

[unofficial translation]

In accordance with Section 3 of the Federal Act of 4 December 1998, Federal Law Gazette (BGBl) I, No. 181, at its meeting on 11 March 2003, the Art Restitution Advisory Board unanimously adopted the following

DECISION

The Federal Minister of Education, Science and Culture is recommended to return the following work of art from the Austrian Gallery Belvedere, namely the

Painting by Johann Gualbert Raffalt
'Two Hungarians with Two Horses in the Puszta'
Oil/wood, 24.5 x 29.5 cm
Inv. No. 5596

to the heirs of Wally Kulka.

Regarding the succession, an expert opinion on international private law will be obtained, which will provide information on to whom the transfer of ownership can be made.

GROUND

The subject matter of this report is an art object that has passed from the Wally Kulka collection into the ownership of the Federal Government. This art object is listed in the attached dossier compiled by the Commission for Provenance Research under the name 'Wally Kulka'. The Advisory Board assumes the accuracy and completeness of this dossier.

Ms. Wally Kulka owned an art collection in Vienna, which also included the painting in question by Raffalt. In 1938, Ms. Kulka was arrested during a failed attempt to flee to Switzerland, and criminal proceedings were initiated against her at the Feldkirch Regional Court. During these criminal proceedings, works of art from her collection were handed over to the Central Monument Protection Office for safekeeping (see letter from the Central Monument Protection Office dated 14 June 1938). As stated in the letter from the Federal Ministry of Finance dated 19 November 1959, these paintings were not seized by the Feldkirch Regional Court at that time. The seizure order issued by the Feldkirch Regional Court referred only to securities and means of payment from Wally Kulka's assets. The paintings were seized by the Feldkirch branch of the Foreign Exchange Investigation Office but were not handed over to the court. Instead, they were stored by the Secret State Police in

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the central depot of the Neue Burg, where they were administered by the Central Monument Protection Office.

On 14 June 1942, Wally Kulka was deported to Sobibor, and her assets were declared forfeited in accordance with the 11th Ordinance to the Reich Citizenship Law with 19 June 1942 as the date of her departure from the territory of the German Reich. In 1943, the Kulka art collection was released for sale. Director Posse subsequently selected Raffalt's painting for the planned 'Führer Museum' in Linz. The five remaining 'secured' paintings from the Kulka collection were sold to museums in the federal states.

In 1950, the representative of Wally Kulka's estate began efforts to locate existing assets, including Raffalt's oil painting. In the aforementioned letter dated 19 November 1959, the Federal Ministry of Finance apparently mistakenly informed the Federal Ministry of Education that Raffalt's oil study had already been returned to the claimant by way of a restitution settlement, thereby rendering the restitution claim moot. However, in a draft letter from the Federal Monuments Office to the Federal Ministry of Finance dated 3 February, it was pointed out that the Federal Monuments Office had not concluded a restitution settlement with the heirs of Wally Kulka or their legal representatives and that no legally binding restitution notice or corresponding restitution decision by a competent authority had yet been submitted to the Federal Monuments Office. Raffalt's oil study was still in storage at the Salzburg Residenz. There is no record of any response to this from the representative of Wally Kulka's estate. An additional inquiry to the head of the Commission for Provenance Research revealed that, despite intensive research, no restitution findings could be found.

With a decree dated 29 June 1963, the Federal Ministry of Education authorised the Federal Monuments Office to transfer a number of art objects which at the time were intended for the Linz Art Museum planned by Hitler, including the painting by Raffalt in question here, to the relevant collections for safekeeping. In 1965, on the instructions of the Federal Ministry of Education, the transferred works of art were definitively included in the inventory of the Austrian Gallery. This museum gave Raffalt's study the inventory number 5596.

The expropriation of the work of art by the National Socialist rulers constitutes a null and void legal act within the meaning of the second provision of Section 1 of the Restitution Act. Despite the above-mentioned information in the letter from the Federal Ministry of Finance dated 19 November 1959, no formal application for restitution has been documented, and the Federal Monuments Office points out in its letter dated 3 February 1960 that neither a restitution agreement has been concluded nor has a legally binding restitution decision been submitted to the Federal Monuments Authority. It must

therefore be assumed that, at least with regard to Raffalt's painting, no restitution decision has been made.

As a result of the failure to assert its claim under the restitution legislation, the Republic of Austria has thus acquired original ownership of Raffalt's study. The requirements of Section 1.2 of the Restitution Act are therefore to be regarded as fulfilled, and the preliminary recommendation was to be submitted to the Federal Minister of Education, Science and Culture.

Vienna, 11 March 2003

Chairwoman: Section chief Dr. Brigitte BÖCK

Members:

Vice-President Dr. Manfred KREMSER, Financial Procurator's Office:

Univ.-Prof. Dr. Artur ROSENAUER, University Vienna:

HR Dir. Dr. Manfred RAUCHENSTEINER, Military History Museum:

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