

[unofficial translation]

The Advisory Board, pursuant to § 3 of the Federal Law of 4 December 1998, Federal Law Gazette 181, has, in its meeting on 7 December 2007, unanimously adopted the following

#### RESOLUTION

The Federal Minister of Finance is recommended to return the subject painting cited in the attached dossier, denoted with “Lothar Egger-Möllwald”:

Albin Egger-Lienz, *Der Flösser* (“The Rafter”)  
75 x 100 cm  
with gold frame

from the collection of the State Finance Directorate to the heirs of Lothar Egger-Möllwald.

#### RATIONALE

The material object of this report is a painting by Egger-Lienz, which has come from the collection of Lothar Egger-Möllwald into the possession of the federal government. This object is cited in the attached dossier, compiled by the Commission for Provenance Research. The Advisory Board assumes the accuracy and thoroughness of this dossier.

Lothar Egger-Möllwald was persecuted on the basis of his attitude towards the Nazi authorities; his spouse on the basis of her descent. The Möllwald couple emigrated to Italy in 1938, while their assets, including the subject painting, remained in Austria. In order to prevent the dispossession of Eveline Egger-Möllwald, she transferred her assets, including a property on, Reisnerstraße 59, Vienna 3rd District, to her spouse. For similar reasons, he appointed a non-Jewish heiress in his will, the Italian Elena Baroli. Lothar Egger-Möllwald died on 7 August 1941 in Italian exile; his wife died on 10 March 1944.

In consideration of the facts presented, there can be no doubt that the described transfers of property were null and void transactions according to § 1 of the Federal Act of 15 May 1946, Federal Law Gazette 106. The Restitution Commission of the Vienna Regional Civil Court took this judgment as the basis for its decision of 1949, which led to the restitution of the aforementioned property to the sons of Eveline Egger-Möllwald. Not mentioned in this restitution decision, however, were any movable property and art objects.

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In the course of the research carried out with the support of the Provenance Research Commission into the provenance of artworks in the possession of the municipality of Lienz (Schloss Bruck Museum), it was found that the painting “The Rafters” by Albin Egger-Lienz is currently in the possession of the State Finance Directorate for Vienna, Lower Austria and Burgenland. According to the determination of provenance research, Egger-Lienz painted this subject in only one version, and this painting is included in the valuation list of 29 September 1941, pertaining to the “pictures from the estate of Mr. Lothar von Egger-Möllwald, Reisnerstraße 59, Vienna 3rd District” (cf. Appendix 18/5). From the markings on this list, it can also be derived that the painting was one of those that belonged to the then-deceased Lothar Egger-Möllwald and were released to Ms. Baroli (Appendix 19). These released pictures were most likely stored until the end of the war in the Viennese shipping agency Dworak and taken in August 1945 by the U.S. military government to be used for the furnishing of various villas in Vienna. Regarding the further whereabouts of the subject painting up until its appearance in the State Finance Directorate in 1955, nothing is known. On the request of the Provenance Research Commission to the Federal Ministry of Finance dated 9 February 2006, it was stated that the painting was inventoried on 14 February 1955, its stock value was given at ATS 5,000. Furthermore, it was explained by the Federal Ministry for Finance: “The facts of the inventory (stock value) suggest, after the appraisal by the relevant authority, that it is in this case not likely to have been a loan from the Federal Picture Library, but rather a transfer of ownership. Also on the back of the picture, it is noted as the property of the State Finance Directorate (FLD).”

As stated above, the property transfers of the Egger-Möllwald couple were undoubtedly null and void, just as the de facto confiscation of the property of the Egger-Möllwald couple was a null and void transaction in the sense of the 2nd element of § 1 of the Restitution Act. As a result of the non-assertion of claims under the restitution legislation, the federal government lawfully acquired ownership of the painting by Egger-Lienz according to Article 22 of the State Treaty in conjunction with the 1st State Treaty Implementation Act.

Therefore, the presupposition of facts of the elements of § 1, Line 2 of the Restitution Act, namely a property transfer to be considered as null and void and a subsequent legal transfer of ownership by the government, is present. The elements of § 1, Line 2 of the Restitution Act are met and the above recommendation was given to the Federal Ministry for Education, the Arts and Culture.

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According to its wording, the authority of the Art Restitution Act applies only to “works of art from Austrian federal museums and collections, including the collections held by the Federal Furniture Administration.” From the explanatory notes (BeilNR XX. GP RV 1390, to § 1) it is apparent that the lawmakers understood “collections” to be the “subdivisions of the federal museums”. The painting, inventoried for the State Finance Authority for Vienna, Lower Austria and Burgenland, and located in the Hollabrunn financial office, is not part of the collection of an Austrian federal museum, and therefore not covered by the wording of the authority of the Art Restitution Act.

But there can be no doubt that the lawmakers placed greater weight on the existing federal ownership of confiscated art objects of their time than on the concrete place of accommodation for such art objects. Had the lawmakers considered cases like the present one, they would certainly have chosen a more comprehensive formulation for the given place of accommodation. The Advisory Board is therefore of the opinion that in this case, the analogous application of the 2nd element of § 1 of the Restitution Act to the painting inventoried by the State Finance Directorate for Vienna, Lower Austria and Burgenland, and located in the Hollabrunn finance office painting is appropriate.

Vienna, 7 December 2007

Chairman  
University Professor Dr. Clemens JABLONER

[Signatures of the Members]

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