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Lenin's Spoils Given Pass by U.S. Officials Exhibit Reopens Wounds For Heirs of Art Patron

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Andre-Marc Delocque-Fourcaud doesn't expect to see Cezanne's "Pierrot and Harlequin" on the walls of his home in Angouleme, France. But it galls him to see it reproduced in glossy ads promoting a show that's about to open at the Museum of Fine Arts in Houston.

"Pierrot and Harlequin," painted in 1888 and never before exhibited in the United States, once was a prized possession in the collection of Delocque-Fourcaud's grandfather, the Moscow merchant and art patron Sergei Ivanovich Shchukin. The collection was confiscated without compensation in 1918 by a decree signed by Vladimir Lenin. Now the Cezanne, along with 23 other works from the Shchukin trove, is among 76 paintings in the exhibition "Old Masters, Impressionists and Moderns: French Masterworks from the State Pushkin Museum, Moscow" set to open today in Houston and then travel to Atlanta and Los Angeles.

Delocque-Fourcaud, as was the case with his mother, Irina Shchukina, before him, has been unable to recover the art or obtain compensation from the Pushkin or from the Hermitage in St. Petersburg, which also has Shchukin paintings.

Since 1995, in the wake of the collapse of the Soviet Union, the U.S. government has pushed East European nations aggressively to reverse state confiscations, contending that victims of both Nazism and communism are entitled to recover assets that were expropriated without due process or compensation.

But the State Department has not pressed Russia to return the spoils of the Communist Revolution, and in August it granted the art loaned by the State Pushkin Museum immunity from judicial seizure on grounds that the exhibition is culturally significant and therefore in the national interest.

U.S. policy, except in the case of the art confiscated after the Russian Revolution, has been consistent. Restitution was among the benchmark measures used to assess the progress made by Central and Eastern European nations aspiring to join the European Union and NATO. "We do believe we have a right to expect that if they're going to be a part of NATO, they will have adopted Western standards in terms of property restitution," Stuart Eizenstat, then undersecretary of state, told the House International Relations Committee in 1998.

That Clinton-era policy was reaffirmed by the Bush administration last July. "The United States government has continually and specifically stressed to them that uniform, fair and complete restitution [of confiscated properties] is a prerequisite both to adequate establishment of the rule of law and to the safeguarding of religious and minority rights and freedoms," the State Department's Special Envoy for Holocaust Issues, Randolph M. Bell, told the Helsinki Commission. "We have stressed that, in joining the Euro-Atlantic mainstream and applying for membership in multilateral organizations, these countries are seeking to join a community of values."

But Russian seizures from the revolution get a pass. "You can't undo the omelet from 1917-1918," Eizenstat said in an interview.

Delocque-Fourcaud, 60, fails to see the distinction. "The fact that the thief is Lenin does not excuse the theft," he said by phone from France. The Shchukin heirs say they want to see the collection reunited under one roof and the "artistic achievement" of Sergei Shchukin acknowledged. The family has declined to specify how much, if any, compensation it seeks.

A former U.S. official with extensive knowledge of U.S.-Russian relations explained that demanding restitution could open a Pandora's box that could dismantle all Russian museums. Further, he added, no one wanted property claims to interfere with important diplomatic and security considerations.

Confiscation in 1918

Sergei Shchukin assembled an extraordinary assortment of primarily French art, patronizing artists who were reviled by the conservatives of their era. His collection, which now has an estimated market value of \$3 billion, included 50 Picassos, 37 Matisses, 16 Gauguins, 16 Derains, 13 Monets, as well as works by Cezanne, Degas, Marquet and van Gogh. Shchukin's fellow merchant-patron, Ivan Abramovich Morozov, had an equally impressive collection of more than 130 paintings, many by the same artists.

In November 1918, Shchukin's collection and his home in Moscow, the Trubetskoi Palace, became the world's first museum devoted to modern art, the "First Museum of Modern Western Painting," under Decree 851, signed by Lenin. A month later, Morozov's collection was seized and his mansion became the "Second Museum of Modern Western Art."

Shchukin was 63 in 1918 when he fled Moscow; he died in Paris in 1936, 10 years after he had made a French will leaving "all his belongings" to his three children.

In 1948, the collections -- which had been moved out of the mansion for protection during World War II -- were divided between the Hermitage and the Pushkin.

It was not until 1954 that the Hermitage reopened its collection of Western art to the Soviet public. It also began exhibiting art abroad, sending 37 paintings to Paris, including some from Shchukin's collection. But the exhibition was closed and the paintings returned to Russia when Irina Shchukina, the collector's youngest daughter, brought legal action.

Nearly 40 years later, still trying to assert her claim to her family's art, she discussed that lawsuit in a letter to Russian President Boris Yeltsin. "It was clear that my action embarrassed the French government as much as [Soviet leader Nikita] Khrushchev," she wrote.

Now that the Soviet Union had disappeared, it was time to confront the past, she wrote to Yeltsin. "It had been the wish of my father to transform the [Trubetskoi] Palace into a museum and give it to Moscow, which he loved so much." While she agreed that the collection should be kept in Russia, she also felt that the Shchukin family should not be insulted. She called on Russia to retract the decree of 1918; the family would then transfer the works to Moscow if some "sensible" but unspecified conditions were met.

However, if Russia refused to open a discussion, she said, she would consider herself "liberated" from all obligations. "Consequently, every time that a piece of the Shchukin collection should happen to be in a state whose laws do not recognize confiscation without compensation of someone's property, I will file suit to get my goods back, starting with France."

There was no answer. Shchukina filed suit to impound exhibition catalogs soon after, when a Matisse exhibition opened at the Pompidou Center. A French court in March 1993 rejected her claim, saying in part that the court was not competent to rule whether the Soviet Union's confiscation was "a violation of such gravity that it could be reversed in France." However, according to the Institute of Art and Law in Leicester, England, her suit left unresolved several legal issues that could affect international art loans, including whether the 1918 Russian nationalization decree constituted theft, and whether the loan of artworks for exhibitions were commercial ventures that should be covered by sovereign immunity.

Shchukina died in 1994. Six years later, her son was passing the Trevi Fountain in Rome when he saw, strewn around the plaza, paper bags bearing the image of Matisse's "La Danse," a well-known painting that Shchukin originally commissioned as a mural for his Moscow mansion. The bags had held souvenirs from an exhibition at the Quirinal Gallery of 100 masterpieces on loan from the Hermitage.

"I had a completely instinctive reaction," said Delocque-Fourcaud, who works as the director of France's National Cartoon Museum, travels to Russia frequently and speaks fluent Russian. "The next day I was in the office of a Rome attorney."

Delocque-Fourcaud wanted a local magistrate to impound the Matisse, contending that the painting had been illegally seized in 1918. However, before the magistrate ruled, the painting quickly was spirited back to St. Petersburg.

He has not challenged all loans. He took no action, for instance, when Shchukin paintings appeared at the 2001 opening exhibition of the collaborative museum of the Hermitage and the Guggenheim Foundation at the Venetian Hotel Casino in Las Vegas. "I should have sued the Guggenheim, the Venetian, the sponsors, for exploiting illegally confiscated property," said Delocque-Fourcaud. "Unfortunately, to challenge such powerful foes requires money. I have the salary of a civil servant."

A Persistent Problem

In seeking immunity for international art loans, an institution must show it did not know of competing claims for the works. The Houston museum told the State Department in its application for immunity earlier this year that it was unaware of competing claims.

Asked about the long-standing Delocque-Fourcaud claim, a State Department lawyer said, "We have to accept the word of the borrowing institution." However, she added, "competing claims will not necessarily deny a request. We believe it was Congress's intent to facilitate exchange . . . Without that, all we'd get to see would be items with no competing claims, and we'd be the worse off."

"The temporary immunity does absolutely nothing to the competing claim. It simply does not improve the competing claimant's position by giving him the opportunity to attach the items while they are in this country."

The curator of the Houston exhibition, Janet Landay, went further. "We are aware that the Shchukin heirs have made claims in the past," she said. However, she said, the museum thought they were invalid. "The Museum of Fine Arts, Houston, along with all the governmental authorities involved, is comfortable with the fact that the Russian government legally owns these paintings, and that they rightfully belong in the Pushkin museum."

Yet, according to experts in the field, the matter is not so clear.

"The issue of confiscated property is a persistent one," said J.D. Bindenagel, who served as the State Department's Special Envoy for Holocaust Issues from 1998 until 2002. "Confiscated property never goes away until it finds its rightful owner and that could be 100 or even 200 years. The property of victims of communism is a subject that could be addressed as those nations create property law, as they are doing to join the European Union."

Victims' advocates contend that if the United States presses for the rights of people who had been deprived of their properties for 40 years under communism, there is an equally compelling claim for aiding those who had been deprived for more than 80 years.

"I don't see a fundamental difference between an illegal seizure by one regime and the illegal seizure by another regime," said Willi Korte, an internationally renowned art investigator from Silver Spring.

"I do not want to minimize the scope of the evil of the Nazi regime, but that does not mean I can condone the seizure by the Bolsheviks. We should not be blind in one eye," said Korte, who recovered the medieval Quedlinburg church treasures, which had been looted by an American soldier stationed in Germany during World War II.

However, diplomats say they focus on restitution by post-war Eastern European governments because communism was imposed in these states by Soviet rule, while the Russian confiscations resulted from a domestic revolution and thus achieved a kind of legitimacy.

"The Shchukin [claim] is a tiny drop in a huge problem that is very complicated," said Greg Guroff, president of the Foundation for International Arts and Education, which arranged the loan between the Houston and Moscow museums. The Bethesda-based foundation was created by old Soviet hands to help cultural organizations in the former Soviet Union survive and protect their collections, said Guroff, who was the cultural attache at the U.S. Embassy in Moscow from 1980 to 1985.

"Would anybody support a return to czarist Russia? It is a quagmire," said Guroff, whose family also lost property -- a hotel in Odessa -- to Soviet nationalization. "There is a statute of limitations; there must be somewhere, or when will the heirs of the pharaohs begin to claim the pyramids?"

The United States did not recognize the Soviet government's acts of expropriation and nationalization in the wake of the Russian Revolution, which was one of the reasons it refused to recognize the Soviet government until 1933. However, it has been long-standing U.S. policy that artworks on loan from the former Soviet republics remain exempt from seizure because "the legitimate interests of these two states are served by not having legal adjudication in the American courts," said the former U.S. official.

Immunity, in effect, makes it impossible to test these claims in a U.S. court.

"Under our social values, uncompensated takings are highly disfavored," said Thomas Kline, an attorney at Andrews & Kurth in Washington who, with Korte, has handled high-profile cases involving plundered cultural properties. "As such, our laws do not allow uncompensated takings to occur within our borders, nor do we support such takings in the international community. However, as a legal principle, our courts do not have an unfettered right to review takings that occur within the borders of another sovereign nation."

Neither the Pushkin nor the Hermitage responded to requests for comment for this story. Mikhail Piotrovski, the director of the Hermitage, reportedly told a colleague in Ontario recently that he

was exploring ways to share residual benefits from the artworks with the collectors' families. That was news to Delocque-Fourcaud. After he made the claim in Rome, he said, "Piotrovski declared on St. Petersburg TV that he didn't want to have anything to do or say to 'that man' -- me."

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