

[unofficial translation]

In accordance with Section 3 of the Federal Act on the Restitution of Art Objects from Austrian Federal Museums and Collections, Federal Law Gazette (BGBl) I No. 181/1998 as amended by BGBl. I No. 117/2009, (Art Restitution Act-KRG), at its meeting on 8 October 2013, the Art Restitution Advisory Board unanimously adopted the following:

## DECISION

It is recommended that the Federal Minister of Education, Arts and Culture review the documents listed in the dossier of the Commission for Provenance Research "Hermann Kolisch" (29/2013), namely

Carl Spitzweg  
Study sheet with twelve humorous figures  
Inv. No. 28083  
Pencil  
200 x 326 mm

Carl Spitzweg  
Study sheet with nine figures, some caricatured  
Inv. No. 28084  
Pencil  
202 x 323 mm

Peter Fendi  
The Milkmaid  
(Based on a fable by La Fontaine)  
Inv. No. 28085  
Pencil, gridded  
10.5 x 12.7 cm

and

Friedrich Gauermann  
Sketch sheet: Painting auction  
Inv. No. 28086r  
Sketches for paintings and a sketch of a woman  
Inv. No. 28086v  
Pencil

be transferred from the Albertina to the legal successors *causa mortis* of Dr. Hermann Kolisch and Dr. Käthe Kolisch.

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## GROUNDINGS

The Advisory Board has received the aforementioned dossier from the Commission for Provenance Research, on the basis of which it establishes the following facts:

The siblings Dr. Hermann Kolisch (1909 – 2002) and Dr. Käthe Kolisch (1910 – 1977) were the children of the art collector Robert Kolisch (1864 – 1920). Since their parents died young, they were initially raised by their uncle and guardian Dr. Alfred Löw (1870 – 1943) and later (until their flight) lived with their aunt Anna Jacobi (1873–1958) in Vienna's 8th district. A large portion of their father's art collection had already been auctioned off in 1921.

Hermann Kolisch and Käthe Kolisch were persecuted as Jews by the Nazi regime; in their declaration of assets, they both listed, among other things, "jewellery, as well as a 50% share of silverware, carpets, art objects, paintings and luxury items" valued at RM 2,600. On 5 November 1938, Hermann Kolisch was granted an export permit by the Central Monument Protection Office for "32 oil paintings, 10 watercolours, 36 miniatures, 5 drawings, 4 tempera paintings, 6 prints [...] 6 portfolios of drawings"; the export of a watercolour portrait and a small oil painting by August von Pettenkofen was denied. The export permit was originally valid until 5 February 1939 and was later extended until 2 September 1939. Apparently in connection with the extension, the export permit was transferred from Hermann Kolisch to Käthe Kolisch.

On 13 December 1938, Alfred Löw informed the Property Transaction Office that he had lent Hermann Kolisch and Käthe Kolisch RM 750 each and had given them works of art with a total value of RM 400 in September 1938.

The Albertina's "ledger" notes that on 7 December 1938, Hermann Kolisch reclaimed two portfolios of drawings; a receipt dated 16 January 1939 and entries in the inventory book indicate that the Albertina purchased the four sheets by Hermann Kolisch for RM 350.

Hermann Kolisch and Käthe Kolisch fled separately in 1939 via England and China, respectively, to the United States, where they died in 2002 and 1977, respectively. Alfred Löw was deported to Theresienstadt in 1942, where he died on 9 December 1943.

The advisory board considered the following:

In accordance with Section 1.(1).2 of the Art Restitution Act, objects owned by the Federal Government which were the subject of a legal transaction or legal act in accordance with Section 1 of the Nullity Act 1946, Federal Law Gazette (BGBl) No. 106/1946, may be

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transferred to the original owners or their successors *causa mortis* in title . As the Advisory Board has already noted on several occasions, with reference to the relevant case law of the Restitution Commission, legal transactions entered into by persons who are to be classified as victims of persecution are, in principle, to be deemed null and void within the meaning of Section 1 of the Nullity Act 1946.

Since Hermann Kolisch and Käthe Kolisch are, in any case, to be classified as belonging to the group of persecuted persons, the sale carried out by Hermann Kolisch in January 1939 is to be regarded as an expropriation, regardless of whether the initiative to sell the hand-drawn sketch originated with the siblings and whether they received a reasonable price (see, e.g., the Advisory Board's recommendation of 26 June 2000, regarding Valerie Eisler).

Although only Hermann Kolisch is named in the Albertina's records regarding the sale, the Advisory Board nevertheless sees grounds to assume that the drawings were jointly owned by the siblings: This follows both from the information in the siblings' declaration of assets and from Alfred Löw's statement that he had gifted the siblings an equal amount of money and works of art (the latter with a total value of RM 400).

It need not be determined whether the sheets originated from Alfred Löw's donation or from the siblings' collection (presumably inherited from their father), because the donation within the family—specifically from the uncle as support for his (former) wards—would not be considered an expropriation within the meaning of Section 1 of the Nullity Act in this context.

As a result of the waiver of claims for restitution, the drawings are now the property of the Federal Government. Since the conditions set out in Section 1(1).2 of the Art Restitution Act are thus fulfilled, it is recommended that the Federal Minister of Education, Arts and Culture transfer ownership of the hand-drawn sketch to the legal successors *causa mortis* of Hermann Kolisch and Käthe Kolisch.

Vienna, 8 October 2013

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

Members:

Rector

Substitute members:

Ministerial Council

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Mag. Eva BLIMLINGER

Dr. Eva B. OTTILLINGER

Univ.-Prof. Dr. Artur ROSENAUER

Mag. Dr. Christoph HATSCHEK

Counsellor of the Administrative Court

Dr. Franz Philipp SUTTER

Advocate General (retired)

Dr. Peter ZETTER

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