

In accordance with Section 3 of the Federal Law on the Restitution of Art Objects from Austrian Federal Museums and Collections, Federal Law Gazette (BGBl. I) No. 181/1998 as amended by BGBl. I No. 117/2009 (Art Restitution Act), at its meeting of 3 July 2014, the Art Restitution Advisory Board unanimously adopted the following

DECISION

It is recommended to the Federal Minister of Arts and Culture, Constitution and the Civil Service that the objects listed in the Commission for Provenance Research dossier “Nathan Eidinger” (10/2014), namely

1.

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|------------------|----------|--------------------------------------------------|
| 1. H.I. 29.596, | Ke 7842: | porcelain statuette: Harlequin |
| 2. H.I. 29.597, | Ke 7843: | porcelain statuette: girl with sheep |
| 3. H.I. 29.598, | Ke 7844: | porcelain statuette: blacksmith |
| 4. H.I. 29.615, | Ke 7859: | porcelain statuette: yarn seller |
| 5. H.I. 29.616, | Ke 7860: | porcelain statuette: young man with egg hat |
| 6. H.I. 29.617, | Ke 7861: | porcelain statuette: young girl with egg hat |
| 7. H.I. 29.620, | Ke 7864: | porcelain group: girl winding yarn and young man |
| 8. H.I. 29.624, | Ke 7867: | two vases |
| 9. H.I. 29.626, | Ke 7869: | cup and saucer |
| 10. H.I. 29.648, | Ke 7873: | two faience plates: Maria Theresa and Franz |

from the MAK – Austrian Museum of Applied Arts / Contemporary Art and

2.

- the file on the Nathan Eidinger collection

from the Federal Monuments Authority

be transferred to the legal successors *causa mortis* of Nathan Eidinger. The transfer of the objects listed under 1) is subject to the reimbursement by the legal successors in accordance with Section 1.2 of the Art Restitution Act of the equivalent value of the payment received in 1953.

GROUND

The Board has studied the above-mentioned dossier from the Commission for Provenance Research and establishes the following facts.

The Romanian citizen Nathan Eidinger (1878–1945) was the proprietor of sugar factories in Romania and the Cottage-Sanatorium in Vienna. Until his flight, he lived with his family in Vienna, where he also possessed an important art collection.

He was a friend of the former Austro-Hungarian foreign minister Ottokar Czernin (1872–1932), from whom he had taken out a loan in the 1920s, which on Czernin’s death became the object of a legal dispute with his heirs. In 1934 a settlement was made whereby Eidinger was to pay back this loan of 220,000 schillings in several instalments by 1939.

After the annexation, Eidinger and his family were persecuted by the Nazi authorities as Jews. They had to flee to Switzerland. To secure the settlement claims, Czernin’s heirs obtained a temporary injunction on Eidinger’s assets, including the porcelain collection already stored with the transport company. On 12 July 1938, they brought a claim before the Landesgericht für Zivilrechtssachen [provincial court for

civil law matters] in Vienna for RM 200,367. In a judgment of 1 June 1940, the court ordered the payment of RM 45,333.33. Execution of the claim was approved on 6 October 1940.

Previously, by a decision of the Magistrat der Stadt Wien [Vienna City Administration] of 11 May 1939 following an application by the Zentralstelle für Denkmalschutz [Central Monument Protection Office], Eidinger's collection was secured ("8 crates of antique porcelain, 1 crate of bronzes, 1 French side table, 1 portrait by R. A. Mengs and 1 portrait of Freiherr von Trattner by Hickel"). A report from the previous day by the Central Monument Protection Office regarding a visit to Eidinger's apartment in the 1st district of Vienna indicates that the file of his collection, apparently made by Eidinger himself, was also seized and transported to the Central Office.

On 28 October 1941, the lawyer Gunther Spitzzy, representing Czernin's heirs, noted the results of a meeting with the Central Office regarding the execution proceedings carried out by him. His clients undertook to sell art objects from Eidinger's (attached) collection named in a list and stored in the Central Office to museums at a price to be determined by the Central Office. Objects that the museums did not purchase at the fixed price would be available for his clients.

By 2 March 1942, the (then) Staatliches Kunstgewerbemuseum (now MAK – Austrian Museum of Applied Arts / Contemporary Art) had acquired thirty-seven depot numbers from Eidinger's collection, which were listed under thirty-eight inventory numbers. Other objects were acquired by the Steiermärkisches Landesmuseum Joanneum, the Tiroler Landesmuseum Ferdinandeum and the art dealer Marianne Scharmitzer.

Nathan Eidinger died in Zurich on 13 March 1945.

On 10 October 1946 the MAK reported the objects acquired from the collection pursuant to the Vermögensentziehungsanmeldungs-Verordnung [Asset Expropriation Registration Regulation], mentioning the names "Nathan Eidinger [...] and Counts Czernin". In a letter of 4 March 1948, the MAK reported to the Federal Monuments Authority that it had acquired thirty-seven objects named in a list from Eidinger's collection. On 13 January 1950, the lawyers Heinrich Kiwe and Renée Kiwe, representing Eidinger's heirs, asked the MAK whether it would be willing to return the objects, because otherwise they would make an application for restitution. The MAK replied on 18 January 1950 that the objects had been acquired from Ottokar Czernin's heirs and had not therefore been expropriated.

In the subsequent restitution case, the restitution commission at the Landesgericht für Zivilrechtssachen in Vienna adjudged on 24 June 1952 that the objects were to be returned to Eidinger's heirs on payment of 11,572 schillings. The commission noted that Eidinger would not have parted with his art objects if he had not been persecuted and would have met the payment obligations with regard to Ottokar Czernin's heirs. As the loss of the collection was therefore a result of the persecution, the MAK (as second acquirer after Czernin's heirs) was required to return them. An appeal by the Finanzprokuratur [Office of the Financial Procurator] was rejected by the Rückstellungsoberkommission [higher restitution commission] on 31 December 1952.

The MAK, which, after receiving the decision of the first court, had urged the Finanzprokuratur to "take all possible steps to prevent this restitution", wrote to the Federal Monuments Authority on 16 July 1952 asking it to secure the objects to be restituted. The Federal Monuments Authority replied in February 1953, after the appeal had been rejected, that the collection would continue to be secured pursuant to the decision of 11 May 1939, which until it was rescinded precluded the transfer to Eidinger's heirs.

On 2 April 1953, the MAK notified the Federal Monuments Authority that it had come to an agreement with Eidinger's heirs, whereby the MAK would acquire the objects under consideration here that were to have been restituted and "at the same time [waives] the export ban and securing of all other objects".

The acquired objects were valued at 15,200 schillings. The 11,572 schillings to be paid by Eidinger's heirs pursuant to the restitution judgment were deducted from this amount, with the remainder, 3,628 schillings, to be paid by the MAK.

On 13 May 1953, the lawyers Heinrich Kiwe and Renée Kiwe, representing Eidinger's heirs, appealed for the decision of 11 May 1939 to be overturned. The appeal was granted by the Vienna City Administration on 10 July 1953. The seized file remained in the Federal Monuments Authority and was not the object of the restitution claims.

The Advisory Board considered the following:

Section 1.(1).1 and 2 of the Art Restitution Act as amended by BGBl. I No. 117/2009 states:

Section 1.(1) The Federal Minister of Finance shall be empowered to return free of charge to their original owners or their legal heirs, those art objects and other movable cultural assets from Austrian federal museums and collections, including the collections of the Federal Administration of Moveable Objects (Bundesmobilienvverwaltung), and other directly owned federal property that

1. were the subject of restitution to their original owners or their heirs or were to be restituted under the regulations at the time and that became the property of the Federal State after 8 May 1945 in direct connection with proceedings under the provisions of the Federal Law on the Prohibition of Export of Objects of Historical, Artistic or Cultural Significance (StGBI. No. 90/1918) and that remain State property;

2. that legally became the property of the State but that had been previously the object of a legal transaction or legal act under Section 1 of the Federal Law on the Declaration of Annulment of Legal Transactions and Other Legal Acts Occurring During the German Occupation of Austria (BGBl. No. 106/1946) and are still State property.

The explanations in the Regierungsvorlage [government bill] (238 of the Beilagen zu den Stenographischen Protokollen des Nationalrates, XXIV. GP) state:

Section 1.(1).1 refers to acquisitions agreed in return for issuance of export authorization in accordance with the Export Prohibition Act, StGBI. No. 90/1918, valid at the time. [...] The close connection between the restitution, export proceedings and transfer of title to the State is to be understood in both a material and temporal sense.

The acquisitions were normally in the form of "donations" or "endowments" free of charge. The provision is now to be extended to all cases in which the State acquired property through the pressure of export proceedings. This refers, for example to acquisitions of restituted artworks and other cultural objects for which the owners, now living abroad following their flight and expulsion, were refused export authorization, effectively forcing them to sell.

Insofar as the acquisition was made in return for another object, this object is to be returned to the State. Amounts are to be adjusted in accordance with the consumer price index published by Statistics Austria (paragraph 2).

The objects under consideration were to be returned to Eidinger's heirs pursuant to the decision of the restitution commission. On receipt of the decision by the first court, which granted the restitution claim, the MAK urged the Federal Monuments Authority to secure the objects under the Export Prohibition Act "so as to prevent their restitution". Following the (upholding) judgment of the court of appeal, the Federal Monuments Authority stated that the objects were (still) to be secured on the basis of the

decision of 11 May 1939 which until it was rescinded precluded their transfer. In a report to the Federal Monuments Authority of 2 April 1953, the MAK stated that the acquisition took place “at the same time” as the “waiver” of an export ban and the securing of the other collection items in the MAK. The ban on export was overturned shortly afterwards by the Vienna City Administration on application by Eidinger’s heirs.

It is therefore apparent that a close temporal and material connection exists between the restitution of the porcelain, on the basis of the decision of 24 June and 31 December 1952, and the acquisition and export proceedings as reported in the letter of 2 April 1953. Regarding the porcelain listed in 1) of this decision, the conditions of Section 1.(1).1 of the Art Restitution Act are fulfilled. Under Section 1.(2), however, the payment of the equivalent of 15,200 schillings was to be refunded prior to the transfer of title.

Regarding the file, the Board determines that its seizure during the visit to Nathan Eidinger’s apartment on 10 May 1939 was also an invalid legal act in the meaning of Section 1 of the 1946 Annulment Act. As this file became the property of the State in the absence of restitution claims, the conditions of Section 1.(1).2 of the Art Restitution Act are met.

As the conditions of the Art Restitution Act are met in both cases, it is recommended to the Federal Minister for Art and Culture, Constitution and the Civil Service that objects be returned to the legal successors of Nathan Eidinger.

Vienna, 3 July 2014

Chairperson

Univ.Prof. Dr. Dr. h.c. Clemens Jabloner

Members

Rektorin Mag. Eva Blimlinger
Hofrat d VwGH Dr. Franz Philipp Sutter
Generalanwalt i.R. Dr. Peter Zetter

Alternates

Mag. Dr. Christoph Hatschek