

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 29 June 2021, the Art Restitution Advisory Board adopted the following

DECISION

It is recommended to the Federal Minister for Arts, Culture, the Civil Service and Sport that the two candlesticks with inventory numbers GO 1844–1 and 2 in the Commission for Provenance Research dossier 01/2021 “‘§ 14-Ablieferungen’ Dr. Alfred Kirchenberger” be transferred from the MAK – Museum of Applied Arts – to the legal successors *causa mortis* of Alfred Kirchenberger.

GROUND

The Board considered the above-mentioned dossier from the Commission for Provenance Research and established the following relevant facts.

Alfred Kirchenberger was born in Prague on 15 May 1880 as the son of Hermine Kirchenberger, née Schön, and Salomon Kirchenberger. On his registration form his religion was given as Roman Catholic. It is unknown whether he was baptized a Catholic immediately after his birth or whether he converted from Judaism to Catholicism at a later date. He studied medicine at the University of Vienna and obtained a doctorate in 1904, after which he (like his father) was a military doctor and surgeon in Wiener Neustadt. He married Agnes née Aigner, born on 16 September 1889 in Vienna, and they had a son Hermann on 1 May 1922. When he was promoted in April 1931 to Oberstabsarzt (Surgeon General) 1st Class, the family registered at Matthias-Corvinus-Straße 26 in St. Pölten, where he also had a medical practice.

After the annexation [of Austria to Nazi Germany] in 1938, although he was baptized a Catholic, he was considered Jewish under the Nuremberg Laws, which entered into force in Austria in May 1938. His wife was classed as “deutschblutig” (German-blooded) and the marriage as a “Mischehe” (mixed marriage). The son had been baptized a Catholic. After the November Pogrom in 1938, the Nazi regime introduced the term “privilegierte Mischehe” (privileged mixed marriage) for such cases, which usually protected the Jewish spouse from deportation. After Alfred Kirchenberger was forced to retire as a result of Nazi persecution, he closed his practice in St. Pölten. On 27 April 1938, Agnes, Alfred and Hermann Kirchenberger were registered at Dionysius-Andrassy-Straße 6/7 in Vienna’s 19th district.

As the measures to disenfranchise and expropriate persons persecuted as Jews were successively introduced, in 1939 the Nazi regime demanded the surrender of precious metal objects, jewels and pearls. This was preceded by a series of regulations. Through the Regulation on the Declaration of the Assets of Jews of 26 April 1938, Jews with assets worth more than 5,000 reichsmarks were obliged to make a detailed declaration of them. The Kirchenberger family thus made an asset declaration on 29 June 1938 for each member and submitted it to the Property Transaction Office. In Alfred Kirchenberger's declaration, under IV g), "objects made of precious metal, jewellery and luxury objects, art works and collections" were valued at RM 1,533, and in his wife's declaration a value of RM 200 was assessed, in both cases without further details.

On 3 December 1938, three weeks after the November Pogrom, the Nazi regime promulgated the Regulation on the Use of Jewish Assets, Section 14 of which forbade Jews from selling jewels, jewellery or artworks except in public sales outlets. The Implementation Regulation of 16 January 1939 defined the pawn offices run by the various municipalities. The Dorotheum was designated for Vienna. The amounts received as purchase price by those obliged to deliver their assets under the Third Regulation on the Basis of the Regulation on the Declaration of the Assets of Jews of 21 February 1939 were extremely small, and 10 per cent was also deducted from these amounts. The aim of the submissions was to "dispose of the assets".

According to the Implementation Regulations of the Reich Minister of Economic Affairs [Reichswirtschaftsminister] regarding the Submission of Jewels and Precious Metal Objects by Jews of 1 March 1939, "a Jewish spouse living in a mixed marriage, insofar as there are offspring from this marriage who are not regarded as Jews" was exempt from this obligation. Despite this, on 25 October 1939 Alfred Kirchenberger handed in silver objects, including the two candlesticks, to the Dorotheum as "§ 14 delivery" pursuant to Section 14 of the Regulation on the Use of Jewish Assets. He received RM 68.40 for the objects.

After the end of Nazi rule in Austria, Alfred Kirchenberger, who had survived in Vienna, put in a claim to the 18th district municipal council regarding expropriated assets under the Asset Expropriation Registration Regulation. He listed numerous losses and damage he had suffered through the Nazi regime: compulsory levies, loss of salary and pension, withheld clothing ration cards, an expropriated radio set as well as furs and collections burned when warehouses were set on fire by the "Wehrwolf" organization, including a coin collection and documents. He did not mention any precious-metal objects. Alfred Kirchenberger died on 24 January 1949. He was buried in Pötzleinsdorf cemetery in the same grave as his wife, who had died on 20 July 1946, a few weeks after the end of the war.

After Alfred Kirchenberger had surrendered the candlesticks in October 1939, they were sold to the Staatliches Kunstgewerbemuseum (State Arts and Crafts Museum). Prior to this, Ignaz Schlosser, the deputy director of the museum, had written to the Dorotheum on 26 July 1939 to be informed “of the restart of the disposal, as the museum would be very interested in identifying objects in advance that might be of interest to the museum”.

Between December 1941 and January 1943, the director Richard Ernst acquired for the museum seventy-seven silver objects compulsorily surrendered to the Dorotheum. He was deliberate in his selection, concentrating on interior design items made at the start of the nineteenth century for bourgeois households. During 1943 the museum exchanged thirteen of these objects with art dealers. From the end of 1943, sixty-four such surrendered silver objects were in the MAK. The candlesticks under consideration here were the sixth item on the Dorotheum invoice of 4 February 1942:

29467/1 2 candlesticks 630 gr. dented [RM] 240.– 29638/1844

The number on the left – 29467/1 – is the Dorotheum item number, and on the right are the handwritten museum inventory numbers – the main number 29638 and the goldsmith number 1844. In the main museum inventory “Go 1844 a, b” is also listed as a special inventory number (today GO 1844-1 und 2) and the comment “[PURCHASED IN THE DOROTHEUM, VIENNA]”, date “[4.II.1942]”.

After the war, in implementation of the Order of the Allied Council of 22 May 1946 on the Registration and Recording of Property of the United Nations – Additional Order of 9 January 1947, the State Arts and Crafts Museum, shortly afterwards renamed the Austrian Museum of Applied Arts, sent lists to the Federal Ministry of Education of objects acquired during the Second World War, broken down into five sub-lists based on presumed origins: a) Allied States, b) German Reich, c) other countries, d) Austria I and e) Austria II. The list Austria I included the silver objects purchased by the museum from the Dorotheum from 1941 to 1943. No measures were undertaken to determine the previous owners of the objects.

The Commission for Provenance Research managed to identify the names connected with the Dorotheum item numbers on the basis of the “§ 14-Kartei” kept in the Austrian State Archives. In the late 1950s, employees of the collection points had noted deliveries under the Regulation on the Use of Jewish Assets on around 17,000 file cards on the basis of the documents still available at the time in the Dorotheum. Since the contact point of the Jewish Community Vienna and the Dorotheum digitized this file in 2007, thereby enabling the numbers to be searched, the former owners have been identified in eight cases to date. On that basis, the Board recommended the return of thirteen objects

from “§ 14 deliveries” to Samuel and Gittel Bauer, Erny and Richard Gombrich, Emil and Amalie Iwnicki, Anna Kutscher, Elise and Erich Müller, Hermine Schütz, Isak Wunderlich and Jacques Ziegler.

In the same way, Alfred Kirchenberger has now been identified as the owner of the candlesticks under consideration. The details on card 29467 of the “§ 14-Kartei” show that a “§ 14 delivery” took place on 25 October 1939 consisting of two sub-items. The first item concerned silver candlesticks valued at RM 76 purchased from the Dorotheum in February 1942 and inventoried by the State Arts and Crafts Museum in Vienna. The card has a surname and address: “Kirchberger [sic], 19 Dyonisius-Andrassystraße 6”. The address clearly identifies the owner as Alfred Kirchenberger. Sub-item 2 valued at RM 66 can no longer be identified today because of the lack of relevant information.

The Advisory Board considered the following:

According to Section 1.(1).2 of the Art Restitution Act, objects that became the property of the State but that had previously been the object of a legal transaction or legal act under Section 1 of the 1946 Annulment Act, BGBl. No. 106/1946 (or equivalent) may be returned to their original owners or legal successors *causa mortis*.

Alfred Kirchenberger was persecuted by the Nazi regime as a Jew. As he lived in a “privileged mixed marriage” with his “German-blooded” wife, he was protected from deportation and was able to survive the Nazi period in Vienna. The “§ 14 delivery” to the Dorotheum on 25 October 1939 of the two candlesticks under consideration is clearly an invalid legal transaction in the meaning of Section 1 of the Annulment Act. Although Kirchenberger reported expropriated assets after the war, the two candlesticks were not included in the claim.

As the conditions of Section 1.(1).2 of the Art Restitution Act are thus met, the Board recommends the transfer to the legal successors of Alfred Kirchenberger.

Vienna, 29 June 2021

Univ. Prof. Dr. Clemens Jabloner (chairperson)

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