

[unofficial translation]

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 15 October 2018, the Art Restitution Advisory Board unanimously adopted the following

### DECISION

It is recommended to the Federal Minister of Education, Science and Research that the work discussed in the dossier of the Commission for Provenance Research "Raoul Fernand Jellinek-Mercedes" (08/2018), specifically:

- Rémond de Saint-Marde, réflexion sur l'opéra (Reflection on the Opera)

Neaulme, 1741, Le Haye

call number Dr 578a

should be transferred from the Theatre, Film and Media Studies Library at the University of Vienna to the successors *causa mortis* of Raoul Fernand Jellinek-Mercedes.

### GROUNDS

The Art Restitution Advisory Board has received the above-mentioned dossier of the Commission for Provenance Research. Accordingly, the following facts are relevant to the decision:

Raoul Fernand Jellinek-Mercedes (1888-1939) lived in Baden near Vienna and possessed significant collections of paintings and musical scores, and a large library. He was persecuted by the NS regime as a Jew and was forced to sell his collections. He committed suicide in Baden on 10 February 1939.

Even though the precise path of his library cannot be traced, in the course of provenance research books belonging to Raoul Ferdinand Jellinek-Mercedes were found in libraries in Essen, Leipzig, Hamburg, Speyer, Berlin, Rostock, Dresden, Bonn and in the library of the Medical University of Vienna and were consequently restituted.

The work in question here also bears the bookplate "Dem Fernand Jellinek-Mercedes sein Buch" and is the property of the federal government. Although the circumstances of its acquisition cannot be determined, it is likely that the work was acquired from an antiquarian bookshop in the course of the establishment of the Central Institute for Theatre Science, which was founded in 1943. Heinz Kindermann, the institute's director, acquired approximately 30,000 volumes in the two years between the institute's founding and the end of the NS regime.

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The Advisory Board considered the following:

According to Section 1. (1). 2 of the Art Restitution Act, objects that legally became the property of the State but had previously been the subject of a legal transaction or legal act under Section 1 of the 1946 Nullity Act, or comparable legislation, may be transferred to their original owners or their legal successors *causa mortis*. As the Advisory Board has repeatedly stated, with reference to the relevant jurisprudence of the Restitution Commission, relevant legal transactions concerning individuals who can be assigned to the group of persecuted individuals are generally to be considered null and void in accordance with Section 1 of the Nullity Act 1946.

In the present case, it cannot be determined through which specific legal transaction or legal act the work was seized from Raoul Fernand Jellinek-Mercedes. However, as the work is clearly attributed to Raoul Fernand Jellinek-Mercedes by the bookplate, and this individual belonged to the group of persecuted persons, it is, in any case, to be assumed that this transfer constitutes an invalid legal transaction or an invalid legal act.

The Advisory Board thus concludes that the conditions of Section 1. (1). 2 of the Art Restitution Act are met, and therefore, it is recommended to the responsible Federal Minister for Education, Science, and Research to transfer the work from federal ownership to the successors *causa mortis* of Raoul Fernand Jellinek-Mercedes.

Vienna, 15 October 2018

Univ. Prof. Dr. Clemens JABLONER (Chairman)

Members:

Ministerialrat

Dr. Peter SEITZ

Ministerialrätin

Dr. Ilsebill BARTA

Rektorin

Mag. Eva BLIMLINGER

Univ.-Prof. Dr. Artur ROSENAUER

Hofrat d VwGH

Dr. Franz Philipp SUTTER

Generalanwalt i.R.

Dr. Peter ZETTER