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At its meeting on 6 March 2015, the Commission established under Section 3 of the Federal Law 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) unanimously passed the following

DECISION

The recommendation is made to the Federal Minister for Art and Culture, Constitution and Media **not** to return the object listed in the dossier of the Commission for Provenance Research, “*Beethoven Frieze* by Gustav Klimt” (12/2014)

Gustav Klimt
Beethoven Frieze, 1901/02
Inv. No. 5987/1-8

from the Österreichische Galerie Belvedere (currently on loan to the Vienna Secession) to the legal successors *mortis causa* of the deceased Erich Lederer.

FOUNDATIONS

The Art Restitution Commission has examined the above-mentioned dossier of the Commission for Provenance Research and has seen documents with in some cases extensive expert opinions by heirs of Erich Lederer and by the Vereinigung Bildender KünstlerInnen Wiener Secession and the Gesellschaft der Freunde der Wiener Secession. The Commission has established the following facts.

The *Beethoven Frieze* was created in the years 1901/02 by Gustav Klimt (1862–1918) as a temporary work of art for the Fourteenth Exhibition of the Vienna Secession held from April to June 1902, which paid homage to Ludwig van Beethoven. Thereafter, the frieze was part of the Eighteenth Exhibition of the Secession in November and December 1903, which was in the form of a Gustav Klimt collective exhibition. After this exhibition, the frieze, which was left hanging between the two exhibitions, would have been taken down and destroyed if the collector Carl Reininghaus had not acquired it for his art collection.

Under the supervision of Carl Moll, Reininghaus had the frieze removed from the walls of the Secession, separated into eight panels and stored in the furniture depot of Möbelaufbewahrungsanstalt Wilhelm & Eisler in Michelbeuern, Vienna IX. A letter from Gustav Klimt in 1907 indicates that he was willing “to carry out the repairs that were [...] deemed necessary on payment of the residual amount of K 5000 [...] from the purchase price [...] when the work was finally hung.” The frieze was not displayed, however, and Reininghaus sold it in 1915 to August Lederer. According to Arpad Weixelgärtner, custodian of the Sculpture and Applied Art Collection of the Kunsthistorisches Museum Vienna, the frieze had been damaged by vibrations from passing trams while in storage in the ground-floor furniture depot. The Österreichische Galerie appears to have been interested in acquiring it even then, because Reininghaus expressed his regret in a letter to the former director of the Galerie, Franz Martin Haberditzl, that “the frieze could not be incorporated in your gallery and preserved for the public” and that he had not been able “to delay the matter [in other words, the sale to August Lederer] any longer.”

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The plan to display the frieze in the Secession on the occasion of the Gustav Klimt commemorative exhibition in June and July 1928 was rejected by Serena Lederer, wife of August Lederer. Following the intercession of Josef Hoffmann, Carl Moll and her son Erich Lederer, one panel from the frieze (*The Hostile Powers*) was transported to the Secession but returned at the request of Serena Lederer before the exhibition opened to the depot in Michelbeuern, where it had been stored after the purchase by August Lederer. To make it easier to transport and to protect the material, the panel was cut down the middle by Fritz Wotruba and Franz Ullmann.

The file of the bankruptcy proceedings in connection with the estate of August Lederer in 1946 contains not only the will but also a personal letter by August Lederer. In this letter, dated 9 February 1930, to Serena Lederer and his children Elisabeth Bachofen-Echt and Erich Lederer, he stated that “the entire collection of art objects and antiquities was to be regarded as the exclusive property of his wife.”

In May 1930, August Lederer was requested by his lawyer to remove the frieze from the furniture depot in Michelbeuern because the property had been sold to Herba (Handelsaktiengesellschaft Österreichischer Apotheker), which needed the rooms. At Herbert Lederer’s request, the Federal Monuments Office (Bundesdenkmalamt) in its decision of 17 May 1930 had placed a preservation order (Denkmalschutz) on the frieze and requested Herba to allow the panels to be kept in the rooms as they would risk damage if they were moved. In a list of classified monuments in Vienna pursuant to Section 3 of the Monument Protection Act presented to the Federal Ministry of Education by the Federal Monuments Office on 3 May 1932, the *Beethoven Frieze* is listed under the immovable objects. Section 3 of the Export Prohibition Act, StGBI. 90/1918 as amended by BGBl. 80/1923 stated that “works by living artists and artists who have been dead for fewer than twenty years” are exempt from the export prohibition. As Klimt had died on 6 February 1918, the *Beethoven Frieze* would not have been subject to the export prohibition until 7 February 1938.

In early 1933, Serena Lederer suggested to the Österreichische Galerie that the frieze be shown for two or three years in the Theseus Temple (Volksgarten, Vienna). In a letter to the Ministry of Education of 11 March 1933, however, the Österreichische Galerie stated that “a temporary display of the Beethoven frieze as suggested for a period of two or three years [...] would be detrimental [...] to its preservation [...] and would serve no purpose [...] from a museological point of view.” It would be a different matter if the display were to be a permanent solution.

August Lederer died on 30 April 1935. In his will he designated his son Erich Lederer as sole heir, whose conditional declaration on domestic immovable assets was accepted by decision of the probate court of 4 December 1935. Because of bankruptcy proceedings, however, the probate proceedings were not concluded until after 1945.

The frieze is documented as having been stored from 20 August 1935 with Spedition E. Bäuml in Vienna XX. In September and October 1936, five sections of the frieze were displayed at the *Exhibition of Acquisitions and Bequests to Public Collections in Vienna 1912–1936 and of Privately Owned Works of Art* before being returned to Spedition E. Bäuml.

After the annexation of Austria to the German Reich in March 1938, Serena Lederer and her children were persecuted by the Nazi regime as Jews. Erich Lederer, who like his mother Serena Lederer had Hungarian nationality, fled to Győr on 19 March 1938. According to Vienna registration data, Serena Lederer remained in her apartment in Vienna I until December 1938 before fleeing to Budapest and

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then to Győr and was once again registered in Vienna – not in her apartment but in a hotel – from 26 April to 9 December 1939.

In accordance with a decision of the Vienna City Council (Magistrat der Stadt Wien) of 26 November 1938, the art collection in the apartment in Vienna I was impounded pursuant to Section 4a of the Export Prohibition Act. In an undated list apparently drawn up later of the impounded objects, the *Beethoven Frieze* appears as item 112 with the indication “stored with the Bäuml removal company”. Unlike other works by Klimt in the Lederer collection, the frieze was not included in the Reich List, as it was called, of valuable cultural assets of the German Reich, but entries in the lists of impounded artworks indicate that the Österreichische Galerie was interested in paying up to RM 3,000 to acquire the frieze, whose value was put at RM 1,500.

A memo from the Central Office for Monument Protection (Zentralstelle für Denkmalschutz) of February 1939 indicates that because of unpaid debts that were “not large compared to the artworks” the Foreign Exchange Office (Devisenstelle) would seize Serena Lederer’s assets only by agreement with the Central Office. A private claim against Serena Lederer of RM 36,000 was also noted. Attached to the memo is a list dated 14 February 1939 itemising twenty-eight works of art from the Lederer collection that “should in particular remain impounded”. Item 21 on this list was the *Beethoven Frieze* with the addition “stored with Bäuml”.

In a decision of 27 July 1939, the Vienna City Council modified the impoundment decision of 26 November 1938 such that “the responsibility for custody of the property of Serena Lederer should now [...] be transferred to the Central Office for Monument Protection” in order to “enable the trustee and liquidator of the Lederer company, director Hermann Berchtold, to sell it by agreement with the Central Office.” In response to an inquiry by the Central Office, the Österreichische Galerie informed the trustee Hermann Berchtold on 30 July 1939 that it was interested in acquiring artworks from the Lederer collection, including the *Beethoven Frieze*. It informed the Central Office that it priced the two *Faculty Paintings* by Klimt at RM 6,000 each and the frieze at RM 3,000.

At the end of 1939 Serena Lederer applied to the Central Office for Monument Protection for authorisation to export the artworks stored with Spedition Kirchner & Co. From the summary list of objects, authorisation was refused for twenty-seven items; the rest were designated by decision of the Central office of 22 December 1939 as being free for export. The *Beethoven Frieze* (stored with Spedition E. Bäuml) was apparently not part of the application.

As Serena Lederer had not registered her assets, stating that she was a foreign citizen, the settlement department of the Property Registry Office (Vermögensverkehrsstelle) in a letter of 18 January 1940 brought criminal charges against her with the Public Prosecutor’s Office in Vienna. The charge sheet, which also included other members of the Lederer family, made particular mention of “the immense value of the art collection” whose “real value was around RM 3,000,000 while the estimated value could be put at RM 6,000,000 and would certainly be of interest to the relevant departments.” The application was made that in accordance with Sections 7 and 8 of the Regulation on the Registration of the Assets of Jews the entire assets of Serena Lederer be confiscated by the State. In the subsequent criminal proceedings, Serena Lederer wrote on 18 March and 24 April 1940 that she had Hungarian nationality and had not lived in the German Reich during the period of asset registration. In a notarised declaration from Budapest of 28 October 1940 she stated she was willing to cede certain artworks, including *Jurisprudence* by Klimt, to the German Reich if “in return, as discussed, the authorisation for the

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complete collection and the unconditional approval for export to Hungary” were granted. The reply from the Institute for Monument Preservation (Institut für Denkmalpflege), as the Central Office for Monument Protection was now called, replied that it was not in a position “to acknowledge” the statement “nor to refer it to other departments”.

On 22 February 1942, the Institute for Monument Preservation stated to Spedition Bartz, the Aryanised successor to Spedition E. Bäuml, that it was taking the *Beethoven Frieze* “from the assets of Serena Lederer into custody”. On 20 April 1942, Spedition Kirchner & Co was informed that the Institute for Monument Preservation was basically willing to approve the export of the goods stored there with the exception of the art collection in the custody of the Institute. Sales negotiations took place in May 1940 with Hans Posse, the special representative for the planned Führer museum in Linz. In a decision of 18 September 1942, the Regional Court for Criminal Matters of Vienna (Landesgericht für Strafsachen Wien) stated that the goods still stored with Spedition Kirchner & Co were to be confiscated.

An exhibition commemorating the eightieth birthday of Gustav Klimt was held from 7 February to 7 March 1943 in the Vienna Secession (called at the time Ausstellungshaus Friedrichstrasse). The exhibition included two panels from the *Beethoven Frieze* (*Yearning For Happiness* and *My Kingdom Is Not Of This World or This Kiss To The Whole World*). The catalogue stated that they were privately owned.

Serena Lederer died in Budapest on 27 March 1943. A few days before, on 24 March, Walter Thomas, General Cultural Advisor (Generalkulturreferent) of the Reich Governor (Reichsstattheater) asked Bruno Grimschitz, director of the Österreichische Galerie, to contact Serena Lederer’s daughter Elisabeth Bachofen-Echt to inquire which artworks she could offer “with account taken of the wishes of the Österreichische Galerie” in return for the release of the rest of the collection. The letter went on to say that the “previous suggestion that the *Beethoven Frieze* alone should be the counterperformance [...] was no longer satisfactory and [...] did not [justify] an intervention to revoke the reserving of the work for the Führer.”

After Serena Lederer’s death on 27 March 1943, the application for confiscation of her assets with the Vienna Regional Court for Criminal Matters in accordance with Section 8.3 of the Regulation on the Registration of the Assets of Jews was modified so that the confiscation of the assets could be recognised without the prosecution of a particular person.

On 21 December 1943, the *Beethoven Frieze* was transported to Thürnthal Castle in Lower Austria. Other items in the Lederer collection had already been shipped for storage in Immendorf Castle on 3 April 1943. Three further shipments were put in storage in Thürnthal Castle and Bad Aussee salt mine in 1944.

The question of ownership of the art collection seems to have remained unresolved, however. While Friedrich Wedl, curator of the estate of August Lederer, wrote on 9 August 1944 that he intended to liquidate the estate in accordance with Section 6 of the Regulation on the Use of Jewish Assets with the aid of Kajetan Mühlmann, State Secretary for Art, Herbert Seiberl from the Institute for Monument Preservation wrote on 12 August 1944 to Gottfried Reimer, who worked for the Linz special project, that it was unclear whether the regulation applied in this case. Reimer described the situation as a “rather opaque matter”, stating that “the appropriation by seemingly legal means of artworks by the State that it would not be entitled to under civil law” was to be avoided. Seiberl then contacted Richard Heiserer,

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curator of the estate of Serena Lederer, requesting clarification of the “extraordinarily complicated legal situation”. Heiserer answered on 28 September 1944 that because of the marriage contract concluded by August and Serena Lederer, the testamentary dispositions and the agreements made by the couple, “the art collection [...] and home furnishings [...] [formed] part of the estate of Szerena Lederer and that the movable estate, including the art collection, [...] was a matter for the Hungarian court [...] because Szerena Lederer and her husband were Hungarian citizens and were living in Budapest at the time of their deaths.”

On 10 November 1944, Heiserer informed the Vienna Regional Court for Criminal Matters that the majority of the home furnishings and art objects belonging to the estate of Szerena Lederer stored by Spedition Kirchner & Co that were not in custody with the Institute for Monument Preservation had been destroyed in an air raid.

In a decision of 31 January 1945, the Vienna Regional Court for Criminal Matters suspended the proceedings against Serena Lederer and dismissed the application for confiscation of the assets, stating that the failure to register the assets had been based on a “entirely reasonable conviction by Serena Lederer” that she was not required to do so.

Later documents from the Federal Monuments Office indicate that Immendorf Castle had been set on fire at the end of the war, probably by members of the SS, and that the artworks from the Lederer collection stored there had been destroyed in that way.

According to a memo of 26 February 1946 from the Federal Monuments Office, Erich Lederer, the son of August and Serena Lederer, had requested information about the art collection. After the Vienna Regional Court for Civil Matters had opened bankruptcy proceedings on the estate of August Lederer, the Federal Monuments Office was requested to inform the liquidator Martin Höberle of the art objects in its custody. The Federal Monuments Office replied, however, that the art collection was owned by Serena Lederer. This legal view was also confirmed by Richard Heiserer to the Federal Monuments Office in a letter of 5 July 1946.

On 18 July 1946, the Federal Monuments Office applied to the Vienna City Council for attachment of the collection to be revoked, stating that the custody had been ordered because “the reason for the custody orders [...] according to the prevailing opinion at the time [was] that these cultural assets [were] in danger of being exported abroad, since [...] the owner, Mrs Serena Lederer, was a Jew and intended to move abroad (to Hungary). [...] As is now officially recognised, these reasons no longer applied.” In a decision of 23 August 1946, the Vienna City Council thereupon revoked the three attachment orders of 1938 and 1939 in connection with the collection. Bankruptcy proceedings were opened by the Vienna Regional Court for Civil Matters on the assets of August Lederer in accordance with a decision of 31 July 1946 and on the estate of Serena Lederer in accordance with a decision of 2 August 1946. Martin Höberle was appointed as liquidator for the bankrupt Erich Lederer, while Otto Tiefenbrunner was the liquidator in the bankruptcy proceedings on the estate of Serena Lederer.

On 4 September 1946, the Federal Monuments Office asked the Federal Ministry for Property Control and Economic Planning whether there were any objections to the transfer of the art objects in custody to the liquidator Martin Höberle, stating that the revoked attachment orders “did not imply [...] any loss of ownership”. After Höberle had inquired with the Federal Ministry for Property Control and Economic Planning on 20 January 1947 about the release of the art collection, the Federal Monuments Office on 2

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April 1947 supported the transfer to the liquidator and, in contrast to its earlier opinion, stated that the art collection had not belonged to Serena Lederer but to her deceased husband Erich Lederer.

In a letter of 19 February 1948, in reference to a planned disposal, the Federal Monuments Office informed the liquidators of the estates of August and Serena Lederer and the assets of Erich Lederer that “in general it is unlikely that export approvals will be granted [...] for the art objects in the bankruptcy estate”.

On 12 August 1948, the Federal Monuments Office requested to Martin Höberle “with reference to the several telephone conversations in this regard [...] once again to arrange for the removal of the *Beethoven Frieze* owned by Serena Lederer, currently stored in Thürnthal Castle, as soon as possible”. The depot would be closed on 31 August 1948 and the Federal Monuments Office was willing “to provide a scenery carrier from the Staatstheater for the removal of the frieze, to be paid for by the owner”. On 28 August 1948, Höberle requested that the frieze, “despite the [...] closure of the depot”, remain “for the time being in Thürnthal Castle” as there was nowhere else to store it. The Federal Monuments Office noted this in a letter of 22 September 1948, indicating that the further storage of the frieze would be at the owner’s expense and risk and that it could not be removed without the written permission of the Federal Monuments Office.

The bankruptcy proceedings were concluded only after the creditors had agreed to a compulsory settlement proposed on 25 November 1949 by Erich Lederer, by which all “assets from the bankruptcy estates of August Lederer, Serena Lederer and Erich Lederer [...] after the cancellation of the bankruptcy, in so far as they were not used to pay the [claims] and the 20% compulsory settlement quotas,” would become the “unencumbered property of Mr Erich Lederer”. The decisions on cancellation of the bankruptcy were passed in December 1950 with regard to Erich Lederer and in December 1951 with regard to the estates of August and Serena Lederer.

In reply to an inquiry by Hans Popper, Erich Lederer’s legal representative, on 11 January 1950 the Federal Monuments Office provided a list of artworks for which export approval was likely to be refused. Among them was the *Portrait of Cardinal Bessarion* by Gentile Bellini. There was no mention in the list of the *Beethoven Frieze*. A meeting on this matter between Josef Zykan and Otto Demus on the one hand and Hans Popper on the other took place in the Federal Monuments Office on 30 January 1950. According to a memo, Demus regretted that the Export Act also applied to the case of Erich Lederer but insisted that this was the case.

After further negotiations, as a result of which Erich Lederer was ultimately obliged to donate a number of artworks, namely the *Portrait of Cardinal Bessarion* by Bellini, sketches by Moritz von Schwind for the *Magic Flute* cycle at the State Opera, drawings by Egon Schiele and a watercolour by Rudolf von Alt, to the Bundesmuseen/Sammlungen der Stadt Wien, the Federal Monuments Office finally issued export approvals on 28 June 1950. The basis for the approval was a copy of an eleven-page list by Hans Herbst, expert at the Dorotheum, which did not include the *Beethoven Frieze* and from which the above-mentioned donations were deleted.

In a *pro domo* memo of 2 May 1950, Otto Demus noted: “Apart from the stated objects, the surrender of a watercolour by Franz Alt, *Interior of St Stephen’s Cathedral*, should be requested and the *Beethoven Frieze* by G. Klimt blocked. Pre-emptive rights should be ensured for Jacobello and Bertos.” The Federal Monuments Office files also contain an undated handwritten proposal by Erich Lederer offering two

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alternatives to the demand for donation by the Federal Monuments Office, namely the donation, *inter alia*, of around 500 sheets by Jakob Alt, Gustav Klimt, Egon Schiele and Moritz Schwind to the Österreichische Galerie or, as an alternative, the donation of the *Beethoven Frieze*. A note is attached to the *Beethoven Frieze* alternative, presumably from the Federal Monuments Office, stating “out of the question on its own”. A *pro domo* memo by Otto Demus of 12 May 1950 would appear to refer to these documents:

The solicitor Dr Popper informally presented to Min. Pernter [presumably Hans Pernter, 1887–1951, Federal Minister of Education 1936–1938, after 1945 head of the Art Section of the Federal Ministry of Education] the two attached letters with alternative suggestions for donations. The proposals were discussed in two meetings on 8 and 11 May this year by Dir. Benesch, Hofr. Garzarolli and Dir. Buschbeck. The last mentioned and myself managed in particular to convince Min. Pernter of the unacceptability of the offers, even if both alternatives were combined and the Jacobello were added. The Federal Monuments Office will therefore continue to insist on the surrender as a gift [original emphasis] of

the Gentile Bellini
the Schwind lunettes
some drawings at least
the watercolour by Franz Alt (St Stephen's)
2) on the granting of a pre-emptive right for
Bertos
Jacobello del Fiore
and
3) on an export ban for
some Viennensia
and the Klimt frieze

Dr Popper will be invited by telephone to come for further discussions.

A memo from the Federal Ministry of Education of 25 May 1950 contained the following commentary on the donations demanded of Erich Lederer in exchange for the issuance of export authorisation:

The art objects offered by Erich Lederer in return for the blocked works – the Klimt frieze, Klimt and Schiele drawings – are not of particular interest to Austrian museums, since the Albertina already has a large number of Klimt and Schiele drawings. The Klimt frieze would be interesting for the Österreichische Galerie but has nothing like the value of the blocked works and possesses no international market value whatsoever.

The Federal Monuments Office informed the Federal Ministry of Education of 17 June 1950 that “the transfer of the [...] offered artworks [...] to State ownership is of greater public interest than retention within Austria of the remaining collection items in private possession” and the Federal Monuments Office was therefore in a position to approve the export “of the remaining collection items (with the exception of the *Beethoven Frieze* by Klimt)”. According to a telephone memo of 28 June 1950, the Federal Ministry of Education agreed to the donation, with written confirmation on 6 July 1950, authorising the Federal Monuments Office to take possession of the donated objects and to approve the export of the not yet located artworks from the Lederer collection itemised in a list B “in the event that they are located again. The Federal Ministry [...] notes that the *Beethoven Frieze* by Gustav Klimt will not be released.”

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On 6 November 1950, the Federal Monuments Office informed Hans Popper that the *Beethoven Frieze* should be removed by Erich Lederer as soon as possible from Thürnthal Castle, if Erich Lederer was authorised to dispose of it, “which is assumed to be the case, because he made an export application in that regard.” The castle had been returned to its owner, and the Federal Monuments Office depot was being closed. As the frieze had been left there only on the basis of a letter by Martin Höberle of 28 August 1948, the Federal Monuments Office requested confirmation of transfer and recommended that a custody agreement be concluded with the castle owner.

After a further inquiry, Popper confirmed to the Federal Monuments Office on 10 January 1951 that Erich Lederer had the necessary authority, whereupon the Federal Monuments Office informed Popper on 8 February 1951 that Thürnthal Castle had been sold by the owner and recalled the need to conclude a custody agreement with the new owner. As the letter remained unanswered, the Federal Monuments Office once again asked Popper on 12 April 1951 to take custody of the *Beethoven Frieze* or to provide a transfer confirmation within a month, otherwise court custody would be ordered. Popper referred to ongoing negotiations regarding a place of storage, whereupon the Federal Monuments Office extended the deadline until 1 November 1951. When this deadline expired, the Federal Monuments Office applied on 14 January 1952 to the Kirchberg am Wagram Local Court (Bezirksgericht) to take official custody of the frieze pursuant to Section 1425 of the General Civil Code [ABGB].

In a decision of 5 May 1953, the Local Court appointed the Federal Monuments Office as custodian, which it appealed against, however, on account of feared claims for compensation from Erich Lederer. The Financial Procurator’s Office (Finanzprokurator) also pointed out that the applicant could not be the custodian. Krems District Court (Kreisgericht) therefore revoked the appointment of the Federal Monuments Office as custodian.

In summer 1953, the Österreichische Galerie brought up the idea through director Karl Garzarolli of custody in the Marstall in the Lower Belvedere, also presumably with the hope of being able to purchase the frieze. Erich Lederer also appeared inclined to support this idea, as a letter from the Federal Monuments Office to the Federal Ministry of Education of 12 April 1953 indicates. The Financial Procurator’s Office warned against custody by the Österreichische Galerie, however, because Erich Lederer had repeatedly threatened to claim for compensation because the frieze had been improperly stored. The Financial Procurator’s Office also pointed out that the internal revenue department “possibly had an outstanding claim” against Erich Lederer “of hundreds of thousands of schillings because Lederer had failed to pay fees for a settlement made in the past. The Republic might therefore be able to obtain the frieze under favourable terms.”

On 30 November 1953, Erich Lederer contacted Josef Zykan at the Federal Monuments Office because he believed following a meeting on 22 July 1953 that

it was possible [...] taking advantage of the warm weather [...] to have my frieze transported from Thürnthal Castle to [...] Prince Eugene’s Marstall.

The Financial Procurator’s Office has apparently intervened again stating that if something is not done very soon, the Klimt frieze will once again be exposed to a cold and wet winter and inclement weather in Thürnthal. The Klimt frieze is the most representative work of Austrian art of the turn of the century and the main work by Klimt following the burning of his University paintings.

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I therefore urgently request [...] your intervention as soon as possible in this matter, because you are an official body and all-powerful and I am only a private individual and powerless. It would really be a shame if this monumental work that is predestined to be displayed prominently in an Austrian gallery as a symbol of Austria were to suffer or be destroyed because of laws.

On 26 October 1954, the Internal Revenue Department for Fees and Transaction Taxes informed the Federal Monuments Office of the planned seizure of the *Beethoven Frieze* because of Erich Lederer's arrears of payment. This seizure was revoked on 12 May 1955, however, following an appeal by Erich Lederer against the tax imposition.

After the Historisches Museum der Stadt Wien had also successfully objected in the still pending custody proceedings to its appointment as custodian, at the suggestion of the Federal Monuments Office, the (now restituted) Spedition E. Bäuml was appointed custodian by decision of the Kirchberg am Wagram Local Court of 24 August 1955.

In a letter to Karl Garzarolli of 7 October 1955, Erich Lederer repeated his wish that the frieze be kept in the Marstall of the Lower Belvedere. In reply, Garzarolli suggested that the frieze be loaned to the Historisches Museum der Stadt Wien, which was currently being built. Lederer rejected this suggestion on 28 October 1955: "I am willing to sell the frieze to the new museum [i.e. the Historisches Museum der Stadt Wien] but not to lend it."

As the depot of Spedition E. Bäuml proved unsuitable for the storage of the frieze, it was shipped by Bäuml on 6 August 1956 to Altenburg Abbey. There followed a dispute about the storage costs. The Financial Procurator's Office stated that the costs should be advanced by the Federal Monuments Office but that the amount demanded by the transportation company were unreasonably high. During this dispute, Spedition E. Bäuml stated that it would "waive its claims against the Republic of Austria, if export authorisation were issued for the frieze". The Federal Monuments Office suspected that Erich Lederer was behind this offer, "hoping to obtain a particularly high price abroad".

On 9 April 1959, the Financial Procurator's Office informed the Federal Monuments Office of a suit by Spedition E. Bäuml against the Republic of Austria in connection with the storage costs. The case ended in July 1961, when Erich Lederer paid the costs of the court custody himself and also the court costs of Spedition E. Bäuml and the Republic of Austria.

Following a joint application by Erich Lederer and the Financial Procurator's Office, the court custody of the frieze was revoked and the frieze transported on 13 September 1961 to the Marstall in the Lower Belvedere.

On 28 February 1967, the director of the Österreichische Galerie at the time, Fritz Novotny, wrote to Erich Lederer of the discovery during a routine inspection of the frieze of "a significant deterioration in its condition compared with the situation last autumn when you inspected the frieze with Federal Chancellor Dr Klaus". He therefore asked Lederer, as its owner, to provide information as soon as possible as to what should be done. On the same day, a meeting was held between representatives of the Federal Monuments Office, the Kuntshistorisches Museum and the Federal Ministry of Education, which was also attended by Novotny. It was noted at the meeting that Lederer was asking 8 million

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schillings for the frieze but that the Republic of Austria was willing to pay a maximum of 3 million schillings. If this offer was too low for Lederer, the export would be approved.

After a further inspection of the frieze by restorers in May 1967, the Federal Ministry of Education informed the Financial Procurator's Office in a letter of 26 May 1967 that the *Beethoven Frieze* had "worrying signs of decay" but that the owner

has shown no willingness to date to do anything to salvage it. It should also be mentioned that the acquisition of the frieze by the Republic of Austria is also being considered but negotiations have not yet concretised because of the excessive price demanded by the owner, currently 8 million schillings.

Because the preservation of this monumental major work by G. Klimt is in the public interest, the Federal Ministry of Education is intending to arrange for its restoration by the Federal Monuments Office. It is intended to claim for these costs afterwards from the owner or to offset them against the purchase price.

The Federal Ministry of Education therefore asked for a statement as to "what steps should be undertaken to obtain a reimbursement later from the owner."

On 17 June 1967, Erich Lederer requested to Walter Frodl, president of the Federal Monuments Office at the time, "to be so kind [...] as to arrange for the Federal Monuments Office to issue approval for the export of the *Beethoven Frieze* painted by Gustav Klimt, which belongs to me and is kept in the Lower Belvedere."

On 28 June 1967, a meeting was held in the Federal Ministry of Education in which, according to a memo from the Federal Monuments Office, Frodl stated that the Federal Monuments Office had an instruction on the basis of a letter of 6 July 1950 from the Federal Ministry of Education that export approval should not be given for the frieze. Fritz Novotny was of the opinion that "the frieze should be kept by Austria" and that Erich Lederer had "good possibilities" of selling the frieze abroad. Carl Blaha, representing the Federal Ministry of Education, stated that the Ministry intended to approach Erich Lederer with a restoration proposal and offer to buy the frieze for 3 million schillings. It was agreed that Lederer's export application of 17 June 1967 should "receive a prevaricating response for the time being".

On 3 July 1967, the Federal Monuments Office thus wrote to Lederer that "an immediate answer to your application [...] is unfortunately not possible for the moment because an investigation is to be carried out, whose result you will be informed of."

On 11 July 1967, The Financial Procurator's Office submitted the detailed statement requested by the Federal Monuments Office in which it concluded that "provided he does not forbid the restoration of the frieze, Mr Lederer should pay the costs."

Lederer, who had apparently heard of the intention to restore the frieze, forbade the restoration in a letter to the Österreichische Galerie of 11 January 1968. On 7 February 1968, Federal Minister of Education Theodor Piffli-Perčević wrote to Lederer asking him to restore the frieze himself or to allow its restoration. In that case, "the Republic of Austria would be entitled to reimbursement" but "in the event of restoration by the Federal Monuments Office, which was a non-profit organisation, the costs [would

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be] maintained at a reasonable level.” At the same time, the Federal Monuments Office was asked whether the *Beethoven Frieze* was subject to a preservation order.

There was apparently no record in the Federal Monuments Office of the preservation order of 17 May 1930 (at the instigation of August Lederer), probably because the frieze was listed as an immovable object. It was noted in a memo of 25 February 1968, that a preservation order would raise the following difficulties:

- a) The public interest of Austria in preservation was so great that [...] it would most certainly have to be followed [...] by its acquisition.
- b) The owner, who was known to be difficult would [...] be so annoyed that further sales negotiations would be impossible and he would increase his already considerable price demand.

It was further noted that the frieze was endangered because of its deteriorating condition, which would not be remedied by a preservation order. Fritz Novotny, who had also spoken in favour of a preservation order for the frieze, was notified “immediately”.

On 12 March 1968, Erich Lederer replied to the Federal Minister that he had spoken with the restorer Giuseppe Marchig. He would be in Vienna in April and would inspect the frieze with Marchig and hoped also to be able to meet the Federal Minister to speak about the frieze and the portrait of Cardinal Bressarion, two topics that he hoped “after a good deal of discussion over twenty-two years could be dealt with so as to clear up this complicated issue once and for all.”

In the last third of 1968, Lederer sent the Österreichische Galerie three international appraisals of the value of the *Beethoven Frieze*, obtained at the suggestion of Theodor Piffli-Perčević. The appraisals were from Franco Russoli (Pinacoteca di Brera), Franz Mayer (Kunstmuseum Basel) and Christie’s (London). All of them put the value of the frieze at 1 million US dollars or more. (Based on the average exchange rate for 1968, USD 1 million was equivalent to ATS 25.8 million).

Hans Aurenhammer, the new director of the Österreichische Galerie, once again emphasised in a report to the Federal Ministry of Education of 25 June 1969 the significance of the frieze, and pointed out that the sales price had now risen to USD 1 million. “In view of the risk to the artwork” he felt “obliged to request a decision as to the future of the frieze so that it could be restored and preserved for future generations – even if it meant that Klimt’s work would be lost to Austria.” He saw three alternatives, which he set out in detail:

1. Purchase of the frieze and restoration by the Federal Monuments Office;
2. Export prohibition and restoration by the Federal Monuments Office against the wishes of Erich Lederer, who had forbidden any intervention;
3. Export approval, if possible with the condition that the owner made the frieze fit for transport at his own cost.

On 15 July 1969, a meeting was held in the Federal Ministry of Education about the report from the Österreichische Galerie, at which it was decided that Fritz Novotny and Walter Koschatzky should form a committee to raise funds, also from private donors, for the purchase of the frieze. It was also decided that the Federal Ministry of Education should make an “official inquiry to Erich Lederer regarding the purchase price”.

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On 23 July 1969, the new Federal Minister for Education Alois Mock wrote to Lederer pointing out that the deterioration of the frieze was continuing “in an increasingly threatening manner” and that therefore “a decision as to the future fate of the work must be made if it is not to be irretrievably damaged”. He asked for “understanding that the Federal Ministry of Education is seeking a solution that will permit this [...] monumental work [...] to be preserved for Austria. I would therefore be very grateful if you could name a price for which you would be willing to sell it.”

Lederer replied on 22 August 1969 that he “would love to see” the frieze in the interval foyer of the State Opera and that he believed that “a price satisfactory to both parties [could] be negotiated, something that has unfortunately not been possible for the last twenty-three years.” On 11 December 1967, Mock confirmed the basic interest in acquisition but pointed out the limited financial resources.

As no further progress was apparently made, Federal Chancellor Bruno Kreisky informed Lederer in a letter of 30 May 1970 that he would support an offer to purchase the frieze for 6 million schillings, recalling at the same time the patronage of the arts by the Lederer family. Lederer thanked Kreisky on 16 June 1970 for “personally taking up the matter, all the more so as discussions on a possible purchase have been ongoing since 1946 – or twenty-four years.” As he was immobile at the moment, he would ask his friend Karl Kahane “to talk” with Kreisky.

In an unaddressed handwritten note dated 19 June 1970, possibly as a basis for negotiation for Kahane, Lederer explained his point of view [emphasis in the original]:

Austria has been seeking to acquire it [the *Beethoven Frieze*] for twenty-four years, almost a “generation” and I am not allowed to export it. They are hoping in this way to bring me to my knees. It seems as if the authorities are watching the clock, saying won't this LEDERER finally die!

The Minister of Education Dr Piffel-Perčević suggested that I obtain appraisals from the museum in Basel [...] and Christie's in London so that a correct price could finally be determined. [...] I obtained and documented these appraisals. And I wish to emphasise that almost one and a half years have elapsed since then, during which the price of the pictures has risen considerably. Most of my art objects were allowed to decay in Immendorf [...] while the Belvedere's pictures stored there were collected and saved! And nevertheless my picture by Gentile Bellini was stolen without any justification.

I was happy to give the watercolours by Schwind [...] and the many watercolours by Egon Schiele and others to the Albertina because they were AUSTRIACA, but it cannot really be claimed that Cardinal Bessarion, born in Trapezunt [Trabzon] and painted by Gentile Bellini, is an Austriacum. I would be very happy if the frieze, which cannot be exported, were finally sold and the Gentile Bellini returned and that this macabre race for my death would end!

On 4 February 1971, the Federal Monuments Office reported with reference to an inquiry by the Federal Ministry of Science and Research that the *Beethoven Frieze* was not subject to a preservation order, once again apparently overlooking the decision of 17 May 1930. A preservation order was refused for reasons indicated in the memo of 25 February 1968 and quoted in the report. It was further noted that:

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- the object is still in public custody and needs no protection;
- the danger to the frieze is of a technological nature due to its progressive decay but a preservation order would not offer any possibility for its restoration;
- Apart from the size and condition of the object, the Austrian Export Prohibition Act should be applied to avoid the danger of its hasty transport abroad. The Federal Ministry of Education had ordered an export prohibition through its decree Zl. 29.095-II/6/50 of 2 July 1950. The Federal Monuments Office reported to the Federal Ministry of Education under Zl. 4427/67 of 3 July 1967 following a meeting on the matter on 28 June 1967 in the Federal Ministry of Education on a further request for export by Mr Lederer of 17 June 1967, in which all participants were in favour of an export prohibition. The Federal Ministry of Education instructed the Federal Monuments Office that the export request was to be delayed in view of the ongoing purchase negotiations. The Federal Monuments Office continued to support this prohibition.
- If under a preservation order for a movable artwork a measure pursuant to Section 7 is requested of the Governor [Landeshauptmann], it would only at best result in a situation that already applies to the object in question: that of public custody.

[...] Moreover, the Federal Monuments Office believes [...] that a preservation order would only annoy the owner, who was known to be difficult. In addition, the following considerations needed to be taken into account:

It would appear to the public that the basic willingness expressed by the Federal Chancellor to acquire the object was to be replaced by the preservation order, which would cost the State nothing, a view that would only put the actors involved in a bad light and could raise questions about the good will of the high-level politicians recently involved in the matter. [The] only way to rescue the object [is] through its purchase by the State. Without a test run, however, the Federal Monuments Office could not definitively state for the time being whether the object could be fully restored.

On 14 April 1971, Hertha Firnberg, Federal Minister for Science and Research, asked Kreisky to contact Lederer regarding the purchase: Because “you [...] have indicated your great personal interest in the *Beethoven Frieze* and are also [...] in touch with Erich Lederer, I would ask you to negotiate directly with him.” As the frieze is in a “quite desolate state”, she assumed that the object was worth about 2 to 3 million schillings and that the restoration would cost 5.5 million schillings (later, however, put at 500,000 schillings).

Even following a meeting between Lederer and Kreisky, on 23 August 1971 Lederer rejected a request by the Federal Ministry of Science and Research to agree to a restoration, stating first “that the Federal Chancellor has suggested [...] that an offer to buy the object would be made in autumn and second that it would be advisable to have the object restored only after it had been finally installed.”

On 27 October 1971, Hans Herbst, an expert from the Dorotheum, submitted an appraisal by order of the Federal Monuments Office putting the value of the frieze at 6 million schillings, provided that it could be completely restored. Should this not be the case, he recommended that “the acquisition be abandoned and export approval be given”.

In a letter of 11 December 1971 to Lederer, Hermann Fillitz, who was teaching at the time in Basel, once again emphasised the importance in art historical terms of the *Beethoven Frieze*. In view of his lack of experience in the art market, he was unwilling to estimate its value but was of the opinion that the

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estimate by Hans Herbst was “certainly much too low”. The estimate by Christie’s appeared to him “however high it might seem at first glance, to be in the price range that such works should probably fetch today. [...] In the last few years, however, the prices have been [...] steadily rising. Also when I compare it with the prices asked of renowned modern artists, the estimate by Christie’s appears to offer a good guide.”

As the letter from Fillitz presented by Lederer did not contain a specific price, the Federal Ministry of Science and Research requested Lederer on 4 January 1972 to nominate a further expert. Lederer concluded that the Ministry was “not seriously interested in acquiring the *Beethoven Frieze*”. Wishing to correct this assumption, the Ministry emphasised in its reply of 16 February 1972 that “there was indeed a great interest” and asked Lederer to submit a sales proposal in writing.

Karl Kahane passed on the correspondence to Bruno Kreisky, adding that Lederer regarded the negotiations as having failed and that the *Beethoven Frieze* could be salvaged for Austria only through Kreisky’s personal intervention. In an internal memo for Kreisky, Hans Aurenhammer valued the frieze at 12 to 13 million schillings and mentioned the fear of the Federal Ministry of Science and Research that the purchase would have to be made from its current budget. He further stressed that Lederer should finally make a serious offer.

In his reply to the Federal Ministry of Science and Research of 13 March 1972, Lederer referred to the appraisals already submitted, which valued the frieze at USD 1 million and repeated his “willingness already expressed to Federal Minister Firnberg [...] to be as accommodating as he could with regard to the purchase” and requested in turn that “a firm offer be made as soon as possible”.

A meeting was held with Hertha Firnberg on 13 March 1972 as well to discuss purchasing the frieze. On 28 March 1972, Firnberg wrote to Lederer that she would be in Lausanne on 11 and 12 April 1972 and would like to meet him in Geneva on one of the evenings to discuss the matter, whereupon Lederer and his wife invited Firnberg and her secretary Wolf Frühauf to dinner on 12 April 1972 at their home.

In a letter of 19 April 1972, Lederer thanked Firnberg for the visit and accepted the offer apparently made that evening to sell the *Beethoven Frieze* for 15 million schillings. He added: “Please understand my willingness to compromise on the price as demonstration of my particular appreciation of the efforts by you and the Federal Chancellor.”

At the meeting of the Ministerial Council on 23 May 1972, Firnberg requested authorisation to purchase the frieze for the agreed 15 million schillings. According to the minutes of the Council meeting, she stated:

I believe that the Ministerial Council is aware that Klimt’s only monumental work is in Austria. It cannot be transferred to its owner abroad because of an export prohibition. The negotiations by the Austrian State regarding its acquisition [...] have produced no result to date. With the agreement of the Federal Chancellor, I have obtained estimates of the price of this work [...]. I should like to emphasise again that the work is Klimt’s only surviving monumental work. Because the object is in danger in its current place of storage, I have been given authorisation [...] to contact [...] the owner Lederer regarding purchase. I have [...] been authorised [...] to negotiate up to a purchase price of 15 million schillings. Most of the estimates [...] put the price at 1 million US dollars. Lederer [...] asked for [...] time to think it over and has now indicated in

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writing that he is willing to sell the work at this price to the Republic of Austria, although he has had offers from elsewhere that are much higher. Added to this is the fact that the work could be transported with the necessary care. Lederer has decided to sell this work to us because the Federal Chancellor has shown such a special interest in it.

Kreisky described the decision-making scope of the Federal Government as follows:

The fate of this work has been discussed for twenty-seven years, as it was a question of confiscated assets. The work has been at risk of decay for many years because [...] nothing was planned for its future. [...] The question facing us was whether we should permit its export, which would have led to a huge uproar because the homeland would then have been deprived of this work by one of the greatest Austrian artists, or whether to purchase it. If we buy it [...] then it should be at a reasonable price. Compared with the prices paid currently for Klimt and Schiele, 1 million dollars would be quite realistic. [...] I believe that [...] the price Federal Minister proposes is one we could pay to acquire this monumental work. There will no doubt be those in Austria who are [...] against the purchase, and I can imagine where these objections might come from, because the work was already described some time ago [...] as pornography. I believe that the high price is justified because it is intended [...] to place the work in the large entrance foyer of UNO City. [...] Given the huge cost of UNO City, the acquisition would at best be no more than the price for the furnishing of a small meeting room. [...] I can only [...] support the application and believe that in view of the controversy surrounding this purchase the entire Federal Government should be informed of it. The Federal Minister of Finance also knows of this plan and has agreed to the purchase.

At the time, 15 million schillings was equivalent to 650,000 US dollars.

The written version of the sales contract was transmitted to Lederer by the Federal Ministry of Science and Research on 16 November 1972 and the funds for the purchase were earmarked under the Second Budget Surplus Act of 1972, BGBl. 284/1972. The Österreichische Galerie was instructed on 20 February 1973 to inventory the frieze.

Lederer added a personal dedication in the book by Marian Bisanz-Prakken *Gustav Klimt – Der Beethovenfries* to Bruno Kreisky, “who through the purchase of this frieze has unconsciously created a monument for eternity in the Austrian history of art”.

Further correspondence between Lederer and Kreisky concerns Lederer’s efforts to recover the portrait of Cardinal Bessarion by Gentile Bellini.

The Commission considered the following:

1. Legal situation and elements

According to Section 1.1.1 of the Art Restitution Act as amended by BGBl. I No. 117/2009, “art objects that were the subject of restitution [...] and [...] in direct connection with proceedings under the provisions of the Federal Law on the Prohibition of Export of Objects of Historical, Artistic or Cultural Significance, StGBI. No. 90/1918, and that became the property of the Federal State” are to be returned to their original owners or their legal heirs. In contrast to the original legal situation, the fact that the property was acquired free of charge is not a legal prerequisite. The Commission had therefore to

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consider whether the legal requirement pursuant to Section 1.1.1 of the Art Restitution Act was fulfilled in relation to the *Beethoven Frieze* acquired by the State in 1972 for 15 million schillings.

a. Context

The explanations in the Government Bill [Regierungsvorlage] (238 of the annexes to the Stenographic Records of the National Council, XXIV. GP) on Section 1.1.1 of the Art Restitution Act state the following:

Section 1.1.1 concerns acquisitions that were agreed in return for the issuance of export approval according to the Export Prohibition Act in force at the time, StGBI. No. 90/1918. The Commission has already adjudged in the past that the legal requirement consists neither of formal restitution proceedings nor of a formal restitution but rather of the linking of restitution, intention to export and transfer of ownership to the State (recommendation of the Commission of 18 August 1999 “Czeczowiczka”). It was now to be established whether an artwork that was not the object of restitution proceedings because the (original) owner refused or failed to enforce his right to restitution in return for export approval falls under the legal requirement of subparagraph 1. The direct connection between restitution, export proceedings and transfer of ownership to the State are to be understood both substantively and temporally. These acquisitions were normally in the form of “gifts” (Schenkungen) or “donations” (Widmungen). The provision is now to be extended to all cases in which the State acquired property under pressure of export proceedings. This applies in particular to the acquisition of restituted artworks and other cultural objects whose export was not approved after the flight and expulsion of owners now living abroad, effectively forcing them to sell.

It is therefore to be noted first that according to Section 1.1.1 of the Art Restitution Act, three elements are of importance, namely a restitution, export proceedings and acquisition of ownership by the State. It is also important that export proceedings are a consequence of a restitution (“in direct connection with proceedings” under the Export Prohibition Act “and that remain State property”). This means that the case requires not only a restitution, export proceedings and acquisition of ownership by the State but also that these three elements are connected both substantively and temporally.

With this in mind, the Commission in its recommendation of 7 March 2014 (Paul Cahn-Speyer) also recommended restitution because there was a “direct substantive and temporal connection in terms between the restitution [...] and the proceedings under the Export Prohibition Act and the purchase”. In its recommendation of 10 June 2010 (Richard Neumann) the Commission judged that there was a direct connection between the three elements because directly after a restitution decision there was an application for export, which was thus “part of the dispositions directly following the restitution”, and the acquisition of ownership by the State took place in the course of the proceedings under the Export Prohibition Act. The Commission failed to see a direct connection of this type in a second recommendation of 10 June 2010 (Emil Zuckerkandl). In this case, an application for export by the aggrieved owner was refused directly after the restitution in 1948 but the desired acquisition by the State was not completed during these proceedings. As the painting was not purchased by the State until ten years later, and from a third party, who had acquired it from the aggrieved owner, the Commission judged that there was not a direct connection between the export proceedings (following the restitution) in 1948 and the purchase in 1958.

b. Export proceedings

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In its recommendation of 8 October 2010 (Jenny Steiner), the Commission considered what administrative acts constituted the legal element of “proceedings” in the meaning of Section 1.1.1 of the Art Restitution Act. It took into account the administrative proceedings based on an application under Section 4 of the Export Prohibition Act and the officially ordered impoundment under Sections 4a to 4d. With regard to the connection between the proceedings and the acquisition of ownership by the State the question of whether the decision by the aggrieved owner to sell the painting to the State was essentially motivated by export proceedings is of decisive importance. A mere general knowledge of the Export Prohibition Act and its restrictive application by the Federal Monuments Office in no way meets the requirement of “direct connection” in the Art Restitution Act.

In its recommendation of 26 September 2014 (Paul Zsolnay), the Commission elaborated on this idea, stating that the legal element of direct connection between the acquisition and “proceedings” under the Export Prohibition Act could also exist when no (formal) administrative proceedings had taken place but official action by the Federal Monuments Office (and the acquiring State museum) are interlinked in such a way that a direct connection between export prohibition, restitution and acquisition also exists from the seller’s point of view.

c. Restitution

In its recommendation of 8 October 2013 (Willibald Duschnitz), the Commission stated that under Section 1.1.1 of the Art Restitution Act it is irrelevant whether the aggrieved party was formally deprived of ownership through a legal transaction or legal action in the meaning of the 1946 Nullity Act [Nichtigkeitsgesetz]. It might therefore be premature to categorically reject as “restitution” in the meaning of Section 1.1.1 of the Art Restitution Act the restoration of the (de facto) power of disposition, possibly based on a *rei vindicatio*. In a further recommendation on the same date (Heinrich Rothberger), the Commission stated that with regard to the legal element of restitution it is not decisive “that a work of art is (or could have been) also formally the object of proceedings under one of the restitution laws but rather that the aggrieved party’s power of disposition to be restored was restricted through an export prohibition designed to enable the State to acquire the work of art directly.”

2. Restitution of the *Beethoven Frieze*

The facts show that during the Nazi period the sale of objects from the collection (including the *Beethoven Frieze*) was considered on several occasions by the appointed trustee, and attempts were made to confiscate the assets by way of criminal proceedings. As these sales did not take place, however, and the criminal proceedings were dropped by the decision of 31 January 1945, ownership of the *Beethoven Frieze* was not lost through an invalid legal transaction or action in the meaning of Section 1 of the 1946 Nullity Act. Even though Serena Lederer (or her estate) retained title to the *Beethoven Frieze*, she had lost the de facto power of disposition as a result of persecution and also through the (subsequently modified) impoundment decision of 26 November 1938. There is no doubt – as the application for annulment by the Federal Monuments Office also confirms – that this impoundment is part of the persecution of Serena Lederer and therefore qualifies as an invalid legal action in the meaning of Section 1 of the 1946 Nullity Act. This is also demonstrated by the fact that the impoundment was revoked by a decision of Vienna City Council of 23 August 1946, which was followed by restitution as *contrarius actus*. It is irrelevant in this context whether Erich Lederer acquired title to

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the *Beethoven Frieze* as a result of the probate or bankruptcy proceedings, in particular as he was recognised by all sides as the owner.

As the impoundment was revoked by the decision of 23 August 1946, the Federal Monuments Office on presentation of the documents requested the liquidator Martin Höberl on 12 August 1946 to remove the frieze from Thürnthal Castle, and this request was repeated to Erich Lederer's legal representative Hans Popper on 6 November 1950, and finally that the court custody of the frieze was applied for, there is no doubt that Erich Lederer (and Serena Lederer's estate) had power of disposition from 1946 and at all events after 1950. Any existing inheritance or bankruptcy restrictions appear insignificant in this context. The *Beethoven Frieze* was therefore restituted in the meaning of Section 1.1.1 of the Art Restitution Act with the revocation of the impoundment by the decision of 23 August 1946.

Export proceedings

Following the restitution of the collection, Erich Lederer made applications for export that were decided on by the Federal Monuments Office on 28 June 1950. In direct connection with these proceedings, the State acquired numerous artworks from Erich Lederer as "donations", whose return of title was recommended by Commission recommendations of 10 May 1999 and 30 November 2012.

The Federal Monuments Office stated to Hans Popper in connection with the request of 6 November 1950 to remove the *Beethoven Frieze* that "an [...] application for export had been made" for this by Erich Lederer. This application cannot be found in the files of the Federal Monuments Office. The frieze was not on the Federal Monuments Office list of 11 January 1950 of the collection items that were expected to be banned from export nor on the collection list on which the export approval of 28 June 1950 was based, after deletions. Otto Demus also noted in a *pro domo* memo of 2 May 1950, however, that the frieze should be "blocked". It is therefore at least conceivable that Erich Lederer was informed during these export proceedings that export approval would not be granted for the frieze.

An export application for the *Beethoven Frieze* at the time would without doubt have resulted from the restitution, if it were to be seen as part of Erich Lederer's dispositions on the future fate of the collection. However, there is no acquisition intention by the State in connection with this administrative act by the Federal Monuments Office. On the contrary, the request to remove the frieze from Thürnthal Castle and the memo by Otto Demus that donation of the frieze in return for issuance of export authorisations was "out of the question on its own" would appear to indicate that the State was not interested in acquiring it.

At all events, in a letter of 17 June 1967, Erich Lederer applied for export authorisation for the frieze that was not further processed by the Federal Monuments Office, apart from a brief reply, and that was not followed up later by Lederer. His handwritten notes of 19 June 1970 indicate, however, that he believed that the frieze was subject to an export prohibition ("[...] and I am not allowed to export it!").

On the other hand, the Federal Monuments Office records indicate that from the mid-1960s at the latest the increasingly urgent restoration was the priority and that the possibility of export authorisation was discussed in internal memos. Measures by the Federal Monuments Office such as the issuance of a preservation order – since the preservation order of 1930 seems to have been forgotten – were rejected, not least because then "it would most certainly have to be followed [...] by its acquisition".

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Connection

Erich Lederer not only offered the *Beethoven Frieze* in 1950 as an alternative to the donations requested by the Federal Monuments Office but also noted in a letter of 30 November 1953 to the Federal Monuments Office in connection with the idea for the first time of installing the frieze in the Lower Belvedere that the frieze was “predestined to be displayed prominently in an Austrian gallery.” In his letter to the Österreichische Galerie of 7 October 1955 he also noted that he was not willing to loan the frieze to the Museen der Stadt Wien but was willing to sell it. After he had submitted three appraisals, which valued the frieze at 1 million US dollars, and Alois Mock had asked him to name a price “for which you would be willing to sell it”, Lederer replied on 22 August 1969 that he would “love” to see the frieze in the interval foyer of the State Opera and said that “a price satisfactory to both parties [could] be negotiated”. Sales negotiations did not begin in earnest until Bruno Kreisky had agreed in a letter of 30 May 1970 to support the purchase of the frieze for around 6 million schillings. Lederer reacted positively to this letter, although the price agreed was well below the value of 1 million US dollars cited in the appraisals. In none of these letters did Lederer indicate that the potential sale were connected with an export prohibition for the frieze.

The subsequent correspondence between the Austrian departments concerned the value of the frieze and the possibilities for its restoration. The Federal Monuments Office once again rejected issuing a preservation order, and the question of an export ban was mentioned, as has been pointed out, by Lederer in his notes of 19 June 1970, but was not at any subsequent time raised by either party in the sales negotiations. In particular, no reference was made to Lederer’s export application of 17 June 1967, which the Federal Monuments Office had failed to deal with.

From the above, it is evident that Erich Lederer was able to dispose of the frieze at the latest from 1950. Both the court custody applied for and later attempts to obtain permission from Lederer for the urgently required restoration demonstrate that all concerned recognised Lederer’s power of disposition with regard to the frieze.

Although the Federal Monuments Office confirmed internally following the restitution of the collection that it would continue to insist on an export ban on some Viennensia and the *Beethoven Frieze*, there is no record of an application in this regard from Lederer. The decisive point is that the administrative actions of the Federal Monuments Office at the time were not connected with an intention by the State to acquire the frieze.

Section 1.1.1 of the Art Restitution Act requires that the State acquired assets in direct connection with proceedings under the Export Prohibition Act resulting from a restitution. A direct connection between restitution, export proceedings and acquisition must exist both substantively and temporally.

Even if it is assumed that (at the latest) in 1950 the frieze was restituted in the meaning of Section 1.1.1 of the Art Restitution Act and that the rejection of export authorisation for the frieze followed from this restitution (which might be inferred from the Federal Monuments Office memo of 2 May 1950), these export proceedings would not be in direct substantive and temporal connection with the acquisition of the frieze in 1972. There was not only a period of twenty-two years between these two events but also no indication in the export proceedings of 1950 that the State intended to acquire the frieze at a later date.

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The sales negotiations also made no reference to Lederer's export application of 17 June 1967 (whose non-treatment was not raised beforehand by Lederer), although it should be pointed out that this application was made at least seventeen years after the acquisition of power of disposition and therefore did not follow the restitution in the meaning of the law.

It has already been noted that mere general knowledge of the Export Prohibition Act and its strict interpretation is not sufficient, and that for the requirement of direct connection with an acquisition by the State to be fulfilled the decision to sell to the State has to have been essentially motivated by the export prohibition proceedings. Even if an interlinked administrative action might be sufficient for fulfilment of the legal requirement, in this case the Federal Monuments Office itself rejected the issuance of a preservation order and in its internal memos accepted the possibility of export authorisation in the event that the purchase should not come about. During the increasingly serious sales negotiations following the letter by Bruno Kreisky of 30 May 1970, proceedings under the Export Prohibition Act were not undertaken nor was there any other administrative act by the Federal Monuments Office aimed at obliging Lederer to sell. The correspondence between Kreisky and Hertha Firnberg (and the Federal Ministry of Science and Research) with Lederer makes no reference either to an export prohibition, and the Ministerial Council records show that at this level as well approval for export was seen as an alternative to purchase.

Conclusion

The Commission therefore comes to the conclusion that no direct substantive and temporal connection exists between the restitution in 1946, proceedings under the Export Prohibition Act and the acquisition by the State in 1972.

The Commission is aware that proceedings (or other interlinked administrative acts) by the Federal Monuments Office in accordance with the Export Prohibition Act followed from the restitution of the collection (including the *Beethoven Frieze*) in 1946, but they were not connected with an intention by the State to acquire the *Beethoven Frieze*.

The export application by Erich Lederer in 1967 cannot be seen as being directly connected substantively or temporally in the meaning of Section 1.1.1 of the Art Restitution Act with the restitution in 1946 alone because of the amount of time between. Moreover, serious sales negotiations took place after the 1967 export application only after the letter by Bruno Kreisky of 30 June 1970 and on his initiative. The intention by the State to acquire the frieze was also presented as an alternative to the granting of export authorisation, as the Ministerial Council records in particular indicate. While Hertha Firnberg discussed the legal situation and referred to the export prohibition for cultural assets that already existed *ex lege*, Kreisky made it clear that a decision had to be made between export approval for the artwork, that was in a threateningly bad condition, and its acquisition. The *Beethoven Frieze* fell under the restrictions of the Export Prohibition Act, but export approval was not refused to force Lederer to sell. There is not therefore any direct substantive and temporal connection between proceedings under the Export Prohibition Act and the acquisition of the frieze by the State.

For the sake of completion, it should be mentioned that the legal requirements of Section 1.1.2, 2a and 3 are not fulfilled because the *Beethoven Frieze* – as mentioned above – was restituted in 1946 and Erich Lederer had real power of disposition at the latest after 1950.

[unofficial translation]

[unofficial translation]

It is therefore recommended to the Federal Minister of Art and Culture, Constitution and Media that title to the frieze should not be transferred to the heirs of Erich Lederer.

Vienna, 6 March 2014

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

Members:

Ministerial Councillor
Dr. Ilsebill Barta

Rector
Mag. Eva Blimlinger

Univ.-Prof. Dr. Artur Rosenauer

Judge at the Administrative Court
Dr. Franz Philipp Sutter

Attorney General ret.
Dr. Peter Zetter

Alternates:

Mag. Dr. Christoph Hatschek

[unofficial translation]