

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 6 March 2020, the Art Restitution Advisory Board unanimously adopted the following

DECISION

It is recommended to the Federal Minister for Arts, Culture, the Civil Service and Sport that the painting in the dossier of the Commission for Provenance Research “Egon Schiele, *Four Trees / Autumn Allée* (1/2020)

Egon Schiele
Four Trees / Autumn Allée
IN 3917

be transferred from the Österreichische Galerie Belvedere to the legal successors *causa mortis* of Josef Morgenstern.

FOUNDATIONS

Since 2003, the Belvedere has been investigating the provenance of the Egon Schiele painting *Four Trees / Autumn Allée* from the holdings of the Österreichische Galerie Belvedere Vienna, IN 3917. In August 2019 additional facts became known that have cleared up the provenance of this painting until after the annexation in 1938. The following facts have been established.

The commercial agent Josef Morgenstern (b. 1886 in Kis-Szlatina in present-day Hungary) and his wife Alice (née Freund, b. 1885 in Prague) lived from 1922 at Apfalgasse 3 in the 4th district of Vienna. In 1924, photographs of their apartment, whose interior was designed by the architect Otto Bauer, were taken for the magazine *Innendekoration*, showing, among other things, Egon Schiele’s painting *Four Trees* hanging over the fireplace. After the annexation of Austria to the German Reich in March 1938, Alice and Josef Morgenstern were persecuted as Jews, and Josef Morgenstern lost his position at Kontinentale Eisenhandels-gesellschaft Kern & Co. On 13 August 1938 the couple deregistered from their apartment in Apfalgasse and left Vienna for Yugoslavia. Before leaving, they entrusted the painting *Four Trees* by Schiele (110 × 140 cm) to a friend, the lawyer Robert Röhl, for safekeeping. The childless couple gave him full power of attorney for all their affairs, dated 23 July and 21 August 1938. In December 1938 they travelled from the island of Korčula in Yugoslavia to Brussels, where they lived in the Grand Hotel. After German troops invaded Belgium in May 1940, Josef Morgenstern — along with over 13,000 foreign males — was arrested by the Belgian police and transported to southern France, where he was interned at the camp in Saint Cyprien. After the camp was closed, he was interned in camps in Gurs and Agen before being deported on 9 September 1942 on the 30th transport from the Drancy transit and collection camp to Auschwitz, where he was murdered on an unspecified date. Alice Morgenstern, who had remained in Brussels, managed to survive under adverse circumstances.

In January 1940, Robert Röhl was appointed curator in absentia of the Morgensterns, after he had already informed the Landgericht für Zivilrechtssachen (provincial court for civil law matters) in Vienna in October 1939 that he did not know whether Alice and Josef Morgenstern had any assets. After the war, Alice Morgenstern commissioned Röhl in 1948 to represent her in proceedings to have Josef Morgenstern declared dead.

Alice Morgenstern remained until she died in 1970 in Belgium, where she lived in precarious financial circumstances. She submitted a claim dated 26 August 1959 for compensation under the Kriegs- und Verfolgungssachschädengesetz (War and Persecution Compensation Act) BGBl. No. 127/1958 (KVSG) to the Finanzlandesdirektion für Wien, Niederösterreich und das Burgenland (Provincial Tax Office for Vienna, Lower Austria and Burgenland). The claim consisted of several pages containing details of her persecution and current financial situation as well as precise information on the number of household items in the apartment in Apfelgasse for which compensation was being claimed. On an additional sheet "Space for comments and further details", Alice Morgenstern wrote:

In addition, I note that the picture "Four Trees" by Egon Schiele, which was owned by us, is now hanging in the Upper Belvedere. We never sold the picture but gave it to our lawyer friend Robert Röhrl, Gumpendorferstraße, Vienna, for safekeeping. Unfortunately he died and I do not know how it came into the possession of the nineteenth-century [recte twentieth-century] collection in the Belvedere. I have not made any attempts to have the picture returned and therefore request that this be taken into account in settling compensation.

During Austria Week in Luxembourg in 1959, an exhibition of Austrian painting from 1830 to 1930 in the Musée de l'État, now Musée National d'Histoire et d'Art, was organized by the Österreichische Galerie from its holdings. Thereafter, the exhibition was shown in December 1959/January 1960, in the Cultuurcentrum in Mechelen, Belgium. The exhibition catalogue no. 83 is *Landschap met vier bomen*. The introduction was written by Fritz Novotny, curator at the Österreichische Galerie. According to her letter to the Provincial Tax Office, Alice Morgenstern learned that the painting owned by the Österreichische Galerie had been shown in Mechelen. A few days before the exhibition ended on 17 January 1960, she made reference in a further letter to the same Provincial Tax Office to the picture shown in Belgium:

[...] I should also like to point out to you that the picture by Egon Schiele which used to be in my possession is currently being shown here in Belgium in Malines (Mechelen) in an exhibition by the Österreichische Galerie Vienna. As I have already informed you, I gave the picture to a friend (Robert Röhrl) for safekeeping. I do not know how it came into the possession of the Galerie. Unfortunately, Dr. Röhrl is dead, and I would greatly appreciate compensation for the loss of this valuable picture.

Alice Morgenstern's claim under the KVSG was acknowledged on 27 April 1960 and she was awarded the maximum compensation of ATS 10,500 for the loss of her entire interior furnishings. The loss of artworks was not covered by the KVSG.

The painting *Four Trees*, also known as *The Four Chestnut Trees*, *Chestnut Allée in Autumn*, *Autumn Allée*, *Landscape with Four Trees* and *Autumn Landscape with Four Trees*, was purchased in 1917 by the art dealer Paul Wengraf directly from Egon Schiele. Josef Morgenstern subsequently purchased the work through the Viennese art dealer Gustav Nebehay. It became the property of the Morgensterns at the latest in 1924, when an interior view of the Morgenstern apartment designed by Otto Bauer, including the Schiele painting *Four Trees*, was published in the magazine *Innendekoration*. In Otto Nirenstein's 1930 Schiele catalogue raisonné, the owner of this picture is listed as "Dr. Josef Morgenstern".

According to the accession document in the Österreichische Galerie Belvedere – file no. 245/1943 – the museum purchased the work from Kunsthandlung L.T. Neumann at the latest in 1943. The

invoice was issued, according to Novotny's handwritten comment, by Kunsthandlung Neumann and its owner August Friedrich Eymer.

In 2018 the Belvedere purchased seven undated black-and-white photos with further undated interior views of the Morgenstern apartment in Apfelgasse. In the picture of the former music room, Schiele's *Four Trees* can be seen hanging over the fireplace. The existence of the landscape in the Morgensterns' apartment in 1938 is confirmed not only by Alice Morgenstern's statement but also the statements of various witnesses presented by her in January 1960 to supplement the August 1959 claim under the KVSG. The architect Otto Bauer, who, as previously mentioned, designed the apartment in the early 1920s, provided information in September 1959 about the artworks and confirmed in an affidavit to have "known the apartment in great detail before the war". He cited a "large Egon Schiele" as one of the pictures he recalled. Fritz Sedlak, leader of the Vienna Philharmonic and long-standing friend of the Morgensterns, confirmed in January 1960 that he had last been in their apartment in June 1938 – in other words, after the annexation. Apart from a Steinway and a "very substantial library", he explicitly mentioned "1 orig. Schiele" as being part of the furnishings. And he recalled that the apartment

was very elegantly furnished. I left Vienna at the end of June and cannot therefore say whether Frau Morgenstern had to sell the furniture cheaply or whether the apartment was seized by the SS. But I can say with certainty that as a Jew the claimant was never able to recover any of her household furnishings.

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*.

Alice and Josef Morgenstern were persecuted by the Nazi regime as Jews. Before escaping from Vienna in August 1938, they gave the painting under consideration to the lawyer Robert Röhrl for safekeeping on account of their flight and issued him with full power of attorney. It is unclear by what legal transaction (legal act) Josef Morgenstern ultimately lost title to the painting, but from the facts outlined here, it may be assumed that the loss of title was due to an instruction by the lawyer Robert Röhrl made under the circumstances of the political and economic penetration by the National Socialists in the meaning of the 1946 Annulment Act (see the Board recommendation of 3 July 2014 on Käthe Kellner) – if the handover to the lawyer was not already an invalid legal transaction.

The Board therefore considers it as proven that the painting belonged to Josef Morgenstern from 1924 at the latest and – as is now confirmed through evaluation of the KVSG file – was his property until at least after the annexation in 1938. It concludes that the conditions of Section 1.(1).2 of the Art Restitution Act are met and therefore recommends to the Federal Minister that the painting be transferred to the legal successors of Josef Morgenstern.

Vienna, 6 March 2020

Univ. Prof. Dr. Clemens Jabloner (chairman)

Members

[unofficial translation]

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