
The Holocaust Expropriated Art Recovery Act: A Brief Background

The Problem

- During the Third Reich, “the Nazis stole hundreds of thousands of artworks from museums and private collections throughout Europe, in what has been termed the ‘greatest displacement of art in human history.’”¹
- In 1998, the United States convened an international conference affirming that “steps should be taken expeditiously to achieve a just and fair solution” to claims involving Nazi-confiscated art.²
- In 2009, the United States, along with dozens of other countries, issued the Terezin Declaration, which urged the signatories “to ensure that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties.”³
- Despite these representations, the United States has not fulfilled its promise to ensure that claims to Nazi-confiscated art are resolved on their merits. As the U.S. Court of Appeals for the Ninth Circuit observed, “[m]any obstacles face those who attempt to recover Holocaust-era art through lawsuits,” including “procedural hurdles such as statutes of limitations” that prevent the merits of claims from being adjudicated.⁴
- Because of the unique and horrific circumstances of World War II and the Holocaust, time-based, non-merits defenses are especially burdensome and unfair obstacles to the victims and their heirs who must piece together their cases from a fragmentary historical record ravaged by war and genocide. In some cases, the statute of limitations may have resulted in the expiration of claims before the war even ended.⁵

The Need for Federal Action

- Federal action is needed to guarantee that the United States fulfills the commitments it has made to the families of Holocaust victims.
- The execution of foreign policy and the resolution of war-related disputes are matters within the exclusive domain of the federal government. Indeed, state efforts to provide similar statute-of-limitations relief at the state level to accommodate claims involving

¹ *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 957 (9th Cir. 2010) (quoting Michael J. Bazylar, *Holocaust Justice: The Battle for Restitution in America’s Courts*

² Principle 8, Washington Conference Principles on Nazi-Confiscated Art, <http://www.state.gov/p/eur/rt/hlcst/122038.htm>.

³ Prague Holocaust Era Assets Conference, Terezin Declaration, <http://www.state.gov/p/eur/rls/or/126162.htm>.

⁴ *Von Saher*, 592 F.3d at 958.

⁵ See, e.g., *Detroit Institute of Arts v. Ullin*, No. 06-1033, 2007 WL 1016996 (E.D. Mich. Mar. 31, 2007).

Nazi-confiscated art have been held to violate the Constitution. In *Von Saher v. Norton Simon Museum of Art*, 592 F.3d 954 (9th Cir. 2009), the Ninth Circuit invalidated a California law that enlarged the state limitations period specifically for Nazi-confiscated-art claims. The court held that the law was an unconstitutional infringement of the federal government’s exclusive authority over foreign affairs.

- Given the federal government’s repeated promises, the patchwork of state laws that too often prevent the resolution of claims on the merits, and the inability of states to address the problem, the enactment of a federal law is the best way to ensure that claims to Nazi-confiscated art are fully and fairly adjudicated on the merits.

The Solution

- The HEAR Act would ensure that claims to Nazi-confiscated art are not unfairly barred by statutes of limitations and other similar time-based, non-merits defenses.
- To do this, the bill creates a 6-year statute of limitations for claims to recover art that was lost due to theft, seizure, forced sale, sale under duress, or the like because of racial, ethnic, or religious persecution by the Nazis or their allies during the period from January 1, 1933, to December 31, 1945.
- The limitations period commences upon “actual discovery” of (1) the identity and location of the art that was unlawfully lost, and (2) information or facts sufficient to indicate that the claimant has a possessory interest in the art.
- The 6-year limitations period under this bill applies to any claim that (1) is pending on the date of enactment, including any claim that was dismissed but for which the judgment is not yet final, or (2) is filed after enactment but on or before December 31, 2026. Claims filed after that date will not have the benefit of the HEAR Act limitations period.
- The HEAR Act precludes any other applicable federal or state statutes of limitations or other time-based defense, including laches.



Maria Altmann, the niece of Adele Bloch-Bauer with a reproduction of one of the two Klimt paintings that were stolen by the Nazis. (Lawrence K. Ho, *Los Angeles Times*)



An allied soldier views artworks looted by the Nazi regime and discovered in a church at Ellingen, Germany, 1945 (REUTERS)