decisions are submitted as recommendations to the Federal Minister responsible for the respective collections, who will adopt the relevant decisions.³⁹

³⁴ To be established in 2025.

³⁵ The Restitutiecommissie formulates recommendations addressed to the Minister of Education, Culture and Science when the property is State-owned; where the property is privately owned or part of the collection of a provincial or municipal museum, the Restitutiecommissie issues a binding opinion.

³⁶ <https://provenienzforschung.gv.at/en/commission-for-provenance-research/>.

³⁷ These researchers are located, specifically, in the following museums: Academy of Fine Arts - Portrait Gallery and Graphic Collection (Vienna); Albertina (Vienna); Belvedere (Vienna); Museum of Military History (Vienna); Imperial Furniture Collection (Vienna); KHM-MUSEUMSVERBAND (Vienna); MAK - Museum of Applied Arts (Vienna); MUSEUM MODERNER KUNST - Stiftung Ludwig Wien (mumok); Naturhistorisches Museum (Vienna); Austrian National Library (Vienna); Technisches Museum (Vienna); University Library (Vienna).

³⁸ <https://provenienzforschung.gv.at/en/empfehlungen-des-beirats/>.

³⁹ The full text of all decisions, which also contains a summary of the provenance research file, is published and made available for consultation. All decisions adopted are available online at: <https://provenienzforschung.gv.at/en/empfehlungen-des-beirats/beschluesse/>.

4.2. France

In 1999, the French Prime Minister, at the request of victims of antisemitic spoliations committed in France between 1940 and 1944 - or of their successors in title - established a Commission for the Compensation of Victims of Spoliations resulting from antisemitic legislation in force during the Occupation (CIVS). However, the restitution of property belonging to the public domain conflicted with the principle, present in French legislation, of the inalienability of public collections; consequently, in order to permit the restitution of property taken during Nazi spoliations, it was necessary over the years to enact specific provisions removing objects from the public domain. Most recently, the Law of 21 February 2022 allowed the restitution of 15 paintings to their successors in title. These targeted interventions were followed by a framework law (of 22 July 2023) that now allows derogation from the principle of inalienability of public collections, subject to the opinion of the CIVS. A decree of the Council of State of 5 January 2024, which entered into force on 1 February 2024,⁴⁰ specifies the functioning of the Commission, now called the Commission for the Restitution of Property and Compensation of Victims of Antisemitic Spoliations.⁴¹

The Commission rules, on request or on its own initiative, on the restitution of cultural property belonging to both public and private collections that was subject to spoliation between 30 January 1933 and 8 May 1945 in the context of the antisemitic persecutions perpetrated by Nazi Germany and by the authorities of the territories it occupied, controlled, or influenced, and by the French State between 10 July 1940 and 24 August 1944.

The Commission therefore issues an opinion on the existence of a spoliation and the circumstances in which it occurred, and, where appropriate, on the determination of the persons who may be considered successors in title of the victim.

Where the case presents no specific difficulties, the President, after investigating the application, may adopt the decision independently. Claimants or their successors in title may request a re-examination of the matter only if they can provide new evidence compared with that on which the first decision was adopted. In all other cases, the Commission's opinions are transmitted to the Prime Minister, who - taking account of the file supplied by the Commission, which is nevertheless not binding - adopts the final decision.

4.3. Germany

In Germany, as noted above, the **Beratende Kommission** (Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property⁴²), in operation since 2003, will be replaced by a new arbitration body by the end of 2024.⁴³

The latter, established during the twentieth Cultural Policy Summit on 13 March 2024, was created to respond more effectively to the aims of the Washington Principles, drawing on the experience gained over the previous 20 years. These renewal needs concern various aspects, including improving the possibility of initiating proceedings against public institutions holding cultural property, involving successors in title during the process, and adopting a binding assessment procedure for decisions.

The new arbitration body, which will operate on the basis of new procedural regulations and a renewed assessment framework, will adopt legally binding decisions that may be subject to further review. A fundamental aspect of this renewed system is the possibility of unilateral recourse to arbitration following a failed attempt at conciliation between the parties. On the one hand, this approach takes account of current restitution practices, under which in many cases the parties are able to reach just and fair solutions without the need to turn to the Advisory

⁴⁰ Décret n° 2024-11 du 5 janvier 2024 instituant une commission pour la restitution des biens et l'indemnisation des victimes de spoliations antisémites et pris en application des articles L. 115-3, L. 115-4 et L. 451-10-1 du code du patrimoine.

⁴¹ The Commission is composed of: two judges of the Court of Cassation, serving or honorary; two members of the Council of State, serving or honorary; two members of the Court of Auditors, serving or honorary; two university professors; and two qualified persons.

⁴² <https://www.beratende-kommission.de/en>.

⁴³ https://www.kmk.org/fileadmin/pdf/PresseUndAktuelles/2024/2024_03_13_20_KuPoSpG_BeratendeKommission_Beschlussvorschlag.pdf.

Commission; on the other hand, where no agreement is reached after an attempt at conciliation, recourse to arbitration is no longer subject to the consent of the current owner.⁴⁴

Provenance research on the property, which takes place primarily in a decentralised manner under the responsibility of the institutions that hold the cultural property, will be strengthened throughout the entire process. This includes the possibility of appointing additional experts during the proceedings, particularly in cases where provenance was examined in the preliminary phase but an additional specialist opinion may contribute to the decision. If the public institution holding the cultural property is unwilling to participate in the preliminary phase, provenance research may be commissioned directly during the proceedings.⁴⁵ The State does not, however, express itself directly regarding property in the hands of third parties, since it is private property; nevertheless, the Commission has allowed such property to be included in the Lost Art Database so as to lower its market price.

4.4. The Netherlands

The committee responsible for analysing restitution claims in the Netherlands was established in 2001 and is called the **Restitutiecommissie**.⁴⁶ It plays a different role depending on whether the work of art in dispute is owned by the Dutch State.

If the property is State-owned, the Committee issues advice addressed to the Minister of Education, Culture and Science in accordance with the government's specific policy guidelines. The Minister examines the reasonableness of the Committee's recommendation and adopts a decision on the restitution claim.

If, instead, a work of art is not owned by the Dutch State (and is therefore, for example, in a provincial or municipal museum or in private hands), the Committee issues a binding opinion vis-à-vis the current possessor of the work of art, the previous owner, or their heirs. During the investigative phase, the Committee offers the different parties involved the opportunity to provide information on the facts that occurred and to express their points of view. Before issuing its binding opinion, the Committee sends the parties a draft that may be further supplemented and reviewed.

In any event, the Committee is composed of no more than seven members, including a chair and a vice-chair.

In adopting its decisions, the Committee recommends that the property be restituted in all cases where it can be established that the current possessor did not act in good faith regarding the origin of the object at the time of acquisition. Good faith is presumed if: (a) the investigation carried out by the current possessor into the origin of the object before acquisition complied with the standards of the time; and (b) in light of that investigation and the general circumstances, the current possessor did not know, and could not reasonably have known at the time of acquisition, that the object had been involuntarily expropriated from a previous owner.

If, instead, the current possessor acted in good faith regarding the origin of the object at the time of acquisition, the Restitutions Committee determines the extent to which the restitution claim should nevertheless be honoured, in the form of: (a) unconditional restitution; or (b) an arbitral solution, provided that this is **just and fair** as established in Article 8 of the Washington Principles.

An arbitral solution may involve, for example: (a) restitution subject to appropriate conditions, including financial conditions; (b) restitution on condition that the object remains on public display permanently, temporarily, or for specified periods of time; (c) non-restitution, but with the current possessor required to pay the claimant adequate financial compensation; or (d) non-restitution, but with the current possessor required to display the object to the public with details of its origin and the name of the original owner.

⁴⁴ <https://www.kulturstaatsministerin.de/SharedDocs/Pressemitteilungen/EN/2024/10/2024-10-09-KuPoSpitzengespraech-eng.html?nn=9d01efe2-3478-4d3f-b082-3ea8728974b1>.

⁴⁵ On these aspects and the latest legislative amendments, see <https://www.kmk.org/aktuelles/artikelansicht/bund-laender-und-kommunale-spitzenverbaende-verbessern-restitutionspraxis-in-deutschland-und-staerken.html> and <https://www.claimscon.org/restitution-law/>.

⁴⁶ <https://www.restitutiecommissie.nl/en/>.

4.5. United Kingdom

In the United Kingdom, the **Spoilation Advisory Panel**,⁴⁷ established in February 2000 as an advisory body within the Department for Digital, Culture, Media, and Sport (DCMS), examines claims by persons, or their heirs, who lost possession of cultural property during the Nazi era and whose property is now held in public collections in the United Kingdom.

Its work constitutes an alternative to litigation, and its recommendations are not legally binding on either party. However, if a claimant accepts the Panel's recommendation and the recommendation is implemented, it is reasonable to expect the claimant to accept this as full and final resolution of the claim.

In cases where the Panel recognises the right to restitution of the property, it may recommend:

- a. restitution of the object to the claimant;
- b. payment of compensation to the claimant, in an amount at the Panel's discretion, taking account of all relevant circumstances, including current market value, but not bound by that current market value;
- c. an ex gratia payment to the claimant;
- d. the display alongside the object of an account of its history and provenance during and after the Nazi era, with particular reference to the claimant's interest in it;
- e. that negotiations be conducted with the successful claimant in order to implement the recommendation as quickly as possible.

The Panel's recommendations are addressed to the Secretary of State for Culture, who adopts the final decision accordingly.

4.6. Concluding observations

The committees or commissions described above were activated between the late 1990s and the early 2000s, in some cases directly by administrative means (as occurred in the United Kingdom). The role of these bodies is of fundamental importance, even in cases where they issue non-binding opinions. Their composition is mixed and balanced (as suggested by the Washington Principles) and is intended to ensure well-considered assessments, since members are called upon to consider different circumstances and weigh public and private interests that often conflict with one another.

One problematic aspect is precisely the balancing of interests. In the Netherlands, for example, the elements that the committee had to consider were expressly indicated: "the Washington Principles and other policy guidelines; the circumstances of the loss of possession of the work; the extent efforts were made earlier to recover the work; the circumstances in which the present possessor acquired the work; the importance of the work to the claimant; the importance of the work to the present possessor; the interest of the general public."⁴⁸ The practical problems created by such provisions are evident, also because they may weaken the primary purpose of restitution policies. It is no coincidence that the Netherlands established the Committee for the Evaluation of the Restitution Policy for Cultural Heritage Objects and the Second World War, the **Kohnstamm Committee**, which in its 2020 report *Striving for Justice* recommended recalibrating and intensifying restitution policy, emphasising the limits and risks of interest-balancing mechanisms.⁴⁹

Precisely following the Kohnstamm Committee's recommendations of 7 December 2020, the Minister of Education, Culture and Science replaced the Advisory Committee for the Assessment of Restitution Applications for Items of

⁴⁷ <https://www.gov.uk/government/groups/spoliation-advisory-panel>.

⁴⁸ See E. Campfens, "Bridging the Gap between Ethics and Law: The Dutch Framework for Nazi-Looted Art", *Art Antiquity and Law*, vol. 25, no. 1, April 2020, pp. 1 et seq.; and T.I. Oost, "From 'Leader to Pariah'? On the Dutch Restitutions Committee and the inclusion of the public interest in assessing Nazi-spoliated art claims", *International Journal of Cultural Property*, vol. 28, issue 1, 2021.

⁴⁹ <https://www.raadvoorcultuur.nl/binaries/raadvoorcultuur/documenten/adviezen/2020/12/07/striving-for-justice/Striving+for+Justice.pdf>.

Cultural Value and the Second World War with the current Restitutions Committee, effective from 22 April 2021,⁵⁰ which operates according to the procedures described above. The decree establishing the Restitutions Committee now includes the complete framework on the basis of which that body assesses claims submitted to it. This assessment framework contains three criteria: original ownership, involuntary loss of possession, and acquisition in good faith.

The Dutch experience therefore shows that the protection of a public interest can also take on contradictory significance. If, for example, the public's abstract interest in having a work accessible and displayed in a museum appears worthy of consideration, at the same time the concrete need to find a remedy, so far as possible, for an extremely serious violation of a human right should always and in any event prevail. In this perspective, an important precedent - concerning Austria - is the well-known Altmann case, in which several Klimt paintings displayed at the Belvedere Museum in Vienna were returned to the lawful heirs of Ferdinand Bloch-Bauer, whose property had been confiscated by the Nazis.

A further problematic profile is the time limit within which any applications may be admitted or restitution may otherwise be allowed. Here countries have adopted different choices, with time spans ranging from five to twenty years. In some cases, a term is also provided for the duration of the special legislation: in the United States, for example, the **Holocaust Expropriated Art Recovery Act** of 2016 contains a sunset clause that ends this regime on 1 January 2027 (a term that will probably be extended). In this case too, the choice to impose a time limit, all the more if restrictive, does not appear consistent with the need to remedy the violation of fundamental rights caused by crimes against humanity. It must be acknowledged, however, that the use of a time limit may also be an accelerating factor both for investigative activity and for the submission of applications.

Another significant issue is the possibility of using conciliation mechanisms or other alternative remedies to resolve disputes. At the beginning of 2024, as noted, Germany chose to replace the non-binding opinion of the expert Commission with forms of binding arbitration.⁵¹

Finally, another problem that the legislation of the various countries has been called upon to solve is that of overcoming certain obstacles arising from the ordinary regime governing cultural property. Among these, in particular, is the issue of the special regime of public property and the prohibition on breaking up public collections. For this reason, the ad hoc laws adopted expressly permitted this possibility, as happened in the United Kingdom with the **Holocaust (Return of Cultural Objects) Act 2009**, and also in France with the framework law of 22 July 2023,⁵² which allowed derogation from the principle of inalienability of the public domain where necessary to return plundered property to the lawful owner. In this way, primary importance was rightly given to the interest in restitution over any other interest.

⁵⁰ <https://www.restitutiecommissie.nl/wp-content/uploads/2023/12/DecreeRC2021incl-notes-validfrom24Jan23.pdf>.

⁵¹ An analysis of these issues was already provided in M. Frigo, "Il quadro giuridico internazionale in tema di restituzione dei beni culturali spoliati alle famiglie ebraiche: quale spazio per i meccanismi alternativi di risoluzione delle controversie?", *Il diritto ecclesiastico*, 2018, pp. 159 et seq. More broadly, A. Chechi, *The Settlement of International Cultural Heritage Disputes*, OUP, Oxford, 2014.

⁵² Law no. 2023-650 of 22 July 2023, *Relative à la restitution des biens culturels ayant fait l'objet de spoliations dans le contexte des persécutions antisémites perpétrées entre 1933 et 1945*.

5. The national legal framework

The problem of restituting works of art plundered from Jewish citizens or from persons regarded as Jewish has been addressed in Italy since the earliest post-war measures. Particularly noteworthy are the Lieutenant's Decrees of 1944 and 1946 - which implemented the Inter-Allied Declaration - aimed at declaring all acts of spoliation null and void.⁵³

It is now recognised that, unfortunately, the implementation of these measures and the administrative process that followed did not allow the effective and complete restitution of the works. This is confirmed both by various court cases and by the work carried out by the so-called Anselmi Commission.⁵⁴

With regard, then, to the situation of Italian public institutions, it should be noted here that works of art plundered during Nazism and Fascism may have entered the collections of those institutions in different ways: through direct purchase, through purchase at auction, directly from private parties or also through pre-emption purchase; through donations, from another institution or a private individual; through testamentary legacy; through seizure; or through the transfer of cultural property in payment of taxes.

As will be seen, the ways in which public museums acquired ownership of these works are not relevant for possible legislative proposals aimed at ensuring their restitution. A targeted legislative intervention, in fact, may order the restitution of property regardless of the title under which it is held or possessed by publicly owned institutes or cultural sites.⁵⁵ An express legislative limit - and therefore one that can be overcome only by an ad hoc legislative provision - is instead the public-domain regime that characterises these works once they have become publicly owned cultural property (as belonging to collections of public museums), because Italian law - specifically the Code of Cultural Heritage and Landscape, Legislative Decree no. 42 of 22 January 2004 - prohibits the breaking up of public collections (the so-called prohibition on **deaccessioning**).

⁵³ B. Cortese, "La restituzione dei beni d'arte spoliati agli Ebrei nella persecuzione nazifascista, tra diritto internazionale e diritto interno", cited above, pp. 136 et seq. See also the following acts and documents: Royal Decree no. 26 of 20 January 1944, "Disposizioni per la reintegrazione nei diritti civili e politici dei cittadini italiani e stranieri già dichiarati di razza ebraica o considerati di razza ebraica", applied on 5 October 1944, Lieutenant's Decree no. 252; Legislative Decree no. 393 of 5 May 1946, "Rivendicazione dei beni confiscati, sequestrati o comunque tolti ai perseguitati per motivi razziali sotto l'impero del sedicente governo della Repubblica sociale"; Legislative Decree no. 364 of 11 May 1947, "Successione delle persone decedute per atti di persecuzione razziale dopo l'8 settembre 1943 senza lasciare eredi successibili"; Legislative Decree no. 896 of 24 April 1948, "Riconsegna dei beni asportati dai tedeschi", including various works of art removed/plundered by Nazi agencies or German troops, for example Titian's *Danae*; Law no. 77 of 14 January 1950, "Avocazione allo Stato del materiale artistico, storico e bibliografico recuperato in Germania e restituito allo Stato italiano dal Governo militare alleato", including works of art sold, even at high prices, or given by art dealers or Fascist leaders to their Nazi allies; Note of the State Attorney General's Office of 23 March 1960, "Gestione beni ebraici confiscati o sequestrati, realizzo beni non rivendicati"; Law no. 233 of 18 July 1997, "Disposizioni di solidarietà per gli appartenenti alle Comunità ebraiche ex perseguitati per motivi razziali".

⁵⁴ Italian Government, Presidency of the Council of Ministers, Department for Administrative Coordination, Commission for the Reconstruction of Events Characterising the Activities of Public and Private Bodies in Italy in Acquiring the Property of Jewish Citizens, *General Report*, April 2001, available online: https://web.archive.org/web/20190331192831/http://presidenza.governo.it/DICA/7_ARCHIVIO_STORICO/beni_ebraici/index.html.

⁵⁵ A different case is, of course, the restitution of property owned by private museums or cultural institutions, which may dispose of their collections with fewer constraints than public ones. A well-known matter concerns the painting *Madonna and Child, the Young Saint John and Two Angels* (1480-1485) by Jacopo del Sellaio, seized during the Nazi occupation from the Unger family (of Jewish origin) and then, after various vicissitudes, purchased in 1987 by the collector Francesco Federico Cerruti. After Cerruti's death in 2016, his collection was entrusted to the Castello di Rivoli - Museum of Contemporary Art (an association with legal personality under private law), which, by conducting provenance research on the works, was able to identify the painting as the property taken from the Unger family. Thanks also to the mediation of the Holocaust Claims Processing Office of the State of New York, the heirs of the Unger family were contacted and, in exchange for fair compensation, agreed to leave the painting within the Cerruti Collection managed by the Castello di Rivoli. For a complete reconstruction of the matter see: <https://www.exibart.com/beni-culturali/il-dipinto-ritrovato-di-jacopo-del-sellaio-dal-saccheggio-nazista-alla-collezione-cerruti-castello-di-rivoli/>.

5.1. Three restitution cases

As regards the case law, on the one hand there have been decisions by courts and local administrations that have overcome some limits inherent in the legislation or uncooperative attitudes on the part of the museum institutions involved, as in the well-known Kaumheimer case.⁵⁶ On the other hand, there have also been assessments that prevented restitutions, so that a solution was then found thanks to the intervention of courts in other countries. This is what happened with Romanino's celebrated painting *Christ Carrying the Cross*, taken from the Gentili di Giuseppe family in 1941, then purchased by the Pinacoteca di Brera in 1998. Brera refused to return it to the heirs, defending the good faith of the purchase, and the work was finally returned by the United States to the heirs after the painting had been loaned for an exhibition in Florida. It should be noted, moreover, that in France the Paris Court of Appeal had resolved in favour of the Gentili di Giuseppe heirs a dispute concerning another painting, requiring the Louvre to reconstitute the work.⁵⁷

It is useful, in any event, to provide further details on three cases:⁵⁸ 1) the Kaumheimer collection; 2) Bernardo Strozzi's *Saint Catherine of Alexandria*; and 3) the paintings from the Gentili di Giuseppe collection. The key points are set out below, while Appendix III reconstructs the three cases in detail.

1) The Kaumheimer collection

The case concerns the porcelain collection of the German Jewish citizen Julius Kaumheimer,⁵⁹ who emigrated in 1935 to Merano and then, in 1939, to the United States. On 17 February 1939, when he was leaving the country, at customs, sixty-nine seventeenth-century German porcelain statuettes were discovered and confiscated by the Bolzano financial authorities. They were later inventoried in the collection of the National Museum of Trento and declared to be of historical and artistic interest for Italian heritage. Julius Kaumheimer's heirs were able to regain possession of the seized property only in 2003, thanks to a decree for restitution of the collection issued two years earlier by the Governor of the Autonomous Province of Trento in application of Law no. 233 of 18 July 1997.

This case is emblematic mainly for two reasons. First, it highlights the diversity of situations that gave rise to spoliations of property to the detriment of Jewish citizens or persons regarded as such during the Nazi and Fascist period. Such property was taken from its owners through forced sales, seizures, plunder when left unattended following flight from the country or detention, and also expropriation under rules protecting cultural property in force in a particular State, as happened to the collection of porcelain statuettes belonging to Julius Kaumheimer. The second aspect that emerges from this case is the importance of creating an effective network of cooperation among different actors, public, private, State, and non-State. The restitution of the statuettes to their lawful owners was made possible only thanks to the intervention of the Jewish Community of Merano, the Hebrew Immigrant Aid Society - a Jewish organisation based in the United States - and, not least, the local governmental and administrative institutions.

2) Bernardo Strozzi's *Saint Catherine of Alexandria*

Charles Alexander Loeser, an American collector and art historian, died in Florence in 1928, leaving an important collection of works of art. In his will, Loeser provided that some of his works should be left by legacy to the Municipality of Florence, on condition that the remaining works could be exported from Italy within two years of the death of his daughter, Matilde Loeser Calnan (which occurred in 2002). After the racial laws were enacted in 1938,

⁵⁶ G. Dellantonio, "The Kaumheimer case: constitution, requisition, restitution and dispersion of a collection of porcelain art from the 1930s to the present day", *Art, antiquity and law*, vol. 22, 2017.

⁵⁷ Judgment of 2 June 1999, *Gentili di Giuseppe v. Musée du Louvre*, which refers to the above-mentioned Inter-Allied Declaration of 5 January 1943. On these matters, M. Frigo, "Il quadro giuridico internazionale in tema di restituzione dei beni culturali spoliati alle famiglie ebraiche: quale spazio per i meccanismi alternativi di risoluzione delle controversie?", cited above.

⁵⁸ For a more detailed examination of the three cases mentioned, see Appendix III of this Report.

⁵⁹ G. Dellantonio, "The Kaumheimer case: constitution, requisition, restitution and dispersion of a collection of porcelain art from the 1930s to the present day", *Art, antiquity and law*, vol. 22, 2017.

the Loeser family was forced to take refuge in Switzerland. In 1944, one of the paintings, Bernardo Strozzi's *Saint Catherine of Alexandria*, was loaned to the headquarters of the German troops and then disappeared for many years. In 2009, the Carabinieri in Monza found the painting and returned it to the American citizen Philippa Calnan, granddaughter and heir of the original owner. At the same time, Calnan was notified of the measures by which the Ministry for Cultural Heritage and Activities declared the painting to be of cultural interest, thereby preventing its export to the United States.

The interested party challenged these measures before the administrative courts, receiving a rejection of her claims from the Regional Administrative Court of Lombardy and acceptance by the Council of State. In resolving the dispute, the Council of State showed a less formalistic approach than the first-instance judges, emphasising the importance - especially in situations of this kind - of not treating legal rules as **pure abstraction**, but rather applying and interpreting them **taking account of the specific factual situations**.

The judicial matter resolved by the definitive shipment to the United States of Bernardo Strozzi's *Saint Catherine of Alexandria* highlights the fundamental role played by courts in cases involving the restitution of property unlawfully taken from Jewish citizens during the Nazi and Fascist period. Such restitution may take place not only through the adoption of specific rules and norms by States and supranational bodies, but also through an interpretation of the law capable of taking account of the specificity of the historical moment in question, sometimes even overcoming certain difficulties arising from the ordinary rules governing cultural property.

3) The paintings from the Federico Gentili di Giuseppe collection

Gentili di Giuseppe was an Italian citizen resident in Paris and owner of an important collection of Italian works of art. He died on 21 April 1940, shortly before the German occupation of Paris. In anticipation of the arrival of German troops, Gentili's two children fled France, moving first to England and then to the United States; because of the impending war, they were unable to complete the succession formalities. Following an application by one of their father's creditors, much of the Gentili collection remaining in Paris was sold at auction on 23 April 1941: some works were purchased, through intermediaries, by Hermann Göring, while others ended up in the hands of collectors and museums.

Many years later this sale was declared void by the Paris Court of Appeal, which, in its judgment of 2 June 1999 in *Christiane Gentili di Giuseppe and Others v. Musée du Louvre and the French State*, ordered the Louvre Museum to reconstitute to the Gentili heirs five paintings that, after being found in the Göring collection, had subsequently been entrusted to that museum. These were Moretto's *The Visitation*, Bernardo Strozzi's *The Holy Family*, Giambattista Tiepolo's *Alexander and Campaspe in the Studio of Apelles*, Alessandro Magnasco's *Card Players before a Fireplace*, and Rosalba Carriera's *Female Portrait*.

Another of the paintings from the Gentili di Giuseppe collection sold at auction in 1941, Romanino's *Christ Carrying the Cross Dragged by a Henchman*, was instead purchased in 1998 by the Pinacoteca di Brera in Milan. The Gentili di Giuseppe heirs asked the Italian Government to obtain the restitution of the painting, but without success.

In 2011, the work was sent on loan for an exhibition in the United States, where, before returning to Italy, it was seized by the District Court of Florida. Once returned to the lawful heirs, the painting was sold at auction in New York and purchased by a private collector for 4,562,000 dollars.

The case of the paintings from the Gentili di Giuseppe collection may be considered an example of how, even with the same factual circumstances, different legal traditions, administrative solutions, and political sensitivities lead to different decisions and results.

5.2. The role and legacy of the Anselmi Commission

With reference to the Anselmi Commission, the investigation it carried out brought to light the inadequacy of the measures adopted: "The failure to reconstitute property concerned above all property not claimed by the entitled persons or by their heirs. This was probably influenced by: ignorance of property belonging to relatives killed in

deportation; the expulsion or emigration of Jews who no longer had the opportunity or reason to attend to their interests; the weight of the tragedy suffered, which negatively affected efforts to recover material property. This category of failed restitutions was certainly not secondary, but in any event, however many restitutions could occur, they did not eliminate the economic consequences of property restrictions and spoliations, and still less the moral suffering that accompanied them.”⁶⁰

Previously, Italy had approved a new law aimed at ensuring the restitution of certain works that, without legislative intervention, could not have been returned. This was Law no. 233 of 1997, Article 2 of which provides that: “Property taken for reasons of racial persecution from Jewish citizens or persons regarded as such, which it has not been possible to return to the lawful owners because of their disappearance or untraceability and that of their heirs, and which is still, as the case may be, held or possessed by the Italian State on any basis, shall be assigned to the Union of Italian Jewish Communities, which shall allocate it to the individual Communities taking account of the provenance of the property and the places where the taking occurred.”

This provision does not set deadlines, but it covers only the situation in which the heirs have not been identified or there are no lawful claimants. It therefore does not apply where an application is submitted by the (presumed) lawful claimants, a situation no longer governed by Italian laws currently in force. Another problem is that the objects must be of clear Jewish provenance, whereas in many cases this can no longer be established without provenance research.⁶¹

5.3. Legislative limits on restitution

From this general framework, all the limits of Italian legislation emerge and, above all, the failure to implement the Washington Principles.

The Anselmi Commission had already made clear the inadequacy of the solutions adopted up to the end of the 1990s. Italy also bears enormous historical and political responsibility for having implemented and facilitated the perpetration of criminal actions against Jewish citizens or persons regarded as such - it is enough to recall here, regarding objects of historical and artistic interest, Minister Bottai's Circular no. 43 of January/March 1939 - and should therefore take a leading role in ensuring that all restitutions are successful. Italy was a leading country on the occasion of the first G7 dedicated to culture, held in Florence in 2017, and of the first G20 with a session dedicated to cultural heritage, held in Rome in 2021. Moreover, with regard to offences against cultural property, Italy was among the strongest supporters of the 2017 Council of Europe Convention, signed in Nicosia, and ratified and implemented with the introduction in 2022 of a new package of rules in the Criminal Code. The time therefore seems to have come for the Italian State to become a virtuous example also in the matter of restitution of works of art plundered during Nazism and Fascism.

A timid attempt to improve this context took place in 2020, with the activation, within the Ministry of Culture's Committee for the Recovery and Restitution of Cultural Property, of a Working Group for the study and research of cultural property taken in Italy from Jewish citizens or persons regarded as such between 1938 and 1945 following the promulgation of the racial laws. The Working Group is entrusted with carrying out survey, research, and identification activities regarding cultural property taken from the Jewish community and from individual Jewish citizens during the period of racial persecution, but without being given human or financial resources. This is an administrative solution that shows the Ministry's attention to the issue, but does not offer adequate remedies to ensure possible restitutions.

In addition, unfortunately most public institutions often have not carried out any provenance research, partly because of the lack of funds for this type of activity. This must be addressed urgently, in line with Principle no. 3 of the Washington Principles, according to which: “Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.”

⁶⁰ Presidency of the Council of Ministers, Commission for the Reconstruction of Events Characterising the Activities of Public and Private Bodies in Italy in Acquiring the Property of Jewish Citizens, 2001, p. 538.

⁶¹ M. Sarfatti, “Le vicende della spoliazione degli ebrei e la commissione Anselmi (1998-2001)”, in G. Speciale (ed.), *Le leggi antiebraiche nell'ordinamento italiano. Razza, Diritto, Esperienze*, Bologna, 2013, pp. 299 et seq.

In the Italian legal order, in conclusion, besides the problems concerning limitation periods that also exist in other legal systems, several legislative obstacles remain:⁶²

1. there are no obligations to identify and possibly inform the public that any works on display were acquired during Nazism and Fascism and are of doubtful provenance;
2. there is no ordinary legislatively established mechanism for examining possible restitution claims;
3. there is no dedicated body, established by law, to examine such applications and suggest a **just and fair solution**;
4. there are no rules capable of overcoming the main legal problem for restitution, namely removal from the public domain and the breaking up of public collections; the only exception is Law no. 233 of 1997, but its scope of action is too narrow;
5. the issues concerning the special regime of cultural property in the event of possible restitutions are not addressed.

All this appears in sharp contrast with what has happened in other European countries, if one considers only the data on the objects restituted. In Germany, for example, the German Government has stated that by 2019 approximately 20,000 objects had been returned to their owners. This number also includes books and collections of Judaica, not only paintings. The Advisory Commission issued 24 recommendations following claims by former owners who requested the return of Nazi-looted works of art from works of art in public collections.⁶³

According to Austria, by 2022 approximately 30,000 objects had been returned. The Austrian restitution commission issued approximately 380 decisions on claims concerning works of art in Austrian public collections.⁶⁴ Of the approximately 380 decisions issued by the Austrian restitution board, approximately 200 were in favour of restitution.⁶⁵

In the Netherlands,⁶⁶ a considerable number of works remained in State hands in a public art collection known as the NK Collection. This collection contains approximately 4,500 objects that were brought back to the Netherlands from Germany after the Second World War. They include paintings, drawings, prints, ceramics, silver, furniture, carpets, and other objects. Some are now on loan to various Dutch museums, embassies, and government buildings, while others are kept in storage by the Cultural Heritage Agency of the Netherlands. The collection is managed by the Dutch State. The total number of objects restituted from the NK Collection is estimated at several hundred, although exact figures may vary depending on ongoing claims and investigations.

Finally, in the United Kingdom, there have been 24 decisions by the Spoliation Advisory Panel following claims for works of art in English public collections.

⁶² An analysis of the state of the Italian legal framework and of the gaps in restitution operations is available on the website of the United States Congress (<https://www.state.gov/reports/just-act-report-to-congress/italy/>).

⁶³ <https://www.beratende-kommission.de/en/recommendations#s-freund-bundesrepublik-deutschland>.

⁶⁴ <https://provenienzforschung.gv.at/en/empfehlungen-des-beirats/beschluesse/>.

⁶⁵ <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1987&context=auilr>.

⁶⁶ <https://www.mauritshuis.nl/en/our-collection/restoration-and-research/provenance-research/nk-collection-and-restitution/> and <https://www.government.nl/topics/second-world-war/restitution>.

6. Legislative proposals

On the basis of the reconstruction above, it appears necessary to propose a legislative intervention in order to make the Italian legal order consistent with the international legal framework.⁶⁷ This is also because Italy has adhered to the above-mentioned **Best Practices for the Washington Principles on Nazi-Confiscated Art** of March 2024.

Any legislative proposal should in any event be accompanied by actions aimed at encouraging and intensifying investigative and research activity by museum institutions, with the stated aim of verifying the provenance of any works acquired both in the period 1933-1945 and in the post-war period. A careful examination of collections by Italian public museums, libraries, and archives is in fact a moral duty that Italy has already accepted in principle by approving the Washington Conference Principles - in particular Principle no. 3 - and the Terezin Declaration (and also the Best Practices). All this would also be in line with the principles of the Code of Ethics of the International Council of Museums (ICOM), which Italy expressly refers to in the regulations governing State museums. In the same perspective, museum institutions could not only promote provenance research within their collections but also implement strategies to communicate the results of the research to the public, for example the history of objects and unclear provenances, through special plaques or labels (a practice that is becoming standard in many States, such as the Netherlands⁶⁸).

The proposal to bring Italy into line with the international rules on the restitution of works plundered during Nazism and Fascism should have the following characteristics:

1. provide for a specific legislative instrument, because Law no. 233 of 1997 is not sufficient to cover all situations;
2. establish a committee or commission of experts, with a mixed and balanced composition as in other countries, with powers to be defined (binding or non-binding opinion, but preferably binding);
3. indicate the assessment criteria for the committee, always placing the interest in restitution as the primary interest;
4. overcome, where the obligation to retribute is established, the prohibitions on removal from the public domain and on breaking up public collections provided by the legislation currently in force on cultural property;
5. overcome any limit arising from limitation periods, allowing the entitled persons to submit restitution claims;
6. retribute the property to the Union of Italian Jewish Communities in the absence of lawful claimants;
7. establish an ad hoc regime for the new status of restituted property (possible removal from the national cultural heritage and a free regime in the case of restitution to persons residing abroad or of non-Italian nationality).

It would also be very important to encourage research by institutions in order actually to trace the provenance of works in doubtful cases. To this end, dedicated resources should also be allocated.

In order to articulate the possible proposal more clearly, it is useful to focus in particular on the possible body - a commission or committee - of experts to which examination of restitution cases would be entrusted.

As to composition, the body should have a not too large number of members, from three to five, who would remain in office for a term of three or five years. It would be important for the experts to be of proven professional qualification and to have expertise capable of covering the different types of property (historical-artistic, archival, book-related, religious-interest property). Appointment could be made by the Minister of Culture, in agreement with

⁶⁷ More generally, regarding Italy's position on the restitution of cultural property, see A. Visconti, "Between 'colonial amnesia' and 'victimization biases': Double standards in Italian cultural heritage law", *International Journal of Cultural Property*, vol. 28, 2021, pp. 551 et seq.

⁶⁸ See, for example, a label used for several paintings in one of the major Dutch museums, the Mauritshuis: "This painting is part of the Netherlands Art Property Collection ('NK collection'): objects that were stolen, seized or purchased during the Nazi regime. After the Second World War they were placed under the administration of the Dutch State. In recent decades, applications for restitution are taken into consideration again and some objects have been returned to the heirs of their rightful owners. For more information: mauritshuis.nl/en/provenanceresearch."

the Union of Italian Jewish Communities for all members or at least for part of them. It would also be necessary to involve the Carabinieri Command for the Protection of Cultural Heritage. The experts' activity could be performed without remuneration, at least in an initial phase.

The committee could be activated within the Ministry of Culture and should be provided with a technical secretariat and support officials. It would also be important for it to have resources dedicated to research activities.

As to its activity, the committee could act on application by the Union of Jewish Communities or by the heirs of the lawful owners, or following a report from the Ministry of Culture - including the Working Group created in 2021 - or from other administrations. The committee should reach a decision on the case within 180 days. The committee would formulate a proposal to the Minister of Culture - to be decided whether binding or not - for restitution or for maintaining the work in the collection. In the event of restitution, the decree should have the effect of removing the property from the public domain and also allowing its export, where necessary, in order for it to reach the heirs of the lawful owners. In the case of requests by the Union of Italian Jewish Communities or where it is impossible to trace the heirs of the lawful owners, the property could be allocated to the requesting Jewish communities or also to the Museum of Italian Judaism and the Shoah (MEIS).

On this last point, useful examples may be drawn from other European countries. In the case of the Netherlands (Centraal Joods Overleg) and Austria (Nationalfonds), for example, unclaimed plundered cultural property does not necessarily physically leave the museum, library, or other institution in which it is located, but remains in the custody of the State for conservation, insurance, security, and so forth. Since an heir could still appear in the future, these objects are held in custody; this does not exclude the possibility of a transfer of ownership to the Jewish community, which usually does not sell the artefacts.

The decree of the Minister of Culture would therefore have the nature of an act of high administration, with an approach similar to that followed for environmental impact assessment (where the Minister's decree almost always conforms to the proposal of the offices).⁶⁹ Judicial protection would therefore be available against any decisions, for example on application by associations or heirs, or also by the museum institutions involved.

Compared with what is provided in other countries, the Italian context does not seem to require interventions aimed at ensuring forms of compensation or indemnification in the event of someone having in the meantime purchased the taken works in good faith. First of all, in the case of property held or possessed, on any basis, by public institutions, the interest in restitution always appears prevailing, and the remedial character of the restitution itself does not require compensation to museums or other public institutions that could plausibly at least have suspected the doubtful provenance of the work. In our civil-law legal system the principle **nemo plus iuris in alium transferre potest quam ipse habet** applies in any event and, certainly in the case of museums or other public institutions, this principle prevails over any hypothetical legitimate reliance in the purchase.

Consideration should also be given to treating works of art plundered from owners who were Jewish or regarded as such as belonging to a special category, as happens in other countries, where these works are held on a fiduciary basis (by public institutions or institutions financed with public funds) until a lawful owner can be found.⁷⁰

Moreover, Law no. 233 of 1997, mentioned above, provides for the restitution of works without any form of compensation or indemnification to the owners. The approach followed by the Italian legislature on that occasion - which is shared here - is that the gravity of the facts underlying the spoliations and the need to provide some remedy through restitution are elements that outweigh any other interest.

Finally, the possible legislation could have a limited duration, for example 10 years, as has already occurred in other countries. This could allow an intensification of research and an acceleration of applications. Nothing would then prevent, as has happened in other legal systems, a further extension of the legislation's validity as its expiry approaches.

⁶⁹ V. Cerulli Irelli, "Politica e amministrazione tra atti 'politici' e atti 'di alta amministrazione'", *Diritto pubblico*, 2009, pp. 130 et seq.

⁷⁰ For Germany, see p. 9 of the Guidelines for implementing the Declaration of the Federal Government, the Länder and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property, of December 1999, new edition (https://www.lootedart.com/web_images/pdf2021/Guidelines%202019.pdf).

Appendix I

Draft Bill

“Law for the Restitution of Works of Art Taken for Reasons of Racial Persecution”

Article 1

(Purpose and subject matter)

1. In accordance with the 1998 Washington Principles on Nazi-Confiscated Art, the 2009 Terezin Declaration on Holocaust Era Assets and Related Issues, and the March 2024 Best Practices for the Washington Principles on Nazi-Confiscated Art, this Law lays down provisions aimed at the restitution of works of art taken for reasons of racial persecution from Jewish citizens or persons regarded as such between 1933 and 1945 and currently located in Italy, and at reaching a just and fair solution for these cases.
2. For the purposes of this Law:
 - a. **works of art** means objects relating to archaeology, prehistory, history, literature, art, or science and belonging to the categories indicated in Article 1(a) to 1(k) of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970, ratified by Law no. 873 of 30 October 1978;
 - b. **taken works** means works subject to confiscation, seizure, theft, plunder, raid, or another method of coercive acquisition; forced or induced sale, including at auction; and also objects sold by their lawful owners because they were subject to racial persecution, whether in countries occupied by Nazi and Fascist forces or in non-occupied countries, for example Switzerland or the United States (so-called **Fluchtgut**).

Article 2

(Committee for the Restitution of Works of Art Taken for Reasons of Racial Persecution)

1. The **Committee for the Restitution of Works of Art Taken for Reasons of Racial Persecution**, hereinafter the **Committee**, is established within the Ministry of Culture.
2. The Committee shall carry out the investigative and decision-making activity aimed at the restitution of works of art taken to the lawful owners at the time of the taking, or to their heirs, descendants, or otherwise entitled persons, or, in the cases provided for in Article 3(4), in any event to the Union of Italian Jewish Communities.
3. The Committee shall, in particular, have the task of:
 - a. examining applications for restitution of works of art taken for reasons of racial persecution in the period 1933-1945, submitted by the lawful owners at the time of the taking or by their heirs, descendants, or otherwise entitled persons, or by the Union of Italian Jewish Communities and/or by the individual Jewish community of reference;
 - b. assessing possible restitution cases, reported to the Committee directly by the Ministry of Culture or by another public administration, concerning works of art believed to have been taken for reasons of racial persecution in Italy or abroad in the period 1933-1945;
 - c. formulating to the Minister of Culture a binding proposal regarding whether or not the work of art that is the subject of the application or report should be restituted.
4. The Committee shall be appointed by decree of the Minister of Culture within thirty days of the entry into force of this Law. The Committee shall be composed of five members, of whom three, including the President, shall be selected from among university professors, judges, and lawyers who are experts of proven professionalism and high qualification in the field of cultural heritage by the Minister of Culture, in agreement with the Union of Italian Jewish Communities; one shall be a representative of the Carabinieri Command for the Protection of Cultural Heritage; and one shall be a representative of the State Attorney

General's Office, designated by the State Attorney General. Members shall hold office for five years, renewable once only.

5. The Committee shall adopt its own rules of organisation and operation. The rules shall also specify the methods for ascertaining the legitimacy of the title of the claimants, as well as any measures that the Committee may suggest, including public-information obligations, in order to ensure the achievement of a just and fair solution.
6. The Committee shall operate without new or increased costs for the Administration, and participation in its work shall be unpaid and shall not give entitlement to compensation, attendance fees, allowances, or reimbursements of any kind.
7. The Secretariat functions of the Committee shall be carried out by the Cabinet Offices of the Ministry of Culture.

Article 3

(Restitution)

1. Once the investigation is concluded, the Committee shall formulate a reasoned proposal to the Minister of Culture within 180 days of receipt of the application or report.
2. The Minister of Culture shall issue the final decree concluding the procedure, in conformity with the Committee's proposal, within 10 days of receiving it.
3. If the application is upheld, the work of art shall be returned to the claimant, where the claimant has title, or, where there are doubts as to the legitimacy of that title, to the Union of Italian Jewish Communities.
4. Where the Committee establishes that a work of art has been taken, following a report by the Ministry of Culture or another public administration and in the absence of lawful claimants, the work of art shall be assigned to the Museum of Italian Judaism and the Shoah or, alternatively, to the Union of Italian Jewish Communities, which shall allocate it to individual Jewish Communities, including foreign Jewish Communities after consulting the World Jewish Restitution Organization, taking account of the provenance of the property and the places where the taking occurred.
5. In the case of a work of art held or possessed, on any basis, by a publicly owned institute or cultural site, the decree shall determine the removal of the restituted property from the public domain. Once the time limits referred to in paragraph 6 have expired, the decree shall also entail that the work of art is not subject to the protective rules laid down by the Code of Cultural Heritage and Landscape, Legislative Decree no. 42 of 22 January 2004, with the consequent possibility of definitive exit from the country.
6. The decree referred to in paragraph 2 may be challenged before the administrative courts under their exclusive jurisdiction. The special procedure referred to in Article 120 of the Code of Administrative Procedure, Legislative Decree no. 104 of 2 July 2010, shall apply. Any appeal shall suspend the effects produced by the restitution decree pursuant to paragraph 5. In any event, the Committee may order public-information measures even while the appeal is being decided.

Article 4

(Alternatives to restitution)

1. Where the Committee considers that restitution does not represent the most just and fair solution, it may propose alternative remedies or other forms of compensation to the parties, taking account of the results of the investigative activity. In any event, any indemnity, price, or other sum received in the past by the former lawful owners or their heirs, on any basis, shall not prevent the Committee from nevertheless proposing restitution.

Article 5

(Publicity)

1. All acts relating to the Committee's activity, including appeals, decisions, and final decrees concluding the procedure, shall be published on the website of the Ministry of Culture, in compliance with the rules on the protection of personal data.

Article 6

(Effectiveness)

1. This Law shall remain effective until 31 December 2040. By decree of the President of the Council of Ministers, the term referred to in the previous sentence may be extended for further periods of fifteen years.

Appendix II

Comparative references

Austria

- **Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus** [Federal Law on the National Fund of the Republic of Austria for Victims of National Socialism], BGBl no. 432/1995, last amended 24 July 2020 (BGBl. I Nr. 94/2020).
- **Bundesgesetz: Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen** [Federal Law: Restitution of Art Objects from Austrian Federal Museums and Collections], 1998, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1998_181_1/1998_181_1.pdf. The law was amended in 2009 (https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2009_I_117/BGBLA_2009_I_117.html) and most recently in 2023, BGBl. I Nr. 158/2023 (<https://www.ris.bka.gv.at/eli/bgbl/I/2023/158>).
- **Entschädigungsfondsgesetz** [General Settlement / Compensation Fund. This is the legislation enacted to give effect to the Washington Principles], BGBl no. 12/2001.

France

- **Rapport au Premier ministre de la Mission d'étude sur la spoliation des Juifs de France** (known as the **Mission MATTEOLI**), 1997, https://www.civs.gouv.fr/images/pdf/matteoli/Rapport_Matteoli_1997.pdf; and **Rapport sur la spoliation des Juifs de France**, 2000, https://www.civs.gouv.fr/images/pdf/matteoli/Mission_Matteoli-rapport_final.pdf.
- **Décret n° 99-778** of 10 September 1999, *Instituant une commission pour la restitution des biens et l'indemnisation des victimes de spoliations antisémites* [establishing a commission for restitution of property and compensation of victims of antisemitic spoliations] (definitively repealed by the decree of 5 January 2024).
- **Loi n° 2023-650** of 22 July 2023, *Relative à la restitution des biens culturels ayant fait l'objet de spoliations dans le contexte des persécutions antisémites perpétrées entre 1933 et 1945* [on the restitution of cultural property subject to spoliation in the context of antisemitic persecutions perpetrated between 1933 and 1945], <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000047464528/>.
- **Décret n° 2024-11** of 5 January 2024, *Instituant une commission pour la restitution des biens et l'indemnisation des victimes de spoliations antisémites et pris en application des articles L. 115-3, L. 115-4 et L. 451-10-1 du code du patrimoine*, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000048865626>.

Germany

- **Memorandum issued by the Advisory Commission on Nazi-Looted Cultural Property**, September 2023, <https://www.beratende-kommission.de/de/kommission#s-memorandum> (press release in English: <https://kulturgutverluste.de/en/news/memorandum-issued-advisory-commission-nazi-looted-cultural-property>).

Netherlands

- Government memorandum by Rick van der Ploeg, the State Secretary for Education, Culture and Science (OCW), sent to the Dutch Parliament, 28 July 2000, <https://zoek.officielebekendmakingen.nl/kst-25839-16.html>.
- Ekkart Committee, **Interim Recommendations about Art Looted from Private Individuals**, 26 April 2001, <https://www.restitutiecommissie.nl/wp-content/uploads/2023/11/Recommendations-EkkartCom-2001.pdf>.
- Decree issued by the State Secretary for Education, Culture and Science establishing the Advisory Committee on the Assessment of Restitution Applications, 16 November 2001, <https://www.restitutiecommissie.nl/wp-content/uploads/2023/11/Decree2001.pdf>.
- Decree of the State Secretary of Education, Culture and Science no. WJZ/420483 (10207), amending the Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of

Cultural Value and the Second World War in connection with an evaluation of the restitution policy, 4 July 2012, <https://www.restitutiecommissie.nl/wp-content/uploads/2023/11/AmendingDecree2012.pdf>.

- Decree issued by the Minister for Education, Culture and Science establishing a Restitutions Committee, 15 April 2021, <https://www.restitutiecommissie.nl/wp-content/uploads/2022/05/Decree-RC-per1December2021.pdf>.
- Restitutions Committee Procedural Regulations, 6 October 2023, <https://www.restitutiecommissie.nl/wp-content/uploads/2023/10/RC-Regulations-6thOct2023.pdf>.

United Kingdom

- The Holocaust (Return of Cultural Objects) Act 2009 (Commencement) Order 2010, <https://www.legislation.gov.uk/uksi/2010/50/contents/made>.
- Department for Culture, Media and Sport (DCMS), Memorandum submitted by the Commission for Looted Art in Europe, September 2006, <https://publications.parliament.uk/pa/cm200607/cmselect/cmcmds/176/176we13.htm>.

United States

- Holocaust Expropriated Art Recovery Act, Public Law 114-308, 114th Congress, 16 December 2016, <https://www.congress.gov/114/plaws/publ308/PLAW-114publ308.pdf>.
- Justice for Uncompensated Survivors Today (JUST) Act of 2017, https://www.state.gov/wp-content/uploads/2020/03/S_585928-Tab-2.JUST-Act-Legislation.pdf.

Appendix III

Case law

1. The Kaumheimer collection

The case concerns the porcelain collection of the German Jewish citizen Julius Kaumheimer,⁷¹ who emigrated in 1935 to Merano to escape the political climate established in Germany and then, in 1939, after the racial laws, sought to move to the United States. On 17 February 1939, when he was leaving the country, at customs, sixty-nine seventeenth-century German porcelain statuettes were discovered and confiscated by the Bolzano financial authorities and then inventoried in the collection of the National Museum of Trento. Immediately after the seizure, the porcelain collection was declared to be of historical and artistic interest and made subject to protective rules. The porcelain pieces immediately attracted great attention and later became the centre of an exhibition opened at the Trento museum in 1991. It was on that occasion that the history of the Kaumheimer collection became public.

In May 2000, before the official conclusion of the Anselmi Commission's work, the president of the Jewish Community of Merano, Federico Steinhaus, claimed restitution of the collection. Responding negatively to this request, the head of the Department of Education, Vocational Training and Culture of the Province sent a letter to the president of that commission (20 May 2000) maintaining that "(...) it appears clear that the Museum legally holds the collection, while it remains the case, tragic and extremely painful, that the person charged with the offence was a Jew forced to flee because of the racial laws. These terrible circumstances, as is clear from the documents held by this administration, do not, however, appear to be the stated reason for the seizure, which was due, as stated, to the application of a law protecting the national artistic heritage."

Despite this opposition, on the proposal of the Director of the Cultural Heritage Service, the Governor of the Autonomous Province of Trento, Lorenzo Dellai, issued the decree of restitution of the collection in October 2001, applying Law no. 233 of 18 July 1997.

Because Julius Kaumheimer and his heirs (who had mistakenly been persuaded that the porcelains had been destroyed) had over the years changed their surname to Kay once they settled in the United States, it had not been possible to trace them at the time of restitution. For this reason, the collection was temporarily transferred from the Province of Trento to the Union of Italian Jewish Communities and entrusted to the Jewish Community of Merano. But Federico Steinhaus, with decisive assistance from a Jewish organisation based in the United States - the Hebrew Immigrant Aid Society - published notices in various American newspapers and magazines and was thus able to identify the children of Julius Kaumheimer. During a ceremony held at the Castello del Buonconsiglio in Trento on 25 June 2003, the collection was officially returned to the heirs who had finally been found in the United States.

2. Bernardo Strozzi's *Saint Catherine of Alexandria*

Charles Alexander Loeser, an American collector and art historian, died in Florence in 1928, leaving an important collection of works of art. In his will, Loeser provided that some of his works should be left by legacy to the Municipality of Florence, on condition (by means of a testamentary burden) that the remaining works could be exported from Italy within two years of the death of his daughter, Matilde Loeser Calnan (which occurred in 2002). The burden was accepted by both the State and the Municipality of Florence. After the racial laws were enacted in 1938, the Loeser family was forced to take refuge in Switzerland. In 1942, the family's immovable and movable property remaining in Italy was seized and placed under State custody. In 1944, one of the paintings, Bernardo Strozzi's *Saint Catherine of Alexandria*, was loaned to the headquarters of the German troops in Florence, and from there its traces were lost for many years. In 2009, the Carabinieri in Monza found the painting and returned it to the American citizen Philippa Calnan, granddaughter and heir of the original owner. At the same time, Calnan was notified of the measures by which the Ministry for Cultural Heritage and Activities, pursuant to Article 13 of Legislative Decree no. 24 of 2004, declared the painting to be of cultural interest, preventing its export to the United States, where the lawful owner resided.

⁷¹ G. Dellantonio, "The Kaumheimer case: constitution, requisition, restitution and dispersion of a collection of porcelain art from the 1930s to the present day", *Art, antiquity and law*, vol. 22, 2017.

The interested party challenged these measures before the administrative courts. The main question to be resolved concerned the expiry of the time limit for the free export of the painting: whether it should remain fixed at two years from the death of Loeser's daughter, or whether, given the particular circumstances, it could be extended to two years from when Loeser's granddaughter obtained possession of the painting. At first instance, the Regional Administrative Court for Lombardy, by judgment of 8 February 2011, opted for the first alternative, holding that Italy could not be blamed for the fact that for approximately sixty-five years the painting had been removed from the family's possession: "Since, pursuant to Article 673 of the Civil Code, the obligation of the person burdened is extinguished if, after the testator's death, performance has become impossible for a cause not attributable to him, the circumstance that from 2002 to 2004 the painting was not in the claimant's possession entails the extinction of the burden, this being a supervening impossibility not attributable to the burdened party."

Less formalistic and more suited to the circumstances of the case was the second-instance judgment issued by the Council of State on 19 February 2013. Unlike the Regional Administrative Court for Lombardy, the Council of State emphasised that legal rules must not be considered as pure abstractions, but must be applied and interpreted taking account of the specific factual situations: "(...) on that date [= in 2004] the painting could not be exported by its owners because, as stated, it had no longer been in their possession since the extremely unfortunate period (1944) in which their property was plundered by German soldiers with the consent (more or less forced) of the Italian authorities operating in Florence under their pressure. Moreover, for years the owners, being racially discriminated against, had to take precautions by taking refuge outside Italy and, on the other hand, could not take their possessions with them, those possessions having in any event entered the sphere of the duty of diligent custody incumbent on the Italian authorities, apt to preserve the optional powers of the heirs of the legatee within the terms indicated above, nor could they, as regards the paintings, then invoke the right of export that they enjoyed even at that time."

Another passage from the judgment shows how the Council of State understood the substance of the case before it: "The singularity of this distant sequence of events still marks the conceptual and legal perimeter of the dispute which, although presented in the form of objections to two recent administrative acts, ultimately concerns the extremely important issue of the protection of victims (in this case fortunately affected only in their property) of serious violations of international law itself and of the fundamental rights it guarantees (at least in its more recent and evolved conceptions, arising from the 'universalisation' of those rights), as found in democratic Constitutions following the Second World War and, certainly, in the current Italian Constitution. The fullness of recovery of property, especially artistic property, unlawfully taken *manu militari* - in this case by an Italian-German action - also requires derogation from many traditional rules of domestic law, among various others for example that on adverse possession."

On the basis of its assessment of the substance of the facts and applicable rules, the Council of State had no difficulty in granting the claimant the time limit to export the Strozzi painting, annulling the administrative measures that prohibited it. All this followed "a) from an adaptive interpretation aimed at neutralising the effects of unforeseeable supervening events that made exercise of the right impossible at an earlier time; b) from the easy possibility, if it were necessary to go beyond the interpretative horizon, of granting relief from forfeiture according to a general principle of our legal order which applies in this case with even greater force, given that the failure to exercise the right between the end of the 1930s and 2009 depended even (and at least in part) on violations of fundamental rights of the Loeser family, with unquestionable effects on the exportability regime guaranteed to it, which was long diverted and obstructed."

3. The paintings from the Gentili di Giuseppe collection

Federico Gentili di Giuseppe was an Italian citizen resident in Paris and owner of an important collection of Italian works of art. He died on 21 April 1940, shortly before the German occupation of Paris. In anticipation of the imminent arrival of German troops, Gentili's two children fled France, moving first to England and then to the United States, and because of the impending war they were unable to complete the succession formalities. Following an application by one of their father's creditors, much of the Gentili collection that remained in Paris was sold at auction on 23 April 1941: some works were purchased, through intermediaries, by Hermann Göring, while others ended up in the hands of collectors and museums.

Many years later this sale was declared void by the Paris Court of Appeal, which, in its judgment of 2 June 1999 in *Christiane Gentili di Giuseppe and Others v. Musée du Louvre and the French State*, ordered the Louvre Museum

to restitute to the Gentili heirs five paintings that, after being found in the Göring collection, had subsequently been entrusted to that museum. These were Moretto's *The Visitation*, Bernardo Strozzi's *The Holy Family*, Giambattista Tiepolo's *Alexander and Campaspe in the Studio of Apelles*, Alessandro Magnasco's *Card Players before a Fireplace*, and Rosalba Carriera's *Female Portrait*.

Another of the paintings from the Gentili di Giuseppe collection sold at auction in 1941, Romanino's *Christ Carrying the Cross Dragged by a Henchman*, was instead purchased in 1998 by the Pinacoteca di Brera in Milan. The Gentili heirs asked the Italian Government to obtain the restitution of the painting, but without success. In 2011, the work was sent to the United States on loan for an exhibition at the Mary Brogan Museum for Art and Science in Tallahassee and, on that occasion, the United States Government asked the District Court for the Northern District of Florida to seize the painting before it returned to Italy, on the ground that it was stolen property that had entered the United States illegally: "the Cristo Portacroce is stolen property, converted property, or property taken by fraud. Further, the Italian Government through the Brera aided and abetted the Cristo Portacroce's importation into the United States, and its transportation in foreign commerce, and is scheduled to export the Cristo Portacroce from the United States, knowing it to be stolen property, converted property, or property taken by fraud."⁷²

On that occasion it was emphasised that Federico Gentili di Giuseppe had legally purchased the painting in 1914; that the Paris Court of Appeal had ordered the restitution to the Gentili heirs of the five paintings mentioned above that had been sold at the 1941 auction; that several American museums had agreed with the heirs to restitute other works that had also been sold at that auction and had later entered their possession; and that the officials of the Pinacoteca di Brera could not have been unaware that the painting came from the Gentili di Giuseppe collection. The painting was therefore seized, and on 31 January 2012 the American Government informed the District Court that it had reached an agreement with the Gentili heirs, under which the Government would deliver the painting to them and they would hold the Government harmless from any action brought as a result of its seizure. Shortly after the work was restituted, it was sold by its lawful owners at auction in New York and purchased by a private collector for 4,562,000 dollars.

Following this matter, the six heirs of Federico Gentili di Giuseppe began a request to obtain another painting belonging to the family and still held at Brera: the *Madonna and Child*, formerly attributed to Civerchio and then assigned to Bernardo Zenale, a work dated between 1505 and 1510 and purchased in the 1970s by the Ministry for Cultural Heritage. In 2002, responding to a question from *Libération* following the delivery of the paintings by the Louvre, the Italian Government did not show itself willing to conclude settlements, maintaining that: "The Louvre returned the canvases because they were indeed the result of a spoliation, while those at Brera come from a bankruptcy auction and the Italian State came into possession of them only as the third owner."⁷³

⁷² As reported in the affidavit of the American customs official, Philip Reynolds, attached to the seizure request.

⁷³ "Milano - Brera, dopo il Romanino parte la contesa sulla 'Madonna' di Zenale", *ArtsLife*, 23 April 2012.

Appendix IV

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Appendix V

Q&A

Historical overview of the taking of Jewish-owned cultural property in Italy

Bianca Gaudenzi and Katharina Hüls-Valenti

1. What happened to the artistic property of citizens of Jewish origin in Nazi-occupied Europe?

After coming to power (30 January 1933), the Nazi regime enacted measures aimed at the systematic exclusion of Jewish citizens from social, cultural, and economic life. The growing antisemitic climate and the Nuremberg Laws of 1935, which severely restricted economic autonomy, forced German Jews to sell their property, often below value, to finance escape, to pay taxes imposed by the State, or to survive (whether in their country of origin or in exile). After the annexation of Austria (12 March 1938) and the outbreak of the Second World War (1 September 1939), anti-Jewish persecution provided, even before extermination, for the total expropriation of Jews both in Germany and in the occupied countries. To that end, the National Socialists established special agencies and units that dealt exclusively with the confiscation, inventorying, and other use of Jewish property (through auction sales or the open market, allocations to museums, or donations to Nazi politicians). Particular mention should be made of the Nazi agencies **Dienststelle Mühlmann** and the **ERR (Einsatzstab Reichsleiter Rosenberg)**, which in the occupied countries between 1939 and the end of the war confiscated millions of items of Jewish-owned cultural property. A large part of the confiscated property was destined for the collections of Nazi leaders such as Adolf Hitler and Hermann Göring, whose inexhaustible zeal for collecting further encouraged confiscations and plunder.

It is estimated that by the end of the war approximately 650,000 works of art and millions of other cultural objects - including books, manuscripts, archival documents, ceremonial objects, and furniture - had been plundered by the Nazis, not to mention artistic property sold under pressure or coercion in occupied countries as well as in neutral countries such as Switzerland or the United States (so-called **flight goods**).

2. What happened to the artistic property of citizens of Jewish origin in Italy during Fascism and the Nazi occupation?

The promulgation of the racial laws in the autumn of 1938 initiated a process of progressive expropriation of citizens of Jewish origin, implemented already in early 1939 through limits on their property, the “excess” portion of which was transferred to **E.G.E.L.I. (Ente di gestione e liquidazione immobiliare - the Real Estate Management and Liquidation Entity)**, as well as through limits on their property rights and civil rights. This began with Circular no. 43 of 4 March 1939, in which the then Minister of National Education, Giuseppe Bottai, urged customs authorities to prevent fleeing Jews (particularly foreign Jews expelled under the racial laws) from taking with them their valuable artistic property. This phenomenon intensified drastically during the RSI, which, in compliance with Mussolini’s Decree-Law no. 2 of 4 January 1944, carried out the confiscation of all movable and immovable property of persons persecuted on racial grounds, from toothbrushes to art collections, entrusting the latter to the Superintendencies.

An even darker fate awaited the collections in the territories annexed *de facto* to the Nazi Reich (the Operational Zones of the Alpine Foothills and the Adriatic Littoral), which were transferred beyond the Alps or dispersed through auctions and exchanges. Further worsening the picture were purchases below value by art dealers in collusion with Nazi and Fascist hierarchies, but above all the raids carried out by various Fascist “bands” (**Banda Carità, Banda Koch**, etc.) or by Nazi agencies and units such as the ERR, responsible among other things for the raid on the library of the Jewish Community of Rome, as well as by neighbours or acquaintances, who did not fail to draw material benefits from the persecution of their fellow citizens.

3. How were the assets confiscated, seized, or plundered from persons persecuted on racial grounds by Fascist Italy managed and returned in the post-war period?

In Italy, as in other countries, the process of returning property to former persons persecuted on racial grounds followed a tortuous and often inadequate path. The effectiveness of the measures enacted by the national-unity

governments in the years 1944-1947 was limited by a series of obstacles, beginning with restrictive criteria requiring formal proof of ownership, which was difficult to produce for those who had survived the Shoah, by time restrictions, and by the choice to consider valid all acquisitions by third parties “in good faith”, including in the case of public auctions such as those held in Florence in 1944. As regards artistic property, the Delegation for the Recovery of Works of Art, created within the Ministry of Foreign Affairs and led by Rodolfo Siviero, initially devoted itself to the recovery of national collections, while the question of expropriation of former persons persecuted on racial grounds almost always remained in the background, only to be soon removed and forgotten.

Even in the case of property confiscated by E.G.E.L.I., which was now responsible for returning it, former persons persecuted on racial grounds found themselves facing absurd requests for payment, such as storage costs, and had to wait many months, if not years, before regaining possession of their property, provided that it had not already been liquidated by E.G.E.L.I. Consequently, many works were never returned to the lawful owners and in some cases were even taken into the Italian State’s ownership following a note by the State Attorney’s Office of 23 March 1960.

Only at the end of the 1990s, thanks to international initiatives such as the 1998 Washington Conference and to the commitment of UCEI, did Italy begin a more serious process of historical review with the creation of the **Anselmi Commission** - the Commission for the Reconstruction of Events Characterising the Activities of Public and Private Bodies in Acquiring Jewish Property - appointed by the Presidency of the Council of Ministers and chaired by Tina Anselmi. Its 2001 recommendations are still waiting to be put into practice, beginning with adequate legislation and the creation of an ad hoc Commission, already present in many other countries of Western Europe.

4. Why were the restitutions carried out in the immediate post-war period partial at best, and why did the issue remain little addressed and little studied for almost fifty years?

Despite the considerable Allied effort to trace, identify, and return cultural property plundered by the Nazis and discovered in various hiding places on German and Austrian territory through an efficient network of identification and sorting centres (the so-called **Collecting Points**), it is first necessary to observe that a significant number of objects remained untraceable because they were lost or destroyed during the war or remained in private hands. In the following decades, such objects began to emerge and circulate on the international art market, thereby causing their traces to be lost and entering private collections and museums throughout the world (through acquisitions, donations, or bequests).

Second, the restitution mechanisms themselves often encountered major difficulties in actually allocating property to its lawful owners: once the plundered property had been returned to the countries where the plunder was presumed to have occurred (so-called **external restitution**, from Germany to the country of provenance), it was up to individual governments to identify and find the lawful owners (**internal restitution**). In many countries, however, this second step was not widely and consistently applied; instead, after sometimes superficial or fruitless searches, the property was often deposited or even incorporated into national collections, where it remained for the following decades.

In many cases it also happened that persons persecuted on racial grounds or their relatives, who were engaged in searching for their loved ones lost in the Shoah and rebuilding their lives, or who were frustrated by years of procedural technicalities and bureaucratic impediments during which they not rarely had to relive episodes of antisemitism, were unable to assert their rights, then falling into a trauma of repression and oblivion that characterised much of post-war European society. Only the second post-war generation found, beginning in the late 1960s, the courage to confront this painful page of European history again.

5. What are the 1998 Washington Principles and the 2024 Best Practices, both signed by Italy?

The Washington Principles were approved by 44 governments and 13 non-governmental organisations at the **Washington Conference on Holocaust-Era Assets** (3 December 1998). The 13 articles are conceived as non-binding legal guidelines (**soft law**), but of great ethical significance, aimed at strengthening and facilitating the research and identification of works of art plundered by the Nazis and promoting their subsequent restitution to the lawful owners through **just and fair solutions**, recommending for this purpose the establishment of specific commissions in the signatory countries.

After the Vilnius Declaration (2000) and the Terezin Declaration (2009), which reaffirmed the need for, and commitment of, the participating countries to adopt appropriate measures to implement the Washington Principles, in March 2024 the **Best Practices for the Washington Principles on Nazi-Confiscated Art** were presented and also approved by Italy. The Best Practices aim to clarify and improve the practical implementation of the Washington Principles by offering a comprehensive definition of **Nazi-looted art**, organised as follows:

- a. extension of the time span of antisemitic persecution beginning in 1933;
- b. a declaration that plunder was perpetrated not only by National Socialists, but also by Fascists or other collaborators;
- c. definition of the types of way in which cultural property may have changed ownership during those years (not only through confiscations and plunder, but also through forced sales or sales under pressure), thereby establishing that such transfers must be considered problematic and the related property potentially subject to restitution.

6. Why is it necessary for Italy to address the issue?

Although greater awareness of this issue at the international level - both in the academic field and in the professional world of institutions and the art market - has led to a notable increase in research and restitutions, it is estimated that more than 100,000 works of art and more than one million archival documents, books, and manuscripts plundered by the Nazis are still missing. The recent Best Practices have also consciously broadened the definition of **Nazi-looted art** (see above), because a growing need has been observed to find equally just and fair solutions for artistic property that was sold under pressure or coercion, including during exile in neutral countries. Consequently, Switzerland too decided in 2022 to make public funds available for provenance research and, above all, in March 2025 created a commission for the restitution of property plundered during Nazism and Fascism, thus joining the other five European countries where similar commissions were established following the Washington Conference.

As evidence of the importance of the issue and the need finally to implement the recommendations of the 2001 Anselmi Commission, an initial step was taken in 2020, when the Ministry of Culture established the **Working Group for the study and research of cultural property taken in Italy from Jews between 1938 and 1945 following the racial laws** (Ministerial Decree no. 323 of 17 July 2020). The Group, however, has no funds, researchers, possibility of training in provenance research, or even decision-making capacity, and consequently is unable to address comprehensively and effectively the various aspects inherent in the issue. In addition to having only a consultative function regarding restitution questions, its task, among other things, does not include systematic provenance research within public institutions, which would instead be absolutely necessary given the international scale of the traffic in works of art plundered by the Nazis and then entering collections through acquisitions from the art market or donations in recent decades.

As recently highlighted in a report by the World Jewish Restitution Organization and the Conference on Jewish Material Claims Against Germany (published on 5 March 2024), Italy is one of the very few countries in Western Europe that has not yet made substantial progress in applying the Washington Principles of 25 years ago, beginning with systematic provenance research in its public collections, as reiterated also by the Best Practices of March 2024.⁷⁴

7. What would be the benefits of the new law?

The approval of the new law, in addition to filling a significant legislative gap and finally bringing Italy into compliance with the numerous international agreements signed between 1998 and 2024, would above all be an act of civic responsibility, aimed at overcoming the discrimination and oblivion inflicted on our fellow citizens of Jewish origin not only by the Fascist State but also by the newly born Republic. As Tina Anselmi emphasised already at the conclusion of the Report of the Commission she chaired in 2001:

⁷⁴ W. Fisher/R. Weinberger, *Holocaust-Era Looted Cultural Property: A Current Worldwide Overview*, 5 March 2024, <https://art.claimscon.org/wp-content/uploads/2024/03/4-March-2024-Holocaust-Era-Looted-Cultural-Property-A-Current-Worldwide-Overview.pdf>, pp. 61-65.

“The material aspects of the spoliation of the Jews’ property and of its restitution are certainly important, but they do not constitute the essential aspect. Before being a matter of money, the spoliation was a persecution whose final objective was moral annihilation and then extermination. No history will be able to recount what men and women experienced daily with the consequent burden of anguish, humiliation, and misery. This is certainly the debt that must be paid [...]. In our case this happened in implementation of discriminatory laws and regulations that violently isolated a part of our population for the sole fact of their birth. This is an unprecedented event that must never happen again; it will not happen if each of us, from today onward, in no way legitimises the violation of human rights, which must be the foundation of the society and laws of our country.”⁷⁵

Twenty-four years later, the time has finally come to put the Anselmi Commission’s recommendations into practice, approving this bill and establishing an ad hoc Commission that can demonstrate to all Europe Italy’s commitment to the fight against antisemitism, past and present.

8. What measures have other European countries adopted to address the issue?

| Country / EU | Legislation in force | Ad hoc commission | Other mechanisms and institutions | Provenance research in main museums |
|----------------|--|---|---|-------------------------------------|
| Austria | Federal Law no. 181 of 4 December 1998 (<i>Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen</i>), amended by Federal Law no. 117 of 23 November 2009 and more recently by Federal Law no. 158 of 22 December 2023 | Kommission für Provenienzforschung and Kunstrückgabebeirat , active since 1998 (Federal Ministry of Culture) | Israelitische Kulturgemeinde Wien (department for restitution affairs) | Yes |
| France | Decree no. 778 of 10 September 1999 establishing the CIVS, later replaced by Decree no. 11 of 5 January 2024; Law no. 650 of 22 July 2023 (derogation from the principle of inalienability of the public domain where necessary) | Commission pour l’indemnisation des victimes de spoliations (CIVS) , active since 1999 (Ministry of Culture); since 2024, Commission pour la restitution des biens et l’indemnisation des victimes de spoliations antisémites | Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945 (Ministry of Culture) | Yes |
| Germany | Gemeinsame Erklärung of 9 December 1999 and Handreichung of 2001 and 2007, revised and expanded in the Gemeinsame Handreichung of 16 December 2019; Kulturgutschutzgesetz (KGSG) of 6 August 2016 (especially §§ 13, 44, and 48) | Beratende Kommission , active since 2003 (Federal Ministry of Culture); from 2025 Beratende Kommission NS-Raubgut | Lost-Art-Database (NB: also allows inclusion of works currently in private hands); Stiftung Deutsches Zentrum Kulturgutverluste (since 2015); Arbeitsstelle für Provenienzforschung (since 2018), etc. | Yes |
| Italy | Law no. 233 of 1997, inadequate because it concerns only so-called heirless property and requires that the objects still be of clear Jewish provenance | None | MiC Working Group (without funds or decision-making power, Ministerial Decree no. 323 of 17 July 2020); Carabinieri TPC Unit | None / not systematic |
| Netherlands | Decree no. WJZ/45374 (8123) of 16 November 2001, later amended by Decree WJZ/420483 (10207) of 4 July 2012 and Decree WJZ/27740278 of 15 April 2021 | Restitutiecommissie , active since 2001 (Ministry of Education, Culture and Science) | - | Yes |
| United Kingdom | Holocaust (Return of Cultural Objects) Act (2009) | Spoliation Advisory Panel , active since 2000 (Department for Culture, Media and Sport) | Central Registry of Information on Looted Cultural Property 1933-1945 (www.lootedart.com) | Yes |
| Switzerland | Verordnung über die unabhängige Kommission für historisch | Unabhängige Expertenkommission für | Anlaufstelle Raubkunst (since 2013) | Yes |

⁷⁵ T. Anselmi, “Introduzione”, in *Commissione per la ricostruzione delle vicende che hanno caratterizzato le attività di acquisizione dei beni ebraici da parte di organismi pubblici e private, Rapporto generale*, p. 9.

| Country / EU | Legislation in force | Ad hoc commission | Other mechanisms and institutions | Provenance research in main museums |
|--------------|--|--|---|-------------------------------------|
| EU | belastetes Kulturerbe of 22 November 2023 | historisch belastetes Kulturerbe , active since 19 March 2025 | Network of European Restitution Committees on Nazi-Looted Art , working group established by the five currently operating European commissions (Germany, France, Austria, Netherlands, United Kingdom) in 2019 | n/a |
| | International agreements also signed by Italy (non-binding): Washington Principles (1998); Council of Europe Resolution no. 1205 (1999); Vilnius Declaration (2000); Terezin Declaration (2009); Best Practices (2024) | n/a | | |

Recent restitution cases

Jacopo di Arcangelo, called del Sellaio, *Madonna and Child, the Young Saint John and Two Angels*, 1480-1485



Location: Cerruti Collection, Castello di Rivoli (Turin)

Type of acquisition: Donation by Francesco Federico Cerruti in 2016

Provenance: Arens-Unger Collection, Vienna (1936-1942); Galleria Van Diemen-Lilienfeld, New York; Galleria Fischer, Lucerne (1974); H. Buchardt Collection, Zurich; Christie's auction, London (1985); Gianfranco Luzzetti, Florence (1985-1987); Francesco Federico Cerruti, Turin (1987).

Mode of expropriation: Confiscated from Anna Unger, daughter of Gustav Arens, by the Nazi agency ERR in Vienna in 1942.

Year of restitution: 2018⁷⁶

Resolution: Financial compensation to the heirs of Gustav Arens; the painting remained at the Castello di Rivoli.

Antonio Lonza, *Flute Player*; Bernhard Fiedler, *View of Jerusalem*; Johann Christian Kröner, *The Herd of Deer in the Woods*; Anton Windmaier, *Path in the Forest*



Location: Civic Museum of Udine

Type of acquisition: Deposited in the museum collection by the Nazis on 3 April 1945

Provenance: Filippo Brunner (1862-1947)

Mode of expropriation: Confiscated from the property of Filippo Brunner, persecuted on racial grounds, in 1944.

⁷⁶ <https://www.castellodirivoli.org/comunicato/caso-del-dipinto-del-rinascimento-italiano-saccheggiato-dai-nazisti-trova-risoluzione-nella-collezione-cerruti-al-castello-rivoli/> (last accessed 26 May 2025).

Year of restitution: 2023

Mode of restitution: Restitution to the heirs of F. Brunner, followed by donation to the Museum.

Manner of Andrea della Robbia, *Saint Mary Magdalene*, probably 19th century



Location: Uffizi Galleries

Type of acquisition: Assigned by Ministerial Decree of 1 August 1988.

Provenance: Kunsthaus A.S. Drey, Munich (1928-1936); Paul Graupe auction, Berlin (17 June 1936); Count Alessandro Contini-Bonacossi, Florence (1941); Hermann Göring (purchased from Contini-Bonacossi); Central Collecting Point, Munich (1945); brought back to Italy by the Recovery Office directed by Rodolfo Siviero (1954).

Mode of expropriation: Forced auction in the context of Nazi antisemitic persecution, Berlin 1936.

Year of restitution: 2020⁷⁷

Agreement: Restitution to Germany, then restitution to the heirs of A.S. Drey.

⁷⁷ https://kunstverwaltung.bund.de/SharedDocs/Provenienzen/DE/6000_6999/6505.html (last accessed 26 May 2025).

Some cases still to be resolved

Edouard Manet, *Portrait of Monsieur Arnaud on Horseback*, 1875



Location: Gallery of Modern Art, Milan

Type of acquisition: Donation by Nedda Mieli Grassi in 1958

Provenance: Max Liebermann, Martha Liebermann (from 1935), Berlin; Justin Thannhauser, Berlin (1936); Walter Scharff, Munich/Alexandria (1936); Carlo Grassi, Cairo (1937); donation by C. Grassi's widow to the Gallery of Modern Art, Milan (1958).

Mode of expropriation: Forced sale because of Nazi persecution, 1936.

Year of restitution: To be decided⁷⁸

Bernardo Zenale, *Madonna and Child*, 1505-1510



Location: Pinacoteca di Brera, Milan

Type of acquisition: Purchased in the 1970s by the Ministry for Cultural Heritage

Provenance: Federico Gentili di Giuseppe

Mode of expropriation: Confiscated by the Vichy Government and sold at auction at Hôtel Drouot in 1941.

Year of restitution: To be decided⁷⁹

⁷⁸ <https://www.lostart.de/en/Verlust/438015> (last accessed 24 April 2025).

⁷⁹ <https://artslife.com/2012/04/23/milano-brera-dopo-il-romanino-parte-la-contesa-sulla-madonna-di-zenale/> (last accessed 15 May 2025).

Vincenzo Foppa, *Annunciation*



Location: Civic Museum of Crema and the Cremasco

Type of acquisition: Purchased in 1941 at Drouot by a member of the Stramezzi family; then purchased in 2022 by the Municipal Administration of Crema “with the collaboration and full support of the Superintendency” for the civic museum from the heirs of Dr Marina Stramezzi, as part of a group of 61 paintings from the Stramezzi Collection.

Provenance: Federico Gentili di Giuseppe

Mode of expropriation: Confiscated by the Vichy Government and sold at auction at Hôtel Drouot in 1941.

Year of restitution: To be decided

Alessandro Moretto, *Portrait of Federigo Martinengo*



Location: Villa Bassi Rathgeb Museum, Abano Terme

Type of acquisition: Donated to the City of Abano Terme in 1972 from the Dr Roberto Bassi-Rathgeb Collection

Provenance: Julius Priester, Vienna

Mode of expropriation: Confiscated in 1938 and seized by the Gestapo in Vienna, then purchased by Dr Bassi-Rathgeb without any intermediate transfer of ownership.

Year of restitution: To be decided