

Pursuant to Section 3 of the Federal Law on the Restitution of Art Objects from Austrian Federal Museums and Collections, Federal Legal Gazette (BGBl.) I No. 181/1998 as amended by BGBl. I No. 117/2009, (Art Restitution Act), the Advisory Board unanimously adopted the following

DECISION

at its meeting on 15 October 2015:

Based on the information currently available, the recommendation is made to the Federal Minister for Art and Culture, Constitution and Media that the objects in the Commission for Provenance Research dossier “Fritz (Franz Friedrich) Grünbaum collection”,

- Egon Schiele, Female Nude Seated on Red Drapery, Back View, watercolour (inv. no. 39931)
- Egon Schiele, Aunt and Nephew, chalk drawing (inv. no. 39932)

from the Albertina should **not** be transferred to the legal successors *mortis causa* of Fritz (Franz Friedrich) Grünbaum.

GROUND S

The above-mentioned Commission for Provenance Research dossier was submitted to the Advisory Board. The Board makes reference to its decision on the Leopold Museum Privatstiftung of 18 November 2010, which also concerned artworks connected with Fritz Grünbaum’s collection.

The Advisory Board establishes the following:

1. Fritz Grünbaum

The well-known cabarettist Fritz (Franz Friedrich) Grünbaum (1880–1941) and his wife Elisabeth Grünbaum, née Herzl, (1898–1942) were persecuted as Jews by the Nazis. Fritz Grünbaum, whose routines already identified him before the Annexation of Austria as a declared opponent of Nazism, attempted to escape with his wife to Czechoslovakia on 11 March 1938, but was turned back at the border. An attempt to escape to Belgium, where Elisabeth

Grünbaum's brother Max Herzl lived, failed as a result of Fritz Grünbaum's arrest. Having been imprisoned in Vienna, he was deported to Dachau concentration camp on 24 May 1938, from there to Buchenwald concentration camp on 23 September 1938, and back to Dachau on 4 October 1940, where he died on 14 January 1941.

2. The art collection

Fritz Grünbaum possessed an extensive art collection described in an appraisal [*Schätzunggutachten*] by Franz Kieslinger in sixty-eight lots, in some cases consisting of several works. According to the appraisal, the collection contained 446 works, including a large number of graphics. Lots 37 and 37a are described as "Large drawings by Schiele, 55 sheets in colour" and "20 pencil drawings and 1 etching by Schiele". The appraisal was attached to the declaration of assets that Elisabeth Grünbaum was required to make for Fritz Grünbaum after the Annexation (see below).

Some items in the collection are documented in various sources from the time, in a few cases with illustrations.

According to the Künstlerhaus incoming ledgers, Fritz Grünbaum loaned five oil paintings to it for exhibitions between 1919 and 1921. He had acquired one of these works, *Upper Austrian Farm* by Eduard Zetsche, at an anniversary exhibition in the Künstlerhaus. In the Künstlerhaus sales ledger, following the entry on the acquisition by Fritz Grünbaum, is an entry regarding the acquisition by Elisabeth Grünbaum's sister, Mathilde Lukacs, of an oil painting by Julius Wegerer and four drawings by Karl Sterrer.

Fritz Grünbaum provided twenty-two works for the Egon Schiele exhibition organised by Galerie Würthle at year-end 1925/1926, which are listed in the catalogue. It is possible that the works mentioned in the catalogue as item 86 (*Nude on Orange Cloth*, sign. Egon Schiele 1914, watercolour) and item 112 (*Mother with Child*, sign. Egon Schiele 1915, drawing) are the same works as those under consideration here. For the Hagenbund Egon Schiele memorial exhibition two years later in October and November 1928, Otto Kallir-Nirenstein confirmed the receipt of twenty-one works by Egon Schiele. The works under consideration are not contained in the list of drawings and watercolours (unless possibly item 4: "*Reclining Nude with Red Cloth* watercolour 1914. – 32 x 48").

A self-portrait by Jehudo Epstein (charcoal drawing, signed, 1924) illustrated in the catalogue of the Künstlerhaus exhibition *100 Years of Portraits and Self-Portraits of Austrian Artists* (1924) can be identified as belonging to the collection. (According to the Künstlerhaus incoming ledger, this portrait was returned after the exhibition to Elisabeth Grünbaum.) This work would appear to correspond to lot 57 in the appraisal by Franz Kieslinger.

Fritz Grünbaum's collection is discussed in an article in the Vienna illustrated magazine *Die Bühne* of 26 March 1925: "The collector is particularly attached to contemporary masters. He possesses valuable pictures by Menzel, Schwind, also occasional ones from earlier centuries. [...] The engraving collection is dominated by Dürer and Rembrandt. [...]" Three drawings from the collection are illustrated in the article, by Edgar Degas, Josef Israëls and Adolf Menzel. They correspond to lots 46, 48 and 52 in Kieslinger's appraisal (described only in general terms). The article also includes a caricature showing Grünbaum in front of three works of art, one of which is recognisable as the above-mentioned self-portrait by Jehudo Epstein. The other two works could be the watercolour drawing *Centaur* by Franz von Stuck (lot 16 in the appraisal) and the watercolour *Two Soldiers in a Mountain Landscape* by Albin Egger-Lienz (lot 17).

Finally, the oil painting *Brass Quintet* by Max Oppenheimer illustrated in the magazine *Der Querschnitt* (no. 10/1930) corresponds to lot 6 in the appraisal.

The whereabouts of these pictures after 1945 could not be ascertained.

3. Elisabeth Grünbaum

On 16 July 1938, Fritz Grünbaum, who was interned in Dachau, gave his wife Elisabeth Grünbaum written authorisation "to submit the legally required notification of assets" and otherwise to "legally represent him in all of his affairs". As her husband's legal representative, Elisabeth Grünbaum therefore submitted the declaration of assets on 1 August 1938. Franz Kieslinger's appraisal attached to it put the value of the 446 works in the collection at RM 5,791. Apart from the five named paintings, there were fifty-five drawings, twenty pencil drawings and one etching attributed to Egon Schiele.

[unofficial translation]

On 8 September 1938, the transportation company Schenker & Co made an application on behalf of Elisabeth Grünbaum to the Central Office for Monument Protection [*Zentralstelle für Denkmalschutz*] for authorisation to export “pictures and carpets as indicated in the attached list”. The handwritten list accompanying the application is very general, but it can be assumed that the works correspond to those in Kieslinger’s appraisal and that it refers to Fritz Grünbaum’s collection. The Central Office for Monument Protection issued the authorisation on the same day. The authorisation does not seem to have been made use of, however, because the forms confirming the export that the customs authorities were required to send back the Central Office are missing. The fact that Elisabeth Grünbaum presented lists of Fritz Grünbaum’s assets in which the collection is included unchanged, with Kieslinger’s evaluation of RM 5,791, to the Property Transaction Office [*Vermögensverkehrsstelle*] on 12 November 1938, 25 January 1939 and 30 June 1939 would also suggest that the works were not exported.

In her notification of change of assets on 30 June 1939, Elisabeth Grünbaum listed “removal costs by transportation company”. It is possible that these costs were incurred when the collection stored with Schenker & Co was removed from the warehouse by Elisabeth Grünbaum.

After Fritz Grünbaum died in Dachau on 14 January 1941, she stated in the death notice of 9 June 1941 that there were no estate assets. The probate proceedings were therefore dismissed for lack of assets. The art collection was not mentioned.

Elisabeth Grünbaum’s last list of assets to be drawn up on 5 October 1942 just before her deportation mentions only an amount in cash and a frozen account. There are no documents indicating that the collection had been confiscated or seized or that it had been sold through the Gestapo Office for the Disposal of the Property of Jewish Emigrants [*Verwertungsstelle für jüdisches Umzugsgut der Gestapo* (Vugesta)] founded in September 1940.

Elisabeth Grünbaum moved out of her marital home on 31 October 1938 to her friend Elsa Klauber in Vienna XIX, Hofzeile 27. After the death of Elsa Klauber’s husband, they both moved on 15 April 1939 to Vienna XIX, Kaasgrabengasse 15. On 26 November 1941 they were required to move to a collection point [*Sammelwohnung*] in Vienna I, Werdertorgasse 5, and then on 8 August 1942 to Vienna I, Marc Aurel-Strasse 5. They were both deported from this

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collection point on 5 October 1942 to Maly Trostinec, where they were most likely killed shortly after their arrival on 9 October 1942.

In a letter of 10 August 1942 to her daughter, who had escaped to Great Britain, Elsa Klauber stated that she was together with Elisabeth Grünbaum and was being supported by Margarethe Hassel. The latter, who was not persecuted by the Nazi regime, sent this letter in 1947 to the daughter, stating that she had been a close friend of Elsa Klauber and Elisabeth Grünbaum since 1940 and had seen them almost every day until their deportation. She also mentioned that Elsa Klauber had given her something for her daughter.

4. Mathilde Lukacs

Elisabeth Grünbaum's sister, Mathilde Lukacs née Herzl, and her husband Sigmund Lukacs were also persecuted as Jews by the Nazis. They escaped on 12 August 1938 to Czechoslovakia and from there to Belgium where, as mentioned earlier, Max Herzl, the brother of Mathilde Lukacs and Elisabeth Grünbaum, was living. The Lukacs also commissioned Schenker with the removal. On 27 June 1938, Schenker submitted an application to the Central Office for Monument Protection for the export of oil paintings, watercolours, graphic works and drawings. The application was granted and according to the export form returned to the Central Office by the customs authorities, the goods passed the Austrian border at Passau on 14 August 1938.

The Lukacs moved in January 1941 to Brussels. They were arrested there on 23 October 1943 and put in an "old people's asylum", where they survived until the liberation. After the war, Mathilde Lukacs and her husband visited Vienna frequently. In 1956 she spent almost all of the second half of the year there and returned with her husband to Vienna for good in 1958.

Mathilde Lukacs efforts to discover the fate of her sister Elisabeth Grünbaum with the aid of the Red Cross tracing service can be documented as early as 1944. On 16 June 1954 she applied to the Provincial Court for Civil Law Matters [*Landesgericht für Zivilrechtssachen*] to have her sister declared dead, stating:

According to the attached certified transcript of the will [...], my sister was the sole heir of her husband Franz Friedrich Grünbaum. To assert my right of inheritance in the probate

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proceedings regarding Franz Friedrich Grünbaum pending with the Vienna District Court, file no. 15 A 341/41, I need to have my sister officially declared dead.

On 16 July 1954 she withdrew the application.

There is no evidence of any attempts by Mathilde Lukacs (or other possible heirs) to locate Fritz Grünbaum's collection, for example by inquiring with the Federal Monuments Office or other institutions, or to apply for restitution.

In May 1952, Mathilde Lukacs made contact for the first time with Galerie Klipstein & Kornfeld in Bern, when she wrote asking for the catalogue for an auction of graphic prints and stated that she had etchings by Dutch and French artists for sale. The correspondence and visits continued for the following four years. Mathilde Lukacs first sold a series of graphic works and drawings by old and contemporary artists to Eberhard Kornfeld. In 1955 she submitted the first eight Egon Schiele works, which were offered for auction on 24 November 1955. Other works were sold at the Egon Schiele sales exhibition in autumn 1956. There is no further record of sales by Mathilde Lukacs. Altogether she sold 113 works to Galerie Klipstein & Kornfeld.

As far as can be ascertained, these works could well correspond to the (general) descriptions in the appraisal by Franz Kieslinger and other information about Fritz Grünbaum's collection, but it is not possible at present to determine with certainty whether the individual works were part of the collection.

Among the works submitted by Mathilde Lukacs was also the work under consideration here, *Female Nude Seated on Red Drapery, Back View*, which can be definitively identified through the illustration in the catalogue. Erich Lederer acquired this work directly from the gallery. The second work under consideration, *Aunt and Nephew*, was part of the sales exhibition in autumn 1956, where it was purchased by Otto Kallir. This drawing, offered as *Mother With Child*, can be definitively identified as well through an illustration in the catalogue. In 1958, Professor Dr. Rudolf Leopold acquired the drawing from Galerie St. Etienne and sold it to Erich Lederer. In 1988, Elisabeth Lederer, Erich Lederer's widow, gave both *Aunt and Nephew* and *Female Nude Seated on Red Drapery, Back View* to the Albertina.

[unofficial translation]

Both pictures have a Swiss customs stamp that is not customary today from the customs office at Geneva airport. It is at least forty years old, although the precise date cannot be determined.

5. General Settlement Fund proceedings

Through its decisions on 13 August 2007 and 10 July 2008, the General Settlement Fund [*Allgemeiner Entschädigungsfonds*] decided that Leon Fischer and Milos Vavra, as equal joint heirs of Fritz Grünbaum, were entitled to compensation for the loss of “moveable property: paintings and graphics, jewellery, cash, book”. Leon Fischer is the grandson of Max Herzl, Elisabeth Grünbaum’s brother, and Milos Vavra is the son of one of Fritz Grünbaum’s nieces. The decision of 13 August 2007 also states that Leon Fischer is the sole heir of Mathilde Lukacs. The General Settlement Fund did not carry out any research in this matter. The decision, also regarding the art collection, was based solely on the notification of assets.

The Advisory Board considered the following

According to Section 1.1 line 2 of the Art Restitution Act, articles belonging to the state that were the object of a legal transaction or act as defined by Section 1 of the 1946 Annulment Act, BGBl. No. 106/1946, may be transferred back to their original owners or legal successors *causa mortis*. As the Advisory Board has determined on several occasions with reference to the relevant Restitution Commission decisions, legal transactions of this nature by persecuted individuals are to be regarded in principle as invalid in the meaning of Section 1 of the 1946 Annulment Act. Gifts may also be qualified as invalid legal transactions of this type.

Fritz Grünbaum and Elisabeth Grünbaum were persecuted individuals. There is also no doubt that Fritz Grünbaum possessed a significant art collection, although its contents can be definitively identified only in isolated cases. The art collection was still mentioned in the notification of change of assets of 30 June 1939. After this date there is no further mention of it. In particular, it is not listed in Fritz Grünbaum’s death notice of 9 June 1941, in which Elisabeth Grünbaum stated that there were no estate assets. The information from this time establishes a connection between the 113 works of art sold by Mathilde Lukacs between 1952 and 1956 through the Swiss Galerie Kornfeld and Fritz Grünbaum’s collection. This would suggest that the works sold by Mathilde Lukacs belonged to this collection. Because of the vague descriptions

and relative interchangeability of the picture titles in sources from the time, it is not possible to definitively identify individual works, including the two works under consideration here.

If it is assumed that the 113 works sold by Mathilde Lukacs (including the works under consideration here) were from Fritz Grünbaum's collection (for which there are good grounds), the question to be asked is how Mathilde Lukacs acquired them. It is conceivable that the collection (or parts of it, including the two works under consideration) were transferred by Fritz Grünbaum to Mathilde Lukacs by way of a legal transaction that would be regarded as invalid in the meaning of Section 1 of the Annulment Act. An invalid legal transaction of this nature can in principle take place within a family or between persons who are close to one another and does not presume any malice by the acquirer (see, for example, the Advisory Board decisions of 20 November 2009 on Hermann Eissler, and 10 June 2011 on Karl Mayländer). As Mathilde Lukacs already escaped on 12 August 1938 and the collection was still listed in the notification of change of assets on 30 June 1939, almost a year later, a direct transfer of the collection from Fritz Grünbaum to Mathilde Lukacs, as was the case with Karl Mayländer, in order to prevent it being misappropriated by third parties, can be excluded in this case.

According to the interpretation of the Art Restitution Act mentioned above, any other acquisition by third parties, which must have taken place after 30 June 1939, must be regarded as misappropriation [*Entziehung*]. For this to take place, it is not necessary to identify a specific legal act or transaction by which the object was misappropriated. It is sufficient, after consideration of all of the circumstances, for misappropriation to be judged to have taken place (see Advisory Board decision of 3 July 2015 on Alfred and Rosa Kraus).

The consideration in this case makes misappropriation by a third party unlikely. Mathilde Lukacs first contacted Galerie Klipstein & Kornfeld already in 1952. It may therefore be concluded that she was in a position to dispose of the art collection at the latest by this time. As there is no record of inquiries as to the whereabouts or applications for restitution of the collection by Mathilde Lukacs, there is little to support the supposition that it had been acquired by a third party. It appears more likely that the works were transferred to Mathilde Lukacs (and only after 1945) without dispute between the parties and without her needing to search extensively for them. This in turn suggests that Elisabeth Grünbaum managed to store the collection (or at least parts of it) safely with third parties, for example Margarethe Hassel. In this case, they were not

misappropriated from Fritz Grünbaum or Elisabeth Grünbaum because the storage did not take away their title to them.

Finally, it should be borne in mind that as Elisabeth Grünbaum's sister, Mathilde Lukacs was one of her legal heirs (and hence Fritz Grünbaum's as well). Although it is impossible to determine today why Mathilde Lukacs withdrew her application for her sister to be declared dead and why she abandoned her claim as Fritz Grünbaum's heir, these actions took place in the period of the sales to Galerie Klipstein & Kornfeld. According to the General Settlement Fund decisions of 13 August 2007 and 10 July 2008, Mathilde Lukacs was one of the heirs to Fritz Grünbaum's collection but not the only one and therefore, even after the probate proceedings had been completed, was not entitled on her own to sell the collection. In view of the temporal scope of the 1946 Annulment Act, however, these actions, even if they were not legal, may not be regarded as misappropriation (see, in particular regarding inheritance law, the Advisory Board decision on the Leopold Museum Privatstiftung of 18 November 2010).

The Advisory Board's conclusion does not conflict with the cited General Settlement Fund decisions of 13 August 2007 and 10 July 2008, because they were based on a different legal foundation, in particular the less stringent standards of proof required by the application proceedings in accordance with the Settlement Fund Act, BGBl. I 12/2001, as most recently amended. The Settlement Fund Act also has a different purpose than the Art Restitution Act. While the Art Restitution Act concerns the transfer of title of specific objects misappropriated as a result of invalid legal transactions or acts, the Settlement Fund Act calls for a lump-sum payment for "loss and damage" by victims of the Nazi regime. No connection can therefore be inferred to the pictures under consideration from the fact that the General Settlement Fund approved a payment for "moveable property: paintings and graphics, jewellery, cash, book" from Fritz Grünbaum's assets.

The Advisory Board therefore concludes that since it cannot be established from the sources currently available that the two pictures were misappropriated from Fritz Grünbaum (or Elisabeth Grünbaum), a state of affairs pursuant to Section 1.1 of the Art Restitution Act does not exist.

Vienna, 15 October 2015

[unofficial translation]

Univ.Prof. Dr. Dr.h.c. Clemens Jabloner
(Chairman)

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Mag. Eva BLIMLINGER

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[unofficial translation]