

[unofficial translation]

In accordance with Section 3 of the Federal Law of 4 December 1998, Federal Law Gazette (BGBl) I 181, at its meeting of 22 June 2004 the Advisory Board unanimously adopted the following

### DECISION

It is recommended to the Federal Minister for Education, Science and Culture that the autograph from the Manuscript Collection and five documents from the Österreichische Nationalbibliothek [Austrian National Library] listed in the dossier “Dr. Max Berger” be transferred to the legal successors of Dr. Max Berger.

### FOUNDATIONS

The substantive object of this report is an autograph by Friedrich von Schiller and five printed documents transferred from Dr. Max Berger’s library to the ownership of the State. These objects are listed in the attached dossier entitled “Dr. Max Berger” drawn up by the Commission for Provenance Research. The Board assumes that this dossier is correct and complete.

Dr. Max Berger was persecuted in the meaning of the Nuremberg Race Laws and sought authorization through the Zentralstelle für jüdische Auswanderung [Central Office for Jewish Emigration] to leave the country. In the course of the liquidation of his residence in Austria and the settlement of his asset situation, he was forced to hand in to the Central Office for Jewish Emigration the above-mentioned Schiller autograph, which was immediately assigned to the National Library Manuscript Collection. During the general autopsy in the Austrian National Library in the course of provenance research, five further printed documents from Berger’s library, clearly marked as such, were found.

According to Section 2.1. of the Third Restitution Act, BGBl. 1947/54, an asset expropriation is invalid “if the owner was subject to political persecution by the Nazi authorities and the acquirer of the asset cannot demonstrate that the asset transfer would also have taken place regardless of the seizure of power by the National Socialists”. In its legal decisions, the Restitution Commission has determined that no further proof is required by the court that “Jews in Austria were subjected to political persecution by the Nazi authorities” (Rkb. Wien 83/47), further that it is irrelevant for the restitution of objects sold by political persecutees whether the purchase price was reasonable or whether the seller himself/herself instigated the sales negotiations. It can be safely assumed in this case that the conditions under the Third Restitution Act for restitution of the Schiller autograph and the printed documents apparently handed over at the same time are met. Berger, who committed suicide on 16 October 1941 was not able to assert his restitution claims. In accordance with Article 22 of the State Treaty in conjunction with the first State Treaty Implementation Act, these objects thus became the legal property of the State. The material conditions of Section 1.2 of the Restitution Act, namely an invalid transfer of title and a subsequent legal acquisition of title by the State, are therefore met. The conditions of Section 1.2 *leg. cit.* are met and the above-stated recommendation was to be given to the Federal Minister for Education, Science and Culture.

Although the Federal Law of 4 December 1998, BGBl. I 181, refers explicitly only to “art objects”, the Board extends this meaning to include the objects under consideration.

Vienna, 22 June 2004

Chairperson  
Sektionschefin Dr. Brigitte Böck

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Members

Vizepräsident Dr. Manfred Kremser, Office of the Financial Procurator  
Ministerialrat Dr. Peter Parenzan, Federal Ministry of Economic Affairs and Labour  
Univ.-Prof. Dr. Artur Rosenauer, University of Vienna  
Mag. Christoph Hatschek, Museum of Military History  
Generalanwalt Dr. Peter Zetter, Federal Ministry of Justice  
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