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## Case Nähschule – Max Silberberg Heirs and Bündner Kunstmuseum Chur

*Max Silberberg – Bündner Kunstmuseum Chur – Artwork/oeuvre d'art – Nazi looted art/spoliations nazies – Negotiation/négociation – Settlement agreement/accord transactionnel – Ownership/propriété – Unconditional restitution/restitution sans condition*

*The painting, “Nähschule – Arbeitssaal im Amsterdamer Waisenhaus” by Max Lieberman, was bequeathed to the Art Museum in Chur (Bündner Kunstmuseum Chur) in 1992, and was claimed in 1999 by the heir of Max Silberberg. The Jewish art collector was forced to sell it in 1934 due to great financial pressure under the growing persecution of Jews at the prelude to the Second World War. In May 2000, the Art Museum in Chur agreed to an unconditional restitution of the painting to the heir.*

*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

- **1934: Max Silberberg**, a wealthy industrialist and art collector, is forced to sell a large part of his belongings as he is under great financial pressure due to work prohibitions for Jews. Through the art dealer **Bruno Cassirer**, he sells the painting “*Nähschule – Arbeitssaal im Amsterdamer Waisenhaus*” (Sewing School – The Workroom of the Amsterdam Orphanage) by **Max Liebermann** (1876) for 16,000 RM to **Adolf Jöhr**, former general director of the Swiss Credit Institute and a great art collector.
- **1937**: The painting is exhibited in art galleries in Bern and Basel.
- **1992**: Subsequent to Adolf Jöhr’s death, his wife **Marianne Krüger-Jöhr** inherits the painting, which is transferred to the **Art Museum in Chur (*Bündner Kunstmuseum*)** at his bequest.
- **August 1999**: Max Silberberg’s daughter-in-law and sole heir, **Gerta Silberberg-Bartnitzki**, addresses a **restitution request** to the museum by her attorney in Berlin.
- **October 1999**: The museum informs the attorney that it accepts the restitution request unconditionally. However, new information is discovered on the painting’s provenance contesting Silberberg’s ownership of the painting prior to the Second World War. The information leads the museum to reconsider its restitution decision.
- **May 2000**: After examining the new material, the museum confirms its first approval and agreed for the restitution of the painting to the heir.
- **18 October 2000**: The painting is sold at Sotheby’s London for EUR 539,884.

## II. Dispute Resolution Process

### Negotiation – Settlement agreement

- Through her attorney, Gerta Silberberg simply sent a letter to the museum, asking for the restitution of the painting which was supported by the relevant documentation. The museum immediately responded by announcing that the case would be examined in a special meeting of the museum board. Presumably without any further involvement of Gerta Silberberg, the museum came to a positive decision.
- New information was then communicated to the museum by the attorney of the Jöhr family regarding the provenance of the object, relying on the *catalogue raisonné* of Max Liebermann’s work by Matthias Eberle (1996). The information ultimately turned out to be false and the original settlement agreement stayed in place.

### III. Legal Issues

#### Ownership

- The restitution of the painting had been based on moral considerations, rather than legal ones. Information on legal considerations of the museum providing an incentive for the restitution of the painting is scarce. However, at court, the Silberberg heir could have questioned the validity of the museum's property title by asserting that it may have not been in good faith when acquiring the painting.
- Nonetheless, it is reportedly the aim of the Art Museum Chur, to address such restitution claims in a "rapid and unbureaucratic"<sup>1</sup> manner in order to set an example for other museums to follow the Washington Principles of 1998.

### IV. Adopted solution

#### Unconditional restitution

- The Art Museum in Chur agreed to the unconditional restitution of the painting to the Silberberg heir.

### V. Comment

- In view of the good faith acquisition by the Art Museum in Chur of the painting and of the prerequisites for the admission of a restitution claim, Gerta Silberberg's case would have been difficult to bring to court.<sup>2</sup>
- As stated above, the Art Museum in Chur felt compelled to confront a moral duty and to comply with the Washington principles, so that other museums and private collections still acting with great hesitation would follow suit.<sup>3</sup>
- The reactions to this voluntary restitution by the public were mostly positive.<sup>4</sup>

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<sup>1</sup> Beat Stutzer, "Zur Restitution eines Max Liebermann-Gemäldes durch das Bündner Kunstmuseum," *Kunst und Recht KUR* 3/4 (May- August 2009): 105.

<sup>2</sup> See also Gunnar Schnabel and Monika Tatzkow, *Nazi Looted Art – Handbuch Kunstrestitution weltweit* (Berlin: Proprietas Verlag, 2007), 404.

<sup>3</sup> As reported in Beat Stutzer, "Zur Restitution eines Max Liebermann-Gemäldes durch das Bündner Kunstmuseum," *Kunst und Recht KUR* 3/4 (May- August 2009): 105.

<sup>4</sup> *Ibid.*

## VI. Sources

### a. Bibliography

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### b. Legislation

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### c. Documents

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### d. Media

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