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## Case Liberation of Saint Peter from Prison – Feldmann Heirs and Private Person

*Arthur Feldmann – Private person/personne privée – Artwork/œuvre d'art – Nazi looted art/spoliations nazies – Unconstrained initiative/initiative spontanée – Ad hoc facilitator/faciliteur ad hoc – Settlement agreement/accord transactionnel – Ownership/propriété – Unconditional restitution/restitution sans condition*

*In 2002, an American professor spontaneously contacted the International Foundation for Art Research (IFAR) as she suspected that the drawing she had inherited, “The Liberation of Saint Peter from Prison”, was looted from Arthur Feldmann during WWII. IFAR established evidence which confirmed her suspicions and acted as a facilitator, together with the Commission for Looted Art in Europe, in the negotiations between the professor and the Feldmann heirs. In 2004, the professor agreed on the unconditional restitution of the drawing to the Feldmann heirs.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.*

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## I. Chronology

### Nazi looted art

- **In the Summer of 2002**, an American professor read about the Feldmann claim against the British Museum in the press<sup>1</sup> and raised doubts on the provenance of an Old Master drawing she had inherited – “The Liberation of Saint Peter from Prison”, originally attributed to Rembrandt van Rijn, but then attributed to his pupil, Govaert Flink<sup>2</sup>. Her father had bought it in good faith in the 1970s from a gallery in Amsterdam<sup>3</sup>. She discovered that Arthur Feldmann had been the victim of looting and that one of his heirs, Uri Peled, was actively seeking reparation.
- The professor sought for an “objective and scholarly intermediary”<sup>4</sup> to verify her doubts concerning the painting and contacted the International Foundation for Art Research (IFAR). IFAR identified the painting as being formerly part of the Feldmann collection and subsequently cooperated with the Feldmann heirs, the professor and the Commission for Looted Art in Europe (CLAE) to find a settlement agreement.
- In **2004**, the American professor agreed to the restitution of the painting. She wished for her name to be kept confidential. The painting was returned to the Feldmann heirs on **30 November 2004**, who then decided to donate it to the British Museum.

## II. Dispute Resolution Process

### Unconstrained initiative – Ad hoc facilitator (IFAR, CLAE) – Settlement agreement

- The American Professor read in the press about the Feldmann art collection and about the dire fate of Arthur Feldmann. She learnt from a Rembrandt catalogue *raisonné* that the drawing “The Liberation of Saint Peter from Prison” belonged to the Feldmann collection before the war<sup>5</sup>. She did not wish to keep “a drawing with such a painful history”<sup>6</sup> and called on the not-for-profit International Foundation for Art Research to assess whether the drawing she had inherited was the one looted by the Nazis from the collection of Arthur Feldmann<sup>7</sup>. The

<sup>1</sup> On this case see Anne Laure Bandle, Raphael Contel, Marc-André Renold, “Case 4 Old Master Drawings – Feldmann Heirs and the British Museum,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

<sup>2</sup> See Sharon Flescher, “British Museum Exhibits 5 Drawings Once Looted from Feldmann Collection,” *IFAR Journal* Vol. 9, No. 1 (2006), 14.

<sup>3</sup> See Dalya Alberge, “Gift of Art to Atone for Looting by Nazis,” *The Times*, December 2, 2004, accessed May 16, 2012, <http://www.timesonline.co.uk/tol/news/uk/article397892.ece>.

<sup>4</sup> Sharon Flescher and Gertrude Wilmers, “American Owners Restitute Nazi-Looted Drawing to Feldmann Family – IFAR Acts as Intermediary,” *IFAR Journal*, Vol. 7, No. 2 (2004): 12.

<sup>5</sup> *Ibid.*

<sup>6</sup> Alberge, “Gift of Art to Atone for Looting by Nazis.”

<sup>7</sup> *Ibid.*

professor further asked the Foundation to assist her in returning the artwork, if it was established that the drawing had been actually looted<sup>8</sup>.

- IFAR was able to establish the drawing's provenance and confirmed the professor's suspicions by presenting satisfactory evidence. The Foundation then contacted the CLAE, who had worked closely with the Feldmann heirs for years and supported their quest to seek out artworks the family had previously owned.
- Thanks to the assistance of both IFAR and CLAE, a settlement agreement was reached with the heirs on the drawing's restitution, the exact result the American professor had hoped for.

### III. Legal Issues

#### Ownership

- The restitution of the painting was based on moral considerations, rather than legal ones. The possessor did not take action in order to obtain a declaratory court decision so as to "quiet title" against possible restitution claims<sup>9</sup>. To the contrary, she simply asked IFAR to determine whether the painting had belonged to Arthur Feldmann and whether it was looted by the Nazis.
- From a strictly legal point of view, it can be argued that the professor's property title could not be challenged through a lawsuit given applicable acquisitive prescription and time limitation provisions under Dutch law<sup>10</sup>. However, as mentioned above, such defences were never raised by the professor<sup>11</sup>.

### IV. Adopted Solution

#### Unconditional restitution

- The professor formally agreed on the restitution of the drawing to the heirs. She asked for no monetary compensation. She only asked that her name not be disclosed.

### V. Comment

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<sup>8</sup> Flescher, "British Museum Exhibits 5 Drawings Once Looted from Feldmann Collection," 13.

<sup>9</sup> Museums have initiated legal proceedings to have their ownership title over artworks confirmed by a court decision; see Alan Feuer, "A Lawsuit Will Determine the Fate of 2 Picassos," *New York Times*, 18 December 2007, accessed May 22, 2012, <http://www.nytimes.com/2007/12/18/nyregion/18picasso.html>; David Glenn, "Peru v. Yale: A Battle Rages Over Machu Picchu," *The Chronicle of Higher Education*, April 3, 2009, accessed May 22, 2012, <http://chronicle.com/article/Peru-v-Yale-A-Battle-Rage/13277>.

<sup>10</sup> Considering that the painting had been bought by the professor's father in Amsterdam, a judge would have very probably applied Dutch law when assessing the validity of the acquisition of title, even under American choice of law rules; see Flescher et al., "American Owners Restitute Nazi-Looted Drawing to Feldmann Family," 13.

<sup>11</sup> Ibid.

- The complete spontaneity with which the American professor sought an assessment of the drawing's provenance and its restitution makes this case remarkable.
- The professor's "unprecedented initiative" was the driving power that enabled the return of the painting to the heirs with the substantial support of both IFAR and CLAE. Her efforts show that the work of international institutions and conferences striving to raise greater public awareness on the matter of Nazi looted art bears promising fruit.
- Such spontaneous initiative also sheds light on one of the main practical hindrances Nazi looted art victims and their heirs face when requesting the restitution of looted property: the difficulty of establishing proof of former proprietorship and the involuntary relinquishment of the property due to Nazi prosecution. The help of specialized institutions can be crucial to facilitate the success of Holocaust Era-related restitution claims.
- Noticeably, the Feldmann heirs decided, of their own volition, to donate the painting to the British Museum, as a gesture of gratitude "to the British people", who, as said by Uri Peled, "enabled my parents, my then 2-year-old sister, and a couple of other members of our family to find refuge from the Nazis"<sup>12</sup>. Given the outcome, this case stands above any debate on the conflict between individual and collective ways to reappraise the past. While the professor was morally satisfied with the painting's restitution and did not follow any materialistic incentive, the Feldmann heirs' interests were well met by the professor's recognition of the harm caused to their family. Also, by not pursuing any materialistic motivation, they passed the artwork on to a public museum.

## VI. Sources

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### b. Documents

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<sup>12</sup> Flescher et al., "American Owners Restitute Nazi-Looted Drawing to Feldmann Family," 14.

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