

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 the Federal Law Gazette (BGBl.) I No. 117/2009, at its meeting on 15 October 2015, the Art Restitution Advisory Board unanimously adopted the following

## DECISION

It is recommended to the Federal Minister for Art and Culture, Constitution and Media that the object from the Kunsthistorisches Museum (Museum of Fine Art - Collection of Historic Musical Instruments) listed in the Commission for Provenance Research collection dossier "Frida Gerngross (Maria Gardi)",

Inv. no. SAM 440,  
Fortepiano, made by Johann Promberger, Vienna, 1810  
(according to the inscription 1804)

should be transferred to the legal successors *causa mortis* of Maria Gerngross.

## GROUND

The Art Restitution Advisory Board has received the above-mentioned dossier from the Commission for Provenance Research. Based on this dossier, the Advisory Board has established that the following facts are relevant to the decision:

Frida Gerngross's second marriage was to Robert Gerngross, with whom she had a daughter, Maria Gerngross (1918-1943). The family lived in the house belonging to Frida Gerngross located at Reichsratsstraße 17 in Vienna's 1st district. The couple and their daughter were persecuted as Jews by the Nazis. In her property declaration, Maria Gerngross listed "2 *spinets*" and "1 *grand piano*" among other items. There are no instruments listed in her parents' property declaration; Frida Gerngross' property declaration only mentions that she owned four glass vessels and a porcelain figurine which were placed "*on the piano*".

Robert Gerngross was taken into "protective custody" immediately after the Anschluss. Their daughter Maria Gerngross fled to Prague in January 1939, was deported to Ravensbrück on 29 May 1942 and murdered in Auschwitz on 25 January 1943.

According to a report dated 1 February 1940, by the head of the Collection of Historic Musical Instruments, Viktor Luithlen, Frida Gerngross, who had performed as a singer under the stage name Maria Gardi in the 1930s, offered the fortepiano in question here for sale at the price of RM 2,000. In the report, Viktor Luithlen stated that he considered "*a maximum price of RM 500 to be appropriate*". On 28 March 1940, he reported to the management of the Kunsthistorisches Museum (Museum of Fine Arts) that the grand piano had been purchased for RM 550 through the instrument maker Anton Jirowsky.

Frida Gerngross and Robert Gerngross were deported from a collective apartment to the Izbica ghetto on 9 April 1942 and declared dead in 1947.

The fortepiano was not registered as seized property in 1946, apparently because the acquisition was classified as "*only indirectly Jewish*" according to a handwritten note in the files of the Collection of Historic Musical Instruments at the time.

The Advisory Board considered the following:

According to Section 1. /1).2 of the Art Restitution Act, objects owned by the State which had previously been the subject of a legal transaction or legal act under Section 1 of the Nullity Act 1946, Federal Law Gazette No. 106/1946, may be transferred to the original owners or their legal successors *causa mortis*. As the Advisory Board has already stated several times with reference to the relevant case law of the Restitution Commission, relevant legal transactions by persons who are to be attributed to the group of persecuted persons are generally to be assessed as null and void in accordance with Section 1 of the Nullity Act 1946.

As can be seen from the reports of the Collection of Historic Musical Instruments, the fortepiano was offered for sale by Frida Gerngross and acquired by the Collection of Historic Musical Instruments via Anton Jirowsky. As no instruments were listed in the property declarations of Frida Gerngross and Robert Gerngross, but two spinets and a grand piano are listed for Maria Gerngross, the Advisory Board assumes that the fortepiano came from her property and was left behind in Vienna when she fled. It remains to be seen whether it was first sold to Anton Jirowsky and from him to the collection, or whether Anton Jirowsky merely acted as an intermediary. In any case, this is a void legal transaction, whereby the factual prerequisites for the offence in accordance with Section 1. (1). 2 of the Art Restitution Act are fulfilled with regard to the object now owned by the Republic of Austria.

It was therefore recommended to the Federal Minister of Arts and Culture, Constitution and Media that the fortepiano be transferred to the legal successors of Maria Gerngross.

Vienna, 15 October 2015

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

Members:

Substitute members:

Rector  
Eva BLIMLINGER

Dr. Christoph HATSCHEK

Univ.-Prof. Dr. Artur ROSENAUER

Court Councillor d VwGH  
Dr. Franz Philipp SUTTER

Retired Advocate  
General Dr. Peter  
ZETTER