

At its meeting on 26 November 2010, the committee established pursuant to § 3 of the Federal Law on the Restitution of Works of Art from Austrian Federal Museums and Collections (BGBl. I No. 181/1998 as amended by BGBl. I 117/2009 – Art Restitution Law) adopted the following unanimous **decision**:

It is recommended that the Federal Minister of Defence and Sport transfer the following to the legal heirs of Albert Klein:

K. W. Prochazka, *Portrait of an Unknown Colonel*
Signed: “KW Prochazka”, undated
Oil on canvas on board, 42 x 34 cm
Inv. no. 1939/15/BI20748

Carl Atzker, *Portrait of Archduke Frederick of Austria*
Unsigned, undated
Oil on canvas, 53 x 44 cm
Framed in a gilded wooden frame with oval cut-out and inscription: “CARL ATZKER”,
damaged
Inv. no. 1939/15/BI20749

Adolf von Schallberg, *Portrait of Emperor Franz Josef I of Austria*
Signed and dated: “Adolf von Schallberg 1860”
Oil on canvas, 240 x 158 cm
Inv. no. 1939/15/BI20750

Grounds

The above-mentioned dossier entitled “Albert Klein” from the Commission for Provenance Research was submitted to the art restitution committee. Its principal contents were as follows:

Albert Klein, born on 31 May 1873 in Varsany, Hungary, was persecuted as a Jew by the Nazi authorities. According to his list of assets drawn up on 16 July 1938 and a letter to the Property Control Office (*Vermögensverkehrsstelle*) of 14 December 1938, Albert Klein had lost his assets through the First World War and the subsequent economic crisis, and the plot of land owned by him in the 21st district of Vienna was seized by the Tax Office. In the aforementioned letter of 13 December 1938 he stated that because of a “20% fine”, presumably referring to the JUVA (Jewish Capital Levy) and a seizure by the Tax Office he was completely without means; on 12 January 1940 the Reich Flight Tax Office imposed a security levy of RM 50,000.

Albert Klein was registered in Vienna until 25 March 1942. According to the death certificate of 13 July 1951 he managed to escape with his wife Sidonie Klein to Budapest and from there in 1944 to Kalinciakovo, Slovakia, from where they were deported to an unspecified location.

According to the records of the Museum of Military History of 20 September 1939, Albert Klein sold the three paintings mentioned above for a total of RM 15.00. The paintings were accepted and received the inventory numbers 20.748 to 20.750. According to a further memo, Albert Klein offered thirteen First World War medals for sale on 30 October 1939. The museum offered to pay a total of RM 5.00 to RM 7.00 for them. The records do not indicate whether the sale actually took place because according to a note – obviously incorrect – Albert Klein is said to have escaped to America on 6 March 1940. At all events, the medals were registered with inventory numbers 65.779 ff on 8 March 1940.

According to a decision of the Provincial Tax Office for Vienna, Lower Austria and Burgenland of 30 May 1953, the plot of land in the 21st district of Vienna was returned to Albert Klein's son pursuant to § 3 of the First Restitution Law. The decision stated that Albert Klein's assets had been forfeited to the German Reich in accordance with the 11th Regulation concerning the Reich Citizenship Law of 23 November 1941.

The committee decided as follows:

Under § 1 para. (1)2 of the Art Restitution Law objects that legally became the property of the State but were the object of a legal transaction or legal act under § 1 of the Annulment Law of 1946 (BGBl. I No. 106/1946) and were still owned by the State were to be transferred to the original owners or their legal heirs.

Under § 1 of the Annulment Law, legal transactions and legal acts carried out as part of the political and economic penetration by the German Reich in order to seize assets are null and void.

Since Albert Klein was a persecuted person as defined by the judicature of the restitution commissions, the committee, pursuant to its previous interpretation of the Art Restitution Law, also decided that these sales were invalid. The sale of the paintings, as indicated by Albert Klein's letter of 14 December 1938 and the (albeit later) security levy by the Reich Flight Tax Office of 12 January 1940 and also in connection with the loss of assets as a result of various discriminatory levies, are also to be regarded as an invalid legal transaction.

According to the dossier, of the objects belonging to Albert Klein only the three paintings to which this recommendation refers are (still) owned by the State. Of the thirteen medals that Albert Klein offered for sale, ten were inventoried in March 1940. They are no longer kept by the Museum of Military History, however, but – according to the dossier – were lost “with a probability bordering on certainty” through the destruction of war and plundering in the years 1944–5.

As the Art Restitution Law concerns only objects that are (still) owned by the State, these medals cannot be considered for restitution under the Law. The committee nevertheless notes that in the unlikely event that the medals are found after all at a later date, they comply with the requirements for restitution. It is of no importance whether a sales agreement was concluded – the files appear not to contain one – or whether the German Reich acquired the medals on the basis of the forfeiture of assets in accordance with the 11th Regulation concerning the Reich Citizenship Law. In either case the legal transaction or act was invalid.

As the State acquired the objects as a result of a failure to make applications for restitution in accordance with Article 22 of the State Treaty (BGBl. I No. 152/1955) in conjunction with the First State Treaty Implementation Law (BGBl. I No. 165/1956), the committee is of the opinion that the state of affairs described in § 1 para. 1(2) of the Art Restitution Law applies and therefore recommends that the Federal Minister of Defence and Sport transfer the said objects to the legal heir of Albert Klein.

Vienna, 26 November 2010

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

Members

Univ. Doz. Dr. Bertrand Perz
Univ.-Prof. Dr. Artur Rosenauer
Dr. Franz Philipp Sutter
Attorney General (ret.) Dr. Peter Zetter

Alternates

Mag. Dr. Christoph Hatschek
Ministerial Councillor Dr. Eva B. Ottillinger