

[unofficial translation]

In accordance with Section 3 of the Federal Law on the Restitution of Art Objects from Austrian Federal Museums and Collections (Art Restitution Act), Federal Law Gazette (BGBl. I) No. 181/1998 as amended by BGBl. I No. 117/2009, at its meeting on 15 October 2018, the Art Restitution Advisory Board unanimously adopted the following

DECISION

It is recommended to the Federal Minister for the EU, Arts, Culture, and Media that the drawing discussed in the dossier of the Commission for Provenance Research on the "Provenance of the Sheet Two Horses at a Small River near Tre Croci, 1913" (01/2018), specifically

- Oskar Kokoschka, Two Horses at a Small River near Tre Croci, 1913,

Inv. no. 31008

should **not** be transferred from the Albertina to the successors *causa mortis* of Dr. Heinrich Rieger.

GROUNDINGS:

The Advisory Board has received the above-mentioned dossier of the Commission for Provenance Research. Accordingly, the following facts are relevant to the decision:

The Art Restitution Board had already dealt with the subject drawing in its meeting on 10 May 1999, and at that time did not see the conditions for restitution to the successors of Erich Lederer. He had sold the drawing to the Albertina for ATS 800 in 1950, and the Board did not see any connection with a procedure under the Export Prohibition Act. No further information about this purchase could be found.

In a letter dated 5 September 1971, Dr. Robert Rieger, the son of the Vienna dentist and art collector Dr. Heinrich Rieger, who had emigrated to New York, described that he had recognized the sheet in question as his father's former property in the exhibition catalogue entitled *Oskar Kokoschka zum 85. Geburtstag Wien 1971* (Oskar Kokoschka's 85th birthday Vienna 1971). However, no contact with the Albertina took place afterward.

A cousin of the late Dr. Robert Rieger eventually contacted the Albertina after an article published in a daily newspaper in 1998 attributed the drawing in question to Dr. Heinrich Rieger. A staff member of the Commission for Provenance Research subsequently conveyed the current state of knowledge, including the possible attribution to the Erich Lederer Collection.

A representative of the heirs of Dr. Heinrich Rieger contacted the Commission in 2016 and requested a re-examination of the provenance of the drawing in question.

A notarial deed from 1921 regarding 658 items from the Dr. Heinrich Rieger Collection also lists, among several sheets by Oskar Kokoschka, a "Horse Study (Charcoal)" with an acquisition year also given as 1921. Further sources about a sheet showing a horse (or several horses) from the Rieger

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Collection include a copy from the commission book of the Salzburg branch of the Welz Gallery from 1939, which mentions a drawing by Kokoschka, designated as "Horses" and indicated as "presumably from Dr. Rieger's collection". An "Inventory of the most important missing paintings from the Dr. Rieger Collection" compiled in 1947, also mentions a "horse study" by Oskar Kokoschka with the status of "whereabouts unknown".

Dr. Heinrich Rieger was persecuted as a Jew by the National Socialists as a Jew and deported to Theresienstadt in 1942, where he died. Before his deportation, he had handed over his collection to the art dealer Friedrich Welz. To finance his escape, Heinrich Rieger began to sell works of art through the Welz Gallery, albeit with little success. Friedrich Welz acquired part of the collection in 1939/40. Heinrich Rieger's heirs filed a restitution claim against Friedrich Welz with the Restitution Commission at the Salzburg Regional Court in 1948. The restitution proceedings were concluded with a partial decision of the Restitution Commission at the Salzburg Regional Court on 3 May 1948 and an out-of-court settlement on 25 January 1949.

Since, apart from Dr. Robert Rieger's assessment that the sheet in question here is the former property of his father, no clear identification is possible, the Commission for Provenance Research examined the provenance of all seven sheets (known today) of Oskar Kokoschka's Tre Croci series that show horses as a motif. None of these sheets could be traced back to the collection of Dr. Heinrich Rieger.

The Advisory Board considered the following:

According to Section 1. (1). 2 (or 2a) of the Art Restitution Act, objects that legally became the property of the State but had previously been the subject of a legal transaction or legal act under Section 1 of the 1946 Nullity Act, or comparable legislation, may be transferred to their original owners or their legal successors *causa mortis*. According to Section 1 of the 1946 Nullity Act, "*legal transactions against payment or free of charge and other legal acts during the German occupation of Austria are null and void if they were undertaken in the course of its political or economic penetration by the German Reich in order to deprive natural or legal persons of property or property rights which they were entitled to on 13 March 1938.*"

The available documents prove that a sheet by Oskar Kokoschka depicting one or more horses was in Heinrich Rieger's collection between 1921 and 1939 and was confiscated by Friedrich Welz in the course of Rieger's persecution. The question to be answered here is therefore whether this sheet is identical to the one acquired by the Albertina from Erich Lederer in 1950. This identity is supported by the fact that Robert Rieger stated in his letter from 5 September 1971 that he recognized the drawing as coming from his father's collection. However, no further evidence could be found to support this attribution of the sheet, such as meaningful title, measurement and material information or illustrations. This is particularly significant in the present case because in 1950 the Albertina did not acquire the sheet from Friedrich Welz, but from Erich Lederer. As Erich Lederer was also persecuted by the National Socialists and had to flee Austria, it seems unlikely that Erich Lederer acquired the sheet from Friedrich Welz upon his return to Austria and then sold it to the Albertina. Even though the seven drawings of horses by Oskar Kokoschka which were included in the catalogue raisonné have been examined, it is still not possible to rule out the existence of other charcoal studies matching this title.

Therefore, the Advisory Board comes to the conclusion that currently the identity of the drawing in question with the one owned by Dr. Heinrich Rieger cannot be determined with sufficient certainty to be able to recommend its transfer to his legal successors *causa mortis*.

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Vienna, 15 October 2018

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

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