Comment written by Advocate Joel Levi about the **Loan Of Cultural Properties Law**

In the first months of 2004 the Israel Museum in Jerusalem conducted negotiations with the Museums Authority in France in order to receive artistic works on loan. It is known by all that in the years after the end of the Second World War France sold thousands of paintings that were stolen from the Jews and no-one knows to whom they were sold and where they are. After many protests, the owners of some 18,000 works were located, which were returned to their owners.

In July 2004, 2,000 works remained in France, of which there were 1,000 paintings and 1,000 sculptures that were not returned by the French Government. Of these an offer was made to the Israel Museum to receive on loan 14 paintings in order to display them.

As a condition for lending the paintings, the French Government wished to ascertain that there would be a law in Israel that would ensure privilege against any claims whatsoever relating to the ownership of the paintings during the loan period.

On 22nd August 2004 the Ministry of Justice circulated a Law Memorandum, according to which an agreement would be signed to lend the paintings to cultural institutions in Israel, that would be stipulated **[JL - is this correct or "given"?]** with the Minister of Justice's consent; this Memorandum included a clause as follows:

"An agreement shall not be signed save with the Minister of Justice's prior written approval after having consulted with the Minister of Foreign Affairs and the Minister of Education, Culture and Sport."

A short time thereafter the JTA News Agency published a news item that France and Israel were about to sign an agreement for the permanent loan of 14 artistic works whose owners or whose entitled heirs the French Government had not succeeded in locating.

The importance of the agreement, according to a statement of a senior official of the Government of Israel, is rooted in the fact that it would be provided therein that the State of Israel is the heir of the Jews who died in Europe during the Holocaust period.

On 15th February 2005 the Proposed Law was published in Reshumot and on 8th April 2005 the Proposed Law was presented to the plenum of the Knesset by the then Minister of Justice, Ms Zippi Livni. The Proposed Law no longer contained the clause

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that prohibited the signing of the agreement for the loan of works without the Minister of Justice's consent.

Knesset members were harshly critical and MK Colette Avital, who had served in a diplomatic position in France, gave a lengthy speech at the time of the discussion. It was *inter alia* stated in the speech (see the Knesset Records dated 8th March 2005):

"We know that there are 2,000 works. We know precisely to whom they belong... The French Government is not prepared to recognise a legal personality that is called the Jewish Community in France. Since the French Government is not prepared to recognise this legal personality, it states that it will not return the works; it will do us a favour and give the Israel Museum 14 works and thereby will absolve itself from all blame and from all responsibility... Madam Minister of Justice, this Law absolves persons who stole property of the Jewish people from any responsibility and any blame... I know that there were discussions about this, I know that the Ministry of Foreign Affairs objected to it. I propose that the vote should be postponed to another date." **[JL - is this the correct way of splitting this paragraph?]**

The date of voting was postponed, but on 20th December 20005 the Proposed Law was approved on first reading without objection (one abstainer).

On 19th December 2006 the Education, Culture and Sport Committee began preparing the Law for second and third reading. The Committee's chairman, MK Rabbi Michael Melchior, conducted four committee meetings, During the meetings a comparison survey was presented to the Committee on behalf of the Knesset Research and Information Centre, and a letter of Michael Carl **[JL - correct spelling?]** to the Minister of Justice in England, which was sent on 30th October 2006 in anticipation of a discussion that was conducted there with regard to a similar law, was presented. Part of this letter was included in the Queen's speech to the House of Lords (the wording of the letter is set forth at the end of this article).

During the course of the discussions a form of wording was formulated that would prevent displaying works that had been stolen, but the form of wording that was approved by the Knesset on second and third reading (without objection) and published in Reshumot on 1st March 2007 lacked the components that are customary in similar laws that were enacted in other countries.

Firstly, the Law did not negate a permanent loan and the possibility of claiming the loaned work was thereby thwarted.

Moreover, according to the norm the loan of works is limited to a period of up to only 12 months save that where the Minister has issued a jurisdiction restriction order, it is

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no longer possible to cancel the order in consequence of the transfer of ownership of the property under the camouflage of a permanent loan.

Secondly, an alternative instance is defined as an appropriate legal instance, while in the absence of a mechanism that is available to the Ministry of Justice to examine the alternative instance threshold condition, such as prescription (it must be recalled that all the works were stolen more than some 70 years ago), there is a grave apprehension that jurisdiction restriction orders will be issued without an in-depth examination, such as the one that is required in any case of a loan of artistic works.

Last but not least: the Holocaust Victims' Property (Return to Heirs and Endowment for Objects of Assistance and Commemoration) Law, 5766-2006, received a grave blow by section 8 of the Loan of Cultural Properties Law which provided that the Victims' Property Law will not apply to a cultural asset in respect whereof a jurisdiction restriction order has been granted.

In the objects section, according to which a loan of cultural assets would not prejudice assertions of the Jewish People with regard to the rights in the properties stolen in the Holocaust, the moral problems involved in displaying stolen works received expression.

It remains for us to see whether the Ministry of Justice will make regulations within 60 days as prescribed in the Law. Involved is the publication of the Minister of Justice's notice of the intention to issue a jurisdiction restriction order and how an objection to such an order must be submitted.

This is also the central reason why great care must be taken prior to issuing a jurisdiction restriction order as detailed in the Law.

Set forth below is the wording of Mr Michael Carl's letter to the Minister of Justice in England on this matter.

"On 26th October 2006 I was kindly sent by DCMS a copy of their Consultation Paper on Anti-Seizure Legislation ('CP') together with a document Consultation On Anti Seizure Legislation: Summary of Responses ('SR') and an invitation to comment.

My observations are as follows:

I note from that the proposal is regarded by the DCMS as urgent (reference is made to a request by Prof. Piotrovsky of the Hermitage Museum) and that the normal consultation period had already been reduced from 12 to 9 months, ending in late May 2006. I also note from the list of respondents attached to SR that out of the 23

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respondents 17 are museums and collections with vested commercial interests in loans from foreign sources, the remainder being made up by dealers or auctioneers and only one academic lawyer. None of the likely claimants involved in potential recovery actions is included and there are no indications that any have been invited to comment. I question therefore whether any meaningful consultation has been conducted. The CP sets out in convincing form the commercial advantages hoped to be gained by excluding foreign based loaned exhibits which have been identified as useful to include in a UK based exhibition, but which are subject to claims by third parties, private individuals, museums or States, because of theft or war loot, from the ordinary Rule of English law, including protective injunctions not available in the country of origin. It claims that Britain is forced to do this because it would be at a competitive disadvantage internationally if it did not. Here again, the argument only concerns commercial issues. The CP in my view fails completely to identify and deal with the effect of such legislation on the holders of claims to such items as well as the respect of the public for property rights in general and national or personal cultural heritage in particular. What is missing by necessity in both the CP and SR is the real issue, namely the moral basis for what in effect will be a Government passport for the handling of stolen and looted art for profit. And all that for a few additional exhibits which can be seen in their present location thanks to cheap air travel?

Britain has been lucky in not having lost substantial parts of its cultural heritage as the consequence of war or occupation. Nevertheless, the interests of the victims of such acts are well known and generally accepted as a moral mortgage of our common past. The redress of spoliation is at the top of the proclaimed agendas of all civilized governments. There are two reasons for this necessary stance: Firstly the recognition that respect for the cultural symbols of the vanquished and robbed is in the long term interest of the victor (Cicero, In Verrem II) and secondly the fact that one of the few available preventative strategies consists in exposing and shaming whoever is knowingly in possession of ill gotten art. The proposed legislation will have the opposite effect. It will encourage the potential loan of a babylonian tablet stolen or illegally exported during the Iraq war and 'needed' for an exhibition in Britain. The shame will be on Britain as a collaborator of the successors in possession of looted or stolen cultural objects.

Most countries with a written constitution have clear guarantees of the right of ownership. Curtailments are only possible for a compelling reason in the interest of society as a whole, that can not be met in any other way (e.g. a road building scheme) and only against fair compensation. The addition of a suitable painting to an art exhibition cannot possibly have the required status. (For this reason I would also expect the German legislation, to which reference is made, to be declared unconstitutional, if a case came before the Federal Constitutional Court.)

Prior to this proposed legislation Britain enjoyed internationally a re-gained respect for dealing diligently with art loot claims, in particular by using the limitation periods and due diligence requirements prudently and thereby preventing the cementation of

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illegally acquired rights. If the state itself is seen to plan in-roads on these last-resort remedies of the otherwise frustrated claimant it will itself have extended the zone from which the rule of law has been excluded. Its own citizens will not understand why this sacrifice of justice is made. They will certainly not understand why this sacrifice of principle should be made for a few pretty pictures on loan from a dubious source for a few weeks. At stake is the innocence of viewing art. Even the emperor Vespasianus, when holding the pound coin gained from such an exhibition to his nose would have said: OLET! "

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